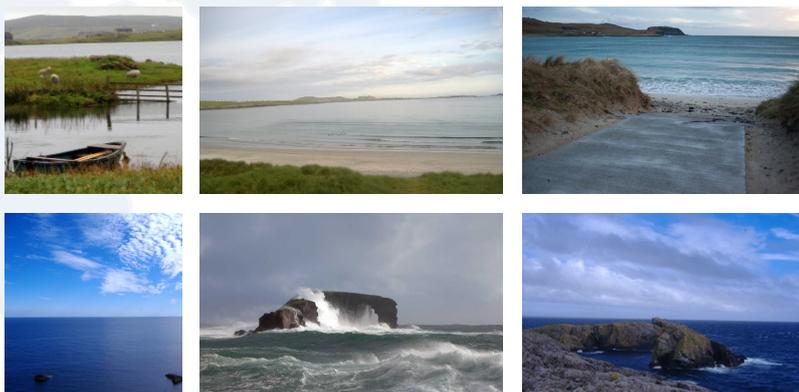


Supplementary Guidance
Works Licensing

Shetland

Local Development Plan 2014



LOCAL DEVELOPMENT PLAN



Shetland Islands Council

Supplementary Guidance – Works Licensing

The Shetland Local Development Plan (the Plan), together with any Supplementary Guidance (SG), sets out the policies and criteria against which planning applications submitted in Shetland will be considered, including those for fish farming developments.

This statutory SG provides the detailed policy advice to meet the requirements of the Plan. It underpins the Local Development Plan Policy **CST1** on Coastal Development with respect to all marine developments except aquaculture. In determining applications for fish farming developments the Council will also have regard to the Shetland Islands' Marine Spatial Plan, itself SG to the Plan, which sets out the spatial development strategy for all marine resource users.

Background

The Zetland County Council Act 1974 (the 1974 Act) imposes a duty on Shetland Islands Council to promote the conservancy of, and control development in, the coastal area of Shetland. Two areas are excluded by the Act, namely Lerwick Harbour limits and a small area around Broonies Taing Pier, Sandwick. Under the powers of the 1974 Act the Council can grant licenses for any works in, on or under the sea and for dredging activity from Mean High Water Springs out to 12 nautical miles. Policy for works licensing has evolved over the years but has always existed to underpin the Council's commitment to sustainable economic development that maintains and improves life chances for local people and communities, protects and enhances Shetland's natural, cultural and built heritage, and involves local communities in the decision making process.

Previous iterations of the Works Licence Policy document, as adopted by the Council, have been referenced in earlier versions of the LDP but have not been included as SG. With the changes to the marine planning process, it is now considered appropriate to fully integrate works licensing with the LDP. As such the SG – Works Licensing provides the detailed development framework that underpins the LDP Policy **CST1 Coastal Development** on all marine developments, including dredging activity

Prior to April 2007 marine aquaculture was also considered under the works licensing process. The Planning etc. (Scotland) Act 2006 amended the Town and Country Planning Act 1997 to extend planning control to marine fish farming with a 2007 Order amending the 1974 Act to exclude fish farming from the definition of works. As a consequence the SG – *Works Licensing* will apply to, *inter alia*, marine renewable developments and other forms of energy extraction (oil and gas), marine infrastructure, maritime activities and recreation. In determining applications for marine developments the Council will also have regard to the National Marine Plan, Scottish Planning Policy, LDP and Shetland Islands' Marine Spatial Plan which collectively set out development objectives and the spatial strategy for all marine resource users.

Under the Marine (Scotland) Act 2010 Scottish Ministers, having adopted a National Marine Plan, can delegate the powers and functions (through a Direction) to develop Regional Marine Plans for the eleven identified Scottish Marine Regions. Together the National and Regional Marine Plans are effectively the respective marine equivalents of Scottish Planning Policy and the Local Development Plan and will guide and direct decisions on all developments in the marine environment. Shetland was the first delegate to receive these powers and functions in March 2016 and the first steps in forming what has been termed a Marine Planning Partnership are underway. It is envisaged that a Shetland Regional Marine Plan will be heavily based on the existing Marine Spatial Plan, this SG – *Works Licensing* document and the SG - *Aquaculture*. It will be necessary for all marine and terrestrial Plans to take cognisance of the policies each contain as they develop and/or go through revision.

Scottish Planning Policy

The following national policies and legislation are relevant to this SG Topic:

Scottish Planning Policy 2014
National Marine Plan 2015

The Conservation (Natural Habitats &c) Regulations 1994
Wildlife and Countryside Act 1981
Water Environment and Water Services (Scotland) Act 2003
Nature Conservation (Scotland) Act 2004
Marine (Scotland) Act 2010
Electricity Act 1989 (Requirement for Consent for Offshore Generating Stations)
(Scotland) Order 2002
Wildlife and Natural Environment (Scotland) Act 2011

This Supplementary Guidance accompanies the
Shetland Local Development Plan Policy CST1 Coastal Development below:

CST1 Coastal Development

Proposals for developments and infrastructure in the coastal zone (Mean High Water Springs out to 12 nautical miles) will only be permitted where the proposal can demonstrate that:

- It will not have a significant impact, either individually or cumulatively, on the natural, built environment and cultural heritage resources either in the sea or on land;
- The location, scale and design are such that it will not have a significant adverse impact.

- It does not result in any deterioration in ecological status or potential for any water body or prevent it from achieving good ecological status in the future;
- There is no significant adverse impact on other users of marine resources, and/ or neighbouring land.

All new marine developments or variations to existing marine infrastructure proposals will be assessed against the SG - *Works Licensing* that details the framework for determination of applications.

Proposals for marine aquaculture developments or amendments to existing fish farm developments will be assessed against the Supplementary Guidance - *Aquaculture*.

All proposals will be assessed against the Shetland Islands' Marine Spatial Plan that sets out a spatial strategy and policy framework to guide marine developments in the coastal waters around Shetland. The Marine Spatial Plan identifies the constraints developers are required to consider when contemplating development in the coastal area and will form supplementary guidance to this plan.

Justification

Whilst Local Authority planning control in the coastal area from Mean Low Water Springs to the limit of territorial waters extends to aquaculture only, the Council must take account of all activities around Shetland's coast. This requirement is further augmented by the duty of development control and safe navigation in respect of marine development placed upon the Council by the Zetland County Council Act 1974. Consequently any proposal for development in the coastal area has to consider a wide range of marine activity and resource use many of which have an economic, environmental and social impact both in the sea and on neighbouring land. Activities will include marine renewables and other forms of energy extraction, marine infrastructure, aquaculture, maritime activities and recreation.

Planning control for aquaculture extends to both the freshwater and marine environments. Finfish and shellfish farming are very significant components of the local economy and SPP requires planning authorities to support the sustainable economic development of new and modified farms in appropriate locations. There is also a need to ensure that potential adverse effects on the environment are minimised and potential conflicts with other users of the marine or freshwater resource are minimised.



**Shetland
Islands Council**

**SUPPLEMENTARY GUIDANCE - WORKS
LICENSING**

June 2016

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SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

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SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

PART I: POLICY FRAMEWORK AND LEGISLATION

1. Introduction

- 1.1 Under the Zetland County Council Act 1974 (the Act of 1974), as amended, the Shetland Islands Council has a duty to promote the conservancy of, and control of development in, the coastal area of Shetland, with the exception of those areas under the jurisdiction of Lerwick Port Authority or Broonies Taing Pier Trust. The Act of 1974 also empowers the Council to grant dredging licenses within the limits of territorial waters around Shetland.
- 1.2 The purpose of the works licence policy is to provide guidance to all involved in the process of considering proposals that fall within the scope of the Act of 1974. In general terms that means the placing of 'works' as defined by the Act of 1974 in the sea, on the seabed or on the foreshore below Mean High Water Springs (MHWS) and out to 12 nm. Works means developments of all types other than that for the purposes of marine fish farming.
- 1.3 The Council will apply this policy to all applications for works licences for which the Council has authority to issue works licences in terms of the Zetland County Council Act 1974 determined on, or after, the date it is approved by Shetland Islands Council. Applications that are out with policy, or attract objections will be determined in line with the Council's Scheme of Delegation as it applies to the Planning Service.
- 1.4 This policy has been drawn up in recognition of the Council's commitment to sustainable development of which the key aims in relation to development in the coastal area are to:
 - Encourage appropriate development that maintains and improves life chances for local people.
 - Involve local communities in the decision making process.
 - Protect and enhance Shetland's environment.

At all times the Council will endeavour to balance these aims to ensure its policies and decisions are equally promoted.

- 1.5 The Council has certain powers and duties in respect of environmental protection, as do other statutory bodies and agencies (see section 3, Regulatory Framework). In respect of works in the coastal area, there may be circumstances where it would be more appropriate for another body to exercise its powers to achieve a particular objective rather than for the Council to seek to secure that objective through the imposition of conditions attached to works licences. However, this does not prohibit the Council from attaching conditions to works licences that may have the effect of securing other objectives as well.

- 1.6 Shetland Islands Council is involved in a number of areas in the fast evolving sphere of marine spatial planning. Principle among these is the Shetland Islands' Marine Spatial Plan, the Local Development Plan and future Regional Marine Plans required under the Marine (Scotland) Act 2010. The purpose behind these plans is a need to optimise, in a balanced manner, the variety of activities that occur in Shetland's marine coastal environment to both safeguard its assets and allow appropriate sustainable development. As such this Works Licence policy will be an integral component of these Plans. It is strongly recommended that developers consult these Plans prior to submitting a works licence application.
- 1.7 This document comprises background information or general advice to developers and prospective licensees and informs the statements contained within the Works Licence Policy.

2. Background

- 2.1 The Act of 1974 was passed primarily to regulate the activities of the oil industry in the coastal area of Shetland. However, this policy is also primarily concerned with, but is not confined to, the following developments and activities:
- Piers, Breakwaters, Marinas, Sea Defences and other constructions
 - Moorings, Pontoons and Moored Barges
 - Pipelines and cables
 - Marine renewable energy developments (wave, tidal and wind).
 - Septic tank sea outfalls
 - Seaweed farming
 - Dredging

3. Regulatory Framework

All Developments

- 3.1 Works licence applications are required for works in the coastal area (MHWS to the limit of territorial sea) around Shetland. Applications will be considered in terms of this policy; the Council's Local Development Plan (where relevant); the National Marine Plan; Scottish Planning Policy; Sectoral Plan Options for Offshore Wind and Marine Renewable Energy and Shetland Islands' Marine Spatial Plan. In addition, applications will be considered in terms of the existing legislative framework currently applying to the development envisaged.
- 3.2 Development for which a works licence is required may also require other permissions from the Council, most notably planning permission (for development above MLWS) or consent from the Council as Coast Protection Authority (for coast protection works). In respect of such developments, existing land-use planning policies (as set out in the Scottish Planning Policy, the Council's Local Development Plan and the Council's Coast Protection Policy) provide the primary policy guidance.

- 3.3 Works below Mean Low Water Springs (MLWS) will generally require a seabed lease from the Crown Estate under the Crown Estate Act 1961. The Council recommends that developers contact the Crown Estate at the earliest possible stage to ensure that their interest is registered and conflicts with other development(s) can be avoided.
- 3.4 Works may require consent from the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 in respect of any discharges from the works.
- 3.5 A marine licence from Marine Scotland under Part 4 of the Marine (Scotland) Act 2010 may also be required in respect of placement of works in the sea, dredging and navigation matters. It replaces the consents previously granted under the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949.
- 3.6 The Council additionally has a statutory duty to meet the requirements of the following legislation:
- The Habitats Directive – conservation of habitats and species; designation of Special Areas of Conservation
 - The Birds Directive – conservation of wild birds; designation of Special Protection Areas
 - Wildlife and Countryside Act 1981 – protection of birds, animals and plants; invasive non-native species; designation of Sites of Special Scientific Interest; nature reserves; rights of way
 - Water Environment and Water Services (Scotland) Act 2003 – protection of the water environment including river basin management planning, controlled activities regulations, provision of water and sewerage services
 - Nature Conservation (Scotland) Act 2004 – duty to further the conservation of biodiversity; SSSIs; preparation of the Scottish Marine Wildlife Watching Code
 - Marine (Scotland) Act 2010 – Marine Protected Areas; marine planning; conservation of seals including haul out designation
 - Wildlife and Natural Environment (Scotland) Act 2011 – provides additional powers and amendments to the 1981 Wildlife Act
 - Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013 – identifies specific coastal areas as shellfish water protected areas

A list of the areas to which the above legislation pertains can be found at Annex 1.

Marine Renewable Developments

- 3.7 For wave and tidal generation schemes, those under 1 MW total output will require a marine licence (from Marine Scotland) in addition to the works licence from Shetland Islands Council. Developments designed to produce more than 1 MW will require a works licence, a marine licence and Section 36 permission under The Electricity Act 1989 (Requirement for Consent for Offshore Generating Stations)(Scotland) Order 2002 through application to Marine Scotland. Developers can use the Section 36 application to obtain deemed planning permission for any onshore infrastructure associated with the development. Alternatively the latter can be obtained direct from

the Planning Authority but the developer must state their preferred option at the application stage.

- 3.8 The same process applies to offshore wind farms with the differential production capacity provisionally set at 50 MW.

4. General Considerations

- 4.1 The Council will take account of the views of all interested parties, including competent and relevant bodies and local communities, in its determination of works licence applications.
- 4.2 Works licence applications will be determined with due regard to relevant national and local policies and guidance in place at the time of the application.
- 4.3 It shall be a condition of all works licenses that developers must comply with all relevant statutory controls currently in force or which come into force during the period in which their works licence remains valid. A failure to comply with any relevant statutory control or a breach of any condition which is brought to the Council's attention will be investigated and may, if circumstances warrant it, result in the Council taking appropriate action.
- 4.4 Where development for which a works licence has been granted does not commence within 3 years of the effective date of grant, the works licence and all rights in connection with it will be forfeit. This period may be extended provided developers submit an application for extension prior to the expiry of the 3 year period in the original works licence.
- 4.5 In respect of all works licences approved pursuant to this policy, if the works are not used, or the operations connected cease, for a continuous period of 3 years on a site for which a works licence has been granted and where development had previously been undertaken, the relevant works licence would cease to have effect. In that case, the licensee will take appropriate steps in correspondence with the Council to seek either an extension of time for continued non-development or approval to recommence development. The Council will not be unreasonable in dealing with either of these requests but where neither scenario happens, or there continues to be no development on site, the Council may initiate proceedings to confirm forfeiture of the works licence. In calculating the 3 year period, no account will be taken of any period where works did not commence or were removed to comply with notices or orders served under other legislation.
- 4.6 Appropriate lights, buoys or beacons that comply with the International Association of Lighthouse Authorities' guidelines must mark any installations close to navigation channels, or which may otherwise be a danger to navigation. Such markings will be specified in the works licence following consultation between the Council's Ports and Harbours Operations and the Northern Lighthouse Board and must be present at all times when equipment is on site.

- 4.7 Where, following a Habitats Regulations Appraisal, an Appropriate Assessment is deemed necessary and subsequently indicates that the development/works will have an adverse effect on the integrity or conservation objectives of any Natura 2000 site, the Council will be minded to refuse the application as required by the 1994 Regulations. Additionally the Council will take account of Articles 12, 13 and 16 of the Habitats Directive in respect of European Protected Species when considering works licence applications.
- 4.8 All applications for new or extended works must be submitted with a mooring specification that is suitable for the proposed development where this is required to maintain the works in position.
- 4.9 Where a works licence requires supporting environmental information, which may be in the form of an Environmental Impact Assessment required under another regulatory regime, the period for determination of the works licence will only commence once all environmental information is received by the Council.
- 4.10 Works licences may only be transferred to a new licensee with the Council's prior written consent. A written application to transfer the licence must be made to the Council who will not unreasonably withhold any such request. Failure to obtain the Council's consent may result in the Council revoking the licence.

SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

PART II: POLICY STATEMENTS

1. GENERAL POLICIES

These policies apply to all structures and developments requiring a works licence under the Act of 1974.

G1 In determining applications for works licences, the Council will take account of, *inter alia*, the following factors:

- The need to ensure that safe navigation is maintained.
- Potential effects, including cumulative, on the environment and natural heritage interests.
- The implications for fishing interests.
- Existing marine aquaculture developments in the locality.
- The implications for recreational and other interests.
- The availability of any necessary infrastructure and potential impact on existing infrastructure, where relevant
- The economic and/or social benefits of the development

G2 The Council may be minded to time limit a works licence where it considers the proposed works to be experimental or where the licence is required by the applicant to run a pilot project or under such circumstances as the Council considers appropriate.

Relevant designations

Special Areas of Conservation

East Mires and Lumbister;

Fair Isle;

Hascosay;

Keen of Hamar;

Mousa;

North Fetlar;

Papa Stour;

Ronas Hill – North Roe;

The Vadills;

Tingon;

Sullom Voe;

Yell Sound Coast;

Pobie Banks candidate SAC.

Special Protection Areas

Fair Isle;

Fetlar;

Foula;

Hermaness, Saxa Vord and Valla Field;

Lochs of Spiggie and Brow;

Mousa;

Noss;

Otterswick and Graveland;

Papa Stour;

Ramna Stacks and Gruney;

Ronas Hill – North Roe and Tingon;

Sumburgh Head.

Marine Protected Areas (Nature Conservation)

Fetlar to Haroldswick

Mousa to Boddam

Marine Protected Areas (Historic)

Out Skerries

Marine Consultation Areas

Brindister Voe and The Vadills;

The Houb, Fugla Ness;

Swinister Voe and the Houb of Fora Ness;

Whiteness Voe.

Sites of Special Scientific Interest, though not listed here, will be relevant in respect of individual applications.

Shetland National Scenic Area.

Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters.

Shellfish Water Protected Areas

Bodies consulted on works licence applications

Community Council within which the application lies;

The Crown Estate;

Royal Society for the Protection of Birds (RSPB);

Scottish Environment Protection Agency (SEPA);

Marine Scotland

Scottish Natural Heritage (SNH);

Shetland Islands Council:

 Environmental Health;

 Development Management;

 Ports and Harbours Operations;

Shetland Fishermen's Association (SFA).

Shetland Shellfish Management Organisation (SSMO)

Northern Lighthouse Board (NLB)

Shetland Amenity Trust

Historic Environment Scotland

Other bodies may be consulted on specific matters, if appropriate.