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Volume 1 Overview Chapters

Chapter 2 Legislation and Policy

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Volume 1 Chapter 2 Legislation and Policy

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Acronyms and Abbreviations

°C	Degree Celsius
AA	Appropriate Assessment
BESS	British Energy Security Strategy
CCC	Committee on Climate Change
CES	Crown Estate Scotland
CfD	Contracts for Difference
dESJTP	Draft Energy Strategy and Just Transition Plan
EEZ	Exclusive Economic Zone
EIAR	Environmental Impact Assessment Report
EIA	Environmental Impact Assessment
EU	European Union
GHG	Greenhouse Gas
GW	Gigawatts
HRA	Habitats Regulations Appraisal
kV	Kilovolt
LDP	Local Development Plan
LSE	Likely Significant Effect
MCA	Marine and Coastguard Agency
MD-LOT	Marine Directorate - Licensing Operation Team
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
MW	Megawatt

NPF	National Planning Framework
NPF3	National Planning Framework 3
NPF4	National Planning Framework 4
nm	nautical miles
OfTI	Offshore Transmission Infrastructure
O&M	Operations and Maintenance
OnTI	Onshore Transmission Infrastructure
ORC	Operations Requiring Consent
OSP	Offshore Substation Platforms
OWF	Offshore Wind Farm
PAC	Pre-application Consultation
PAN	Proposal of Application Notice
PPP	Planning Permission in Principle
RIAA	Report to Inform Appropriate Assessment
SAC	Special Areas of Conservation
SDP	Strategic Development Plan
SEPA	Scottish Environment Protection Agency
SMR	Scottish Marine Regions
SPA	Special Protection Areas
SSSI	Site of Special Scientific Interest
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change
WTG	Wind Turbine Generators

2 Legislation and Policy

2.1 Introduction

- 2.1.1.1 This chapter of the Environmental Impact Assessment Report (EIAR) sets out the key legislation, policies, and other material considerations applicable to the Proposed Development. Additional legislation, policies, and other relevant considerations for specific receptors are listed within the relevant topic chapters of this EIAR.
- 2.1.1.2 Separate offshore and onshore Planning Statementsⁱ to support both the Section 36 consent applications, Marine Licence applications and onshore planning submission are also provided. The Planning Statements provide further detail on the key legislation and policies applicable to the Proposed Development and provide an assessment of compliance against these.
- 2.1.1.3 Figure 2-1 below provides an overview of the relevant policy and legislation which guides the Proposed Development from an international, UK and Scottish perspective. The policies listed in the figure are not an exhaustive list but highlight the key pieces of policy and legislation outlined in this chapter.

ⁱ Refer to Application Document 3 Proposed Development (Onshore) Planning Statement, Application Document 4. Caledonia North Planning Statement, and Application Document 5. Caledonia South Planning Statement.

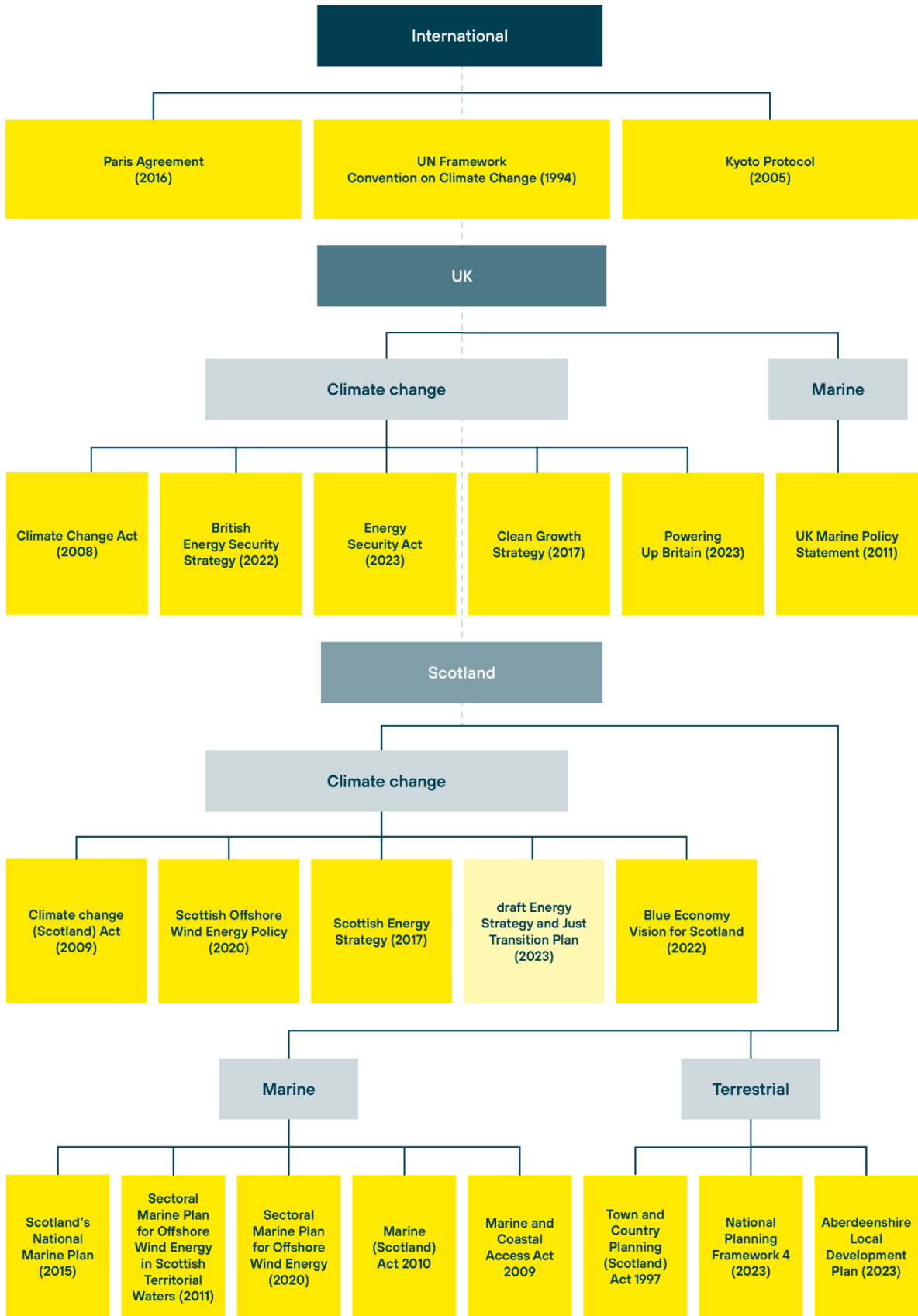


Figure 2-1 Policy and legislation guiding the Proposed Development

2.2 Climate Change Policy and Legislation and the Need for Renewable Energy

2.2.1.1 The challenges of climate change, energy decarbonisation and security of supply are driving governmental policy and decision making on renewable energy developments. There are now a significant number of national and international policies, strategies and regulations relating to climate change and the development of renewable energy in the United Kingdom (UK) and Scotland.

2.2.1.2 At an international level there are three key treaty obligations that provide the overall framework for delivering climate change targeted actions:

- The United Nations Framework Convention on Climate Change (UNFCCC), (United Nations, 1992¹), an international treaty for addressing climate change. It sets the framework for the creation of future agreements that would create obligations on the reduction of Greenhouse Gas (GHG) emissions on signatories;
- The Kyoto Protocol, under the UNFCCC, 1997 (came into force in 2005)² which sets clear GHG emissions reduction targets for state parties. The UK and Scotland transposed these commitments via The Climate Change Act 2008 (UK Parliament, 2008³) and the Climate Change (Scotland) Act 2009 (Scottish Parliament, 2009⁴) respectively; and
- The Paris Agreement, under the UNFCCC (2016⁵). The Paris Agreement supersedes the Kyoto Protocol. Within the agreement state parties agreed to implement key actions to reduce the human impact on climate change, limiting global warming to just under 2 degrees Celsius (°C), with a maximum increase of 1.5°C.

2.2.1.3 On the 28 April 2019, the Scottish First Minister Nicola Sturgeon declared a status of Climate Emergency. The UK Government, followed with the same announcement on the 1 of May 2019. This underlined the need for governmental action to tackle climate change and limit its effects. The Intergovernmental Panel on Climate Change Sixth Assessment Report published in 2021 (IPCC, 2021⁶), underlined the need for immediate action to reduce human influenced climate change.

2.2.1.4 The drive for offshore wind delivery at a UK level is shown by the publication of the Energy white paper: Powering our net zero future (UK Government, 2020⁷) then enhanced by the subsequent policy in 2022 and the most recent passing of the Energy Security Act 2023 (UK Parliament, 2023⁸). The British Energy Security Strategy (“the BESS”) (UK Government, 2022⁹) sets out the UK Government’s ambition to deliver up to 50 Gigawatts (GW) of offshore wind energy development by 2030, including up to 5 GW of innovative floating wind, which aligns with Scottish Government’s National ambitions of the same. The Energy Security Act 2023 (UK Parliament, 2023⁸) sets the regulatory commitment to accelerate the delivery of offshore wind, whilst respecting the environment. This also

includes the power for secondary legislation to address the need for a strategic delivery of compensatory measures for effects on sites within national site network.

- 2.2.1.5 Scotland's long-term climate change targets require net-zero GHG emissions by 2045, in line with advice from the Committee on Climate Change (CCC) and the statutory requirements defined by the Climate Change (Scotland) Act 2009 (Scottish Parliament, 2009¹⁰) and as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (Scottish Parliament, 2019a¹¹). The ongoing development of the renewable energy sector will be required to meet these targets, with offshore wind playing a significant role as development and operation costs are reduced.
- 2.2.1.6 The Scottish Offshore Wind Energy Policy (Scottish Government, 2020¹²), building upon the ambitions outlined within the Scottish Energy Strategy (Scottish Government, 2017¹³), sets out the Scottish Government's ambition to capitalise on the potential that offshore wind development can bring to Scotland and the role this technology could play in meeting Scotland's commitment to reach net zero by 2045. In 2023, the Scottish Government consulted on the draft Energy Strategy and Just Transition Plan ("the dESJTP") (2023¹⁴) that consolidated the commitments made in the 2020 Policy. The dESJTP consultation also collated views on the potential new ambition for offshore wind showing the commitment of the Scottish Government to achieve the overall UK targets set by the BESS in 2022.
- 2.2.1.7 In addition, to the support shown by both UK and Scottish Government, offshore wind has been proven to be a competitive technology. As demonstrated by the Contracts for Difference (CfD) Allocations, offshore wind was confirmed to be one of the more competitive technologies to assist with delivery of energy targets due to pricing and ability to deliver at scale. Schemes to support investment and deployment in the sector is supported by the UK Government (Department for Energy Security and Net Zero, 2022¹⁵).
- 2.2.1.8 All of the above policy and regulatory aims can be summarised as four key drivers for the shift in energy production to low carbon sources in the UK and Scotland, including renewable energy, which are:
- The urgent need to tackle climate change;
 - The need to secure energy supply, through the deployment of renewable electricity capacity;
 - The need for new energy infrastructure; and
 - The need to maximise economic opportunities of the transition to a low carbon economy.
- 2.2.1.9 The Proposed Development of the Caledonia OWF project as a source of clean energy will make an important contribution in helping to achieve the

relevant International, European, UK and Scottish climate change policy aims and legislative requirements.

2.3 Marine Policy Framework

2.3.1.1 The following section outlines the marine planning framework relevant to the Proposed Development (Offshore).

2.3.2 Scotland’s National Marine Plan

2.3.2.1 In March 2015, the Scottish Government published Scotland’s National Marine Plan (Scottish Government, 2015¹⁶). It sets out strategic policies for the sustainable development of Scotland’s marine resources out to 200 nautical miles (nm) (i.e., the contribution of waters offshore from Scotland to the UK’s Exclusive Economic Zone (EEZ)). It is required to be compatible with the UK Marine Policy Statement (UK Government, 2011¹⁷) and existing marine plans across the UK, in particular where there is interaction between England’s inshore and offshore marine plans and Northern Ireland’s Marine Plans. Sector-specific objectives (Offshore Wind and Marine Renewable Energy) of Scotland’s National Marine Plan (Scottish Government, 2015¹⁶)¹⁶ to the Proposed Development are shown in Table 2-1. The objectives include economic, social, marine ecosystem, climate change mitigation and adaptation. Climate change adaptation does not apply to OWF/ marine renewables and therefore not included in the table.

2.3.2.2 Scotland’s National Marine Plan (Scottish Government, 2015¹⁶) encompasses both the policy and planning framework for offshore wind and provides the policy against which development proposals are considered against. The Scottish Government is currently progressing work on Scotland’s National Marine Plan 2.

Table 2-1. Offshore wind and marine renewable energy objectives of Scotland’s National Marine Plan.

Objective	Economic	Social	Marine Ecosystem	Climate Change - Mitigation
Sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations.	x		x	x
Economic benefits from offshore wind, wave and tidal energy developments maximised by securing a competitive local supply chain in Scotland.	x	x		

Objective	Economic	Social	Marine Ecosystem	Climate Change - Mitigation
Alignment of marine and terrestrial planning and efficient consenting and licensing processes including but not limited to data sharing, engagement and timings, where possible.	x	x		
Aligned marine and terrestrial electricity transmission grid planning and development in Scottish waters.	x			
Contribute to achieving the renewables target to generate electricity equivalent to 100% of Scotland's gross annual electricity consumption from renewable sources by 2020.				x
Contribute to achieving the decarbonisation target of 50 g CO ₂ /kWh by 2030 (to cut carbon emissions from electricity generation by more than four-fifths).				x
Sustainable development and expansion of test and demonstration facilities for offshore wind and marine renewable energy devices.	x	x		x
Co-ordinated government and industry-wide monitoring	x	x	x	

2.3.3 Sectoral Marine Plan for Offshore Wind Energy

2.3.3.1 The first Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters, referred to as Blue Seas – Green Energy (Scottish Government, 2011¹⁸), was adopted in 2011. In July 2013, Marine Scotland published the Draft Sectoral Marine Plan for Offshore Wind, Wave and Tidal energy in Scotland. It identified potential future options for commercial scale offshore wind energy developments. These draft plans were never formally adopted by Scottish Ministers, but the draft options were included in Scotland’s National Marine Plan and are retained in the Offshore Wind Energy in Scottish Waters Regional Locational Guidance (Scottish Government, 2020a¹⁹) for reference.

2.3.3.2 In November 2017, Crown Estate Scotland (CES) announced their intention to run a further leasing round for commercial scale offshore wind energy projects in Scottish Waters. To inform the spatial development of this leasing round, Marine Scotland (now known as the Marine Directorate), as planning authority for Scotland’s seas, were required to undertake a planning exercise in accordance with Scotland’s National Marine Plan.

2.3.3.3 The Sectoral Marine Plan for Offshore Wind Energy (Scottish Government, 2020b²⁰), published in October 2020, provides the strategically planned spatial footprint for offshore wind development in Scotland. It identifies the 15 sustainable Plan Options for the future development of commercial-scale offshore wind energy in Scotland, including deep water wind technologies and covering both Scottish inshore and offshore waters. It also contributes to achieving Scottish and the UK’s energy and climate change objectives and was developed to ensure consistency with Scotland’s National Marine Plan. In the recent ScotWind Leasing process, a total of 20 proposed Offshore Wind Farm (OWF) projects were awarded option agreements within the 15 Plan Options, for a total of 27.6GW of capacity. This includes 17 proposed OWF projects awarded in January 2022, with a further three sites awarded in August 2022 as part of the ScotWind ‘Clearing’ process.

2.3.3.4 The Sectoral Marine Plan for Offshore Wind Energy²⁰ suggests that the NE4 Plan Option (Caledonia Site) is likely to be important as a foraging area for seabirds, including kittiwake from multiple designated sites, and has been classified as subject to ‘high levels of ornithological constraint’. It also identifies that there is potential for development in the NE4 Plan Option to have significant consequences for navigational safety, due to a large overlap with a key shipping route around the Scottish coastline. Relatively low socio-economic costs (compared to other Plan Options) are identified as potentially arising from development within the NE4 Plan Option. The only costs identified are associated with commercial shipping and fishing, both of which are low when considered over the lifetime of the Proposed Development. These key issues relating to offshore ornithology, shipping and navigation and commercial fisheries are addressed as part of the

Environmental Impact Assessment (EIA), and parallel Habitats Regulations Appraisal (HRA) process for nature conservation designated sites.

- 2.3.3.5 A key part of the Sectoral Marine Plan implementation includes the application of an Iterative Plan Review process. This process allows for new evidence through, for example, scientific research and/or monitoring programmes to be considered and incorporated into the Plan where appropriate. Caledonia Offshore Wind Farm Limited (The Applicant) acknowledges that the Iterative Plan Review is ongoing, being undertaken by the Offshore Wind Directorate, and will engage with this process, while attempting to facilitate the necessary evidence to inform the review of the NE4 Plan Option. It is noted that if the assessment of the Proposed Development concludes adverse effects on integrity as concluded by the plan-level HRA, it may be necessary for the Caledonia Site to seek a derogation and put forward effective compensation measures.

2.3.4 Regional Marine Plan

- 2.3.4.1 Regional marine plans are currently in the process of being prepared within those Scottish Marine Regions (SMRs) where there is an established Regional Marine Planning Partnership. The planning competence of these Regional Marine Planning Partnerships extends out to 12nm. Regional marine plans are required to be developed in accordance with Scotland's National Marine Plan (unless relevant considerations indicate otherwise) and are required to consider the Plan Option areas identified via the sectoral marine planning process, as well as co-ordination with CES's ScotWind Leasing regime and any relevant grid requirements and initiatives.
- 2.3.4.2 Elements of the Proposed Development (Offshore) are within the Moray Firth SMR which encompasses the coastal waters from Fraserburgh to Duncansby Head, extending from Mean High Water Springs (MHWS) out to 12nm. The approach to regional marine planning has been reviewed and updated by the Marine Directorate response to the report created by the Environment, Climate Change and Land Reform Committee (Marine Directorate, 2023²¹).

2.3.5 Other Relevant Marine and Energy Policies

- 2.3.5.1 Both the UK and Scottish Governments have policies in place relevant for the delivery of offshore wind. Table 2-2 below provides an overview of the additional relevant policies and objectives that the proposed development will contribute towards.

Table 2-2. Key UK and Scottish Marine Policy

Policy	Objectives/Targets
Clean Growth Strategy (UK Government, 2017a ²²)	Continued to commit the UK to strengthening its status as a leading market for offshore wind development.
UK Marine Policy Statement (UK Government, 2011 ¹⁷)	Offshore wind is expected to be largest single renewable energy source by 2020 and will play a significant role in move toward low carbon energy supply.
Blue Economy Vision for Scotland (Scottish Government, 2022 ²³)	Offshore wind is one of the many components that form Scotland’s Blue Economy. The Scottish Government has created a vision for Scotland’s Blue Economy: “By 2045 Scotland’s shared stewardship of our marine environment supports ecosystem health, improved livelihoods, economic prosperity, social inclusion and wellbeing.”
Powering up Britain (UK Government, 2023 ²⁴)	Policy document that brings together the UK’s Energy Security Plan and Net Zero Growth Plan, and sets up the vision for the delivery of energy goals in UK. This action plan identifies key goals to achieve energy and climate security, amongst which also a plan to accelerate deployment of renewables, including 50GW of offshore wind by 2030.

2.4 Terrestrial Planning Framework

2.4.1.1 The following section outlines the terrestrial planning framework relevant to the Proposed Development (Onshore).

2.4.2 National Planning Framework 4

2.4.2.1 The fourth National Planning Framework (NPF4) (Scottish Government, 2023a²⁵) was adopted by the Scottish Government on 13 February 2023.

2.4.2.2 NPF4 comprises three parts:

- National Spatial Strategy – a shared vision where each part of Scotland can be planned and developed to create: Sustainable, Liveable, Productive places;
- National Planning Policy – detailed national policy on a full range of planning topics; and
- Annexes – National Development Statements of Need, Spatial Planning Priorities, Six Qualities of Successful Places, the Minimum All-Tenure Housing Land Requirement for each planning authority in Scotland, along with a Glossary of terms and Acronyms.

2.4.2.3 Given the focus of NPF4 on the climate crisis and what planning and development can do to achieve a net zero, sustainable Scotland by 2045, it is evident that a drive to increase offshore wind energy features heavily throughout. Part 1 – National Spatial Strategy includes the North East area, inclusive of the Moray Firth and Aberdeenshire. The document highlights the important contribution the area can make to Scotland’s climate change targets by supporting renewable energy generation and highlights the ‘potential to increase offshore wind energy capacity’, along with the necessary improvement to the electricity distribution and transmission network.

- Policy 1: Tackling the climate and nature crises, sets out an intent to “encourage, promote and facilitate development that addresses the global climate emergency and nature crisis;”
- Policy 3: Promotes nature recovery and nature restoration with the intent to “protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks;”
- Policy 4: Ensures the safeguarding of nationally and internationally important natural assets with the intent to “protect, restore and enhance natural assets making best use of nature-based solutions;” and
- Policy 11: Energy, also sets out the broad and wide-ranging presumption in favour of renewable energy projects stating, “Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported”.

2.4.2.4 The Proposed Development (Onshore) meets the criteria of a National Development, as set out by NPF4 Part 3. Section 3: Strategic Renewable Electricity Generation Transmission Infrastructure. Specifically, that a development within one or more of the Classes of Development described below is designated a national development:

- a) On and offshore electricity generation, including electricity storage, from renewables exceeding 50 megawatts capacity; and
- b) New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132 kilovolts (kV) or more; and) New and/or upgraded Infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.

2.4.3 Aberdeenshire Local Development Plan 2023

2.4.3.1 The Aberdeenshire Local Development Plan (LDP) 2023 (Aberdeenshire Council, 2023²⁶) was formally adopted on 13 January 2023.

- 2.4.3.2 The LDP has been written to accord with National Planning Framework 3 (NPF3), and to be consistent with the Aberdeen City and Shire Strategic Development Plan (SDP). Both NPF3 and the SDP have been superseded by NPF4.
- 2.4.3.3 The LDP includes Section 13: Climate Change explicitly recognising the need for Aberdeenshire to support development that contributes to sustainable development and policies, to support action to tackle climate change and to promote energy generation by renewable sources.
- 2.4.3.4 Policy C2 Renewable Energy notes that Aberdeenshire Council will approve wind energy developments that are appropriately sited and avoid unacceptable environmental effects.
- 2.4.3.5 Development associated with the generation of renewable energy will be supported in principle, subject to detailed consideration.
- 2.4.3.6 Policy PR2 Reserving and Protecting Important Development Sites protects and does not allow alternative development on sites that may reasonably be needed in the future to support national developments identified in the NPF.

2.5 Application Consenting Process and Relevant Legislative Frameworks

2.5.1 Introduction

- 2.5.1.1 This section outlines the consents required to build the Proposed Development, and the relevant legislative frameworks which apply.

2.5.2 Consents Required

- 2.5.2.1 As noted within Volume 1, Chapter 1: Introduction, the Applicant requires the following consents:
- Two consents under Section 36 of the Electricity Act 1989 for the OWF generating stations, specifically for Caledonia North and Caledonia South;
 - Four marine Licence applications under the provisions of Part 4 of the Marine (Scotland) Act 2010 (Scottish Parliament, 2010²⁷) and Part 4 of the Marine and Coastal Access Act 2009 (UK Parliament, 2009²⁸) broken down below:
 - Two marine licences for the generating stations to allow the for the construction of each wind farm infrastructure:
 - one applicable to Caledonia North; and
 - one applicable to Caledonia South.

- o Two marine licences for the construction of the Offshore Transmission Infrastructure (OfTI) assets:
 - one applicable to Caledonia North; and
 - one applicable to Caledonia South.
- One Planning Permission in Principle (PPP) application for the Onshore Transmission Infrastructure (OnTI), under the Town and Country Planning (Scotland) Act 1997 (as amended) (UK Parliament 1997²⁹).

2.5.2.2 The following section outlines the consenting process for these applications.

Offshore

2.5.2.3 The Proposed Development is located within the Scottish Territorial Waters (extending to 12nm from shore) and the UK EEZ (between 12 and 200nm). The Scottish Ministers are the Regulatory Authority in respect of the necessary consents and licences required for the construction and operation of an OWF project. To allow the Scottish Ministers to properly consider the development proposals, developers are required to provide information which demonstrates compliance with the relevant legislation and allows adequate understanding of the material considerations.

2.5.2.4 Where an offshore energy project, such as an OWF, requires Section 36 Consent and a Marine Licence, the Marine Directorate, on behalf of the Scottish Ministers, are able to process both consent applications jointly. Table 2-3 outlines the high-level consenting process that will be followed.

Onshore

2.5.2.5 The Proposed Development (Onshore) will be determined under the Town and Country Planning (Scotland) Act 1997 (UK Parliament, 1997²⁹), which extends to Mean Low Water Springs (MLWS).

2.5.2.6 Aberdeenshire Council are the Regulatory Authority in respect of the necessary consents for the construction and operation of the Proposed Development (Onshore). Table 2-3 outlines the high-level consenting process that will be followed.

Table 2-3. Consenting process summary

Development Stage	Activities Undertaken
Pre-application	This has included: <ul style="list-style-type: none"> ▪ Undertaking of preparatory works; ▪ EIA scoping and development of EIA. As part of this engagement with relevant key stakeholders was undertaken to inform the scoping and development of EIA; and ▪ Pre-application consultation and engagement on the Proposed Development including two rounds of statutory consultation with members of the public and stakeholders,

Development Stage	Activities Undertaken
	both in person and virtual exhibitions; and, technical engagement with statutory stakeholders and organisations including but not limited to; Aberdeenshire Council, Marine Directorate, NatureScot, Scottish Environment Protection Agency (SEPA), Royal Society for the Protection of Birds, Ministry of Defence and Maritime and Coastguard Agency.
Application	<p>Proposed Development (Offshore): Submission of applications to Marine Directorate Licensing Operations Team (MD-LOT), circulation of information to consultees and public advertisement of the application.</p> <p>Proposed Development (Onshore): Submission of application to Aberdeenshire Council, circulation of information to consultees and public advertisement of the application.</p>
Consideration of Application	Consultees make representations on the applications.
Application Evaluation	<p>Proposed Development (Offshore): Consultation responses and the application are reviewed by MD-LOT and recommendation provided to the Scottish Ministers.</p> <p>Proposed Development (Onshore): Aberdeenshire Council review the application and consultation responses.</p>
Application Determination and Announcement	<p>Proposed Development (Offshore): Scottish Ministers provide the determination on the application, which is then publicly announced and published.</p> <p>Proposed Development (Onshore): Aberdeenshire Council provide the determination on the application.</p>
Post-decision	Developer compliance with conditions associated with the consents.

2.5.3 Legislative Framework

2.5.3.1 The following section describes the legislative framework within which the Proposed Development will be delivered.

2.5.4 Electricity Act 1989

- 2.5.4.1 The Proposed Development (Offshore) will be subject to applications to the Scottish Ministers under Section 36 of the Electricity Act 1989 (UK Parliament, 1989³⁰) for consent to construct and operate an electricity generating station. The scope of this consent will include the construction, installation and Operations and Maintenance (O&M) of Wind Turbine Generators (WTGs) and inter-array cables within the respective application areas. In addition, the Scottish Ministers may make a declaration under section 36A of the Electricity Act 1989 (as amended) (UK Parliament, 1989³⁰) extinguishing the public rights of navigation for the locations of the proposed WTGs and Offshore Substation Platforms (OSP) structures.
- 2.5.4.2 In summary, consent under Section 36 of the Electricity Act 1989 (as amended) (UK Parliament, 1989³⁰) is required for any proposal to construct, extend or operate a generating station (an OWF) situated in:
- Scottish Territorial Waters (from baselines out to 12nm), with a generation capacity in excess of 1 Megawatt (MW); or
 - Scottish Offshore Region (from 12 to 200nm), with a generating station in excess of 50MW.
- 2.5.4.3 Scottish Ministers grant consent under Section 36 of the Electricity Act 1989 (as amended) (UK Parliament, 1989³⁰) with consideration of input and recommendations from MD-LOT.
- 2.5.4.4 The Proposed Development will be applying for two Section 36 consents under the Electricity Act 1989 (as amended) (UK Parliament, 1989³⁰), for Caledonia North and Caledonia South respectively.
- 2.5.4.5 In formulating the Proposed Development it will be relevant to taken into account the terms of schedule 9 to the electricity Act 1989 (UK Parliament, 1989³⁰). This ensures that environmental considerations are properly evaluated through the project design process and that appropriate mitigation is put forward.

2.5.5 Marine Licensing

Marine (Scotland) Act 2010

- 2.5.5.1 The Marine (Scotland) Act 2010 ("the 2010 Act") (Scottish Parliament, 2010³¹) provides the legislative and management framework for the marine environment within Scottish Territorial Waters (from MHWS out to 12nm). Under the Marine (Scotland) Act 2010, the Proposed Development (Offshore) will be required to obtain separate Marine Licences for Caledonia North and Caledonia South in relation to the construction and deposition of structures below MHWS.

- 2.5.5.2 Part 4 (Marine Licensing) of the Marine (Scotland) Act 2010 includes licensable marine activities (Section 21) for which the following would apply to the Proposed Development (Offshore):
- (1) To deposit any substance or object within the Scottish marine area, either in the sea or on or under the seabed, from any of the following:
 - (a) a vehicle, vessel, aircraft or marine structure; or
 - (b) a container floating in the sea, or a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.
 - (2) To deposit any substance or object anywhere in the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object either:
 - (a) in Scotland; or
 - (b) in the Scottish marine area.
 - (5) To construct, alter or improve any works within the Scottish marine area either:
 - (a) in or over the sea; or
 - (b) on or under the seabed.
 - (6) To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area; and
 - (7) To carry out any form of dredging within the Scottish marine area (whether or not involving the removal of any material from the sea or seabed).
- 2.5.5.3 The Scottish Ministers grant a Marine Licence under Part 4 of the Marine (Scotland) Act 2010 (Scottish Parliament, 2010³¹) with consideration of input and recommendations from MD-LOT.

Marine and Coastal Access Act 2009

- 2.5.5.4 The Marine and Coastal Access Act 2009 ("the 2009 Act") (UK Parliament, 2009³²) provides devolved authority to Scottish Ministers for marine planning and conservation powers in the Scottish Offshore Region (from 12 to 200nm). Under the Marine and Coastal Access Act 2009 (in the context of the Scottish Offshore Region), the Proposed Development (Offshore) will be required to obtain separate Marine Licences for Caledonia North and Caledonia South in relation to the construction and deposition of structures beyond 12nm.
- 2.5.5.5 Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009 includes licensable marine activities (Section 66) for which broadly the same activities listed above for the Marine (Scotland) Act 2010 would apply

to the Proposed Development (Offshore) (e.g., deposits, removals and construction; see Section 1.7.2). Scottish Ministers grant a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009 with consideration of input and recommendations from MD-LOT.

Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013

- 2.5.5.6 The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 (Scottish Parliament, 2013b³³), commonly referred to as the Pre-application Consultation (PAC) Regulations, apply to activities occurring within Scottish Territorial Waters (i.e., from MHWS out to 12nm). Whilst these requirements do not apply in respect of relevant applications in the Scottish Offshore Region (beyond 12 nm), the principles of the PAC Regulations will be followed for all offshore aspects of the Proposed Development (Offshore).
- 2.5.5.7 For a prescribed class of activity, within which offshore wind developments is captured, the PAC Regulations require developers to notify the Marine and Coastguard Agency (MCA), Northern Lighthouse Board, NatureScot and SEPA along with any delegate for a relevant marine region. Developers must hold at least one pre-application event for which notification is given to these bodies, and members of the public may provide comments to the developer. Developers must publish, within at least one local newspaper, a notice containing a description of the activity, detail where further information may be obtained, the date and place of the pre-application event and how and when comments should be submitted to the developer. A PAC Report must then be submitted alongside the Marine Licence application to MD-LOT.
- 2.5.5.8 Caledonia has undertaken extensive pre-application consultation to inform this EIAR, details of the PAC process undertaken are presented in Application Document 1: Pre-Application Consultation Report, including both statutory and non-statutory consultation and engagement activities.

Marine Licensing Summary

- 2.5.5.9 The proposed development in its entirety is located both within and outwith 12 nm, therefore falling under the jurisdiction of both the 2010 Act and 2009 Act. This means that the marine licences required will be as follows:
- The two generating stations (Caledonia North and Caledonia South respectively) are located beyond 12nm (offshore waters), and therefore the applications for the two marine licences will be sought under the 2009 Act; and

- The OfTI crosses the 12nm line (inshore waters) and will require to be licensed under both the 2010 Act and the 2009 Act. There will be two OfTI marine licences applications, one for the OfTI to Caledonia South and one for the OfTI for Caledonia North.

2.6 Terrestrial Planning Legislation

2.6.1 Town and Country Planning (Scotland) Act 1997

2.6.1.1 The primary legislation setting the structure of the terrestrial planning system, which extends inland from MWLS, is the Town and Country Planning (Scotland) Act 1997 (UK Parliament, 1997²⁹) (“the 1997 Act”). This Act governs the day-to-day operation of the planning system in Scotland and seeks to ensure that future development and use of land is sustainable. Its primary objectives are to promote sustainable economic development, encourage regeneration and to maintain and enhance the quality of the natural heritage and built environment.

2.6.1.2 It includes the requirement for PAC with local communities for all major and national developments. There are effectively three steps to this process:

- Notifying the Council and the Community Council of their intention to consult with the community. This notification is called a – Proposal of Application Notice (“PAN”);
- Consulting with the community to gather their views on the Proposed Development. The PAC must include at least two public events, held at least 14 days apart. At the final public event held, applicants must feedback on the comments received throughout the PAC; and
- The submission of a PAC report in support of a planning application.

2.6.1.3 Consent for the Proposed Development (Onshore) is being sought via an Application for PPP, in accordance with the Town and Country Planning (Scotland) Act 1997 to Aberdeenshire Council. The Proposed Development (Onshore) is classed as a ‘National Development’, as set out in NPF4. Details of the PAC process undertaken to inform this EIAR are presented in Application Document 1: Pre-Application Consultation Report.

2.6.1.4 Section 26A of the Town and Country Planning (Scotland) Act 1997 defines the three categories in the hierarchy of development to which all developments will be allocated:-

- national development;
- major development; and
- local development.

2.6.1.5 It outlines that the National Planning Framework (NPF) may describe national developments and designate it or a class of development and designate each development within that class as a national development.

2.6.1.6 As outlined in section 2.4.2, the Proposed Development would be classified as a 'national' development under the NPF4 (2023).

2.6.2 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

2.6.2.1 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (Scottish Parliament, 2013c³⁴) set out in detail the requirements/procedure at each stage of the development management process, from pre-application through to post decision, as relevant to both the Applicant and the determining authority.

2.6.2.2 The pre-application process, application preparation and submission of the Proposed Development (Onshore) planning application has been progressed in accordance with the stipulations of these regulations.

2.6.3 The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021.

2.6.3.1 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 were amended by The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 (Scottish Parliament, 2021³⁵). This changed some of the consultation activities required by the Applicant. From 1 October 2022, the PAC regulations required:

- a minimum of two public events to be organised by the Applicant;
- newspaper notices to be placed by the applicant in relation to each such statutory public event (indicating where additional information can be obtained and how comments can be made to the prospective applicant);
- consultation to be undertaken with relevant community councils;
- feedback to be provided at the final public event;
- compliance with new statutory requirements on the content of the PAC report;
- new exemptions to PAC requirements in certain cases (i.e., where a proposal for the same development has been through PAC before and an earlier application was then made within the previous 18 months); and

- a statutory limit of 18 months between a PAN being submitted to the planning authority and the subsequent application.

2.6.4 Terrestrial Planning Legislation Summary

- 2.6.4.1 An application for PPP will be submitted for the development of the OnTI under the Town and Country Planning (Scotland) Act 1997 (as amended) (Scottish Parliament 1997²⁹).
- 2.6.4.2 The Proposed Development (Onshore) would be classed as a 'national' development in accordance with the hierarchy of development set out in the 1997 Act.
- 2.6.4.3 Procedures for preparation and submission of the application for PPP will be undertaken in accordance with the Town and Country Planning (Scotland) Act 1997 and The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, this includes the documents to be submitted in support of the application.
- 2.6.4.4 PAC in relation to the Proposed Development (Onshore) will be undertaken in accordance with PAC requirements as set out in The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

2.6.5 Environmental Impact Assessment

- 2.6.5.1 Requirements for EIA were defined in the EIA Directive (2011/92/EU, as amended by Directive 2014/52/EU) which were transposed into Scottish law. The purpose of the EIA Directive was to ensure that the potential effects of a project on the environment are taken into consideration before relevant consents are granted. If a development is deemed to have the potential to have a significant effect on the environment by virtue of its scale, size and location, then an EIA is required. The competent authority could not grant consent for an EIA development without taking into account the EIAR.
- 2.6.5.2 The requirements of the EIA Directive were enacted through relevant Scottish legislation for electricity generation projects requiring consent under Section 36 of the Electricity Act 1989³⁰ by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (Scottish Parliament, 2017b³⁶). In relation to marine licensing under the Marine (Scotland) Act 2010 (Scottish Parliament, 2010³¹) and Marine and Coastal Access Act 2009 (UK Parliament, 2009³²), the requirements of the EIA Directive are enacted by the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (UK Parliament, 2007³⁷) and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (Scottish Parliament, 2017c³⁸).

- 2.6.5.3 Amendments have been made to EIA Regulations relevant to Scotland’s inshore and offshore waters, so that they continue to be effective and maintain the same standards of protection now that the UK is no longer part of the European Union (EU). The amendments are minor and technical in nature – the legislation continues to operate as it did before EU exit day.
- 2.6.5.4 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (EIA Regulations 2017) (Scottish Parliament, 2017d³⁹) sets out the criteria of development that are to be considered as ‘EIA development’. Regulation 6 of the Regulations considers that a development is an EIA development where either the Local Planning Authority or Scottish Government has issued a Screening Opinion or Direction that the development is an EIA development, or an EIAR is issued to the determining authority by an applicant.
- 2.6.5.5 These EIA Regulations set out the process and requirements for EIA, to which the Proposed Development will adhere.

2.6.6 Habitats Regulations

- 2.6.6.1 Article 3 of the EU Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, commonly known as the Habitats Directive (92/43/EEC) (1992⁴⁰), required the establishment of a European network of important high-quality conservation sites known as Special Areas of Conservation (SACs) that will contribute to conserving habitats and species identified in Annexes I and II of the Directive. The listed habitat types and species are those considered to be most in need of conservation at a European level (excluding birds). In accordance with Article 4 of the EU Directive on the conservation of wild birds, commonly known as the Birds Directive (2009/147/EC) (2009⁴¹), Special Protection Areas (SPAs) are strictly protected sites classified for rare and vulnerable birds (Annex I of the Directive), and for regularly occurring migratory species.
- 2.6.6.2 For Scotland’s terrestrial and marine environment, the requirements of the Habitats and Birds Directives were largely transposed by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (up to 12nm) (UK Parliament, 1994⁴²), the Conservation of Habitats and Species Regulations 2017 (of relevance to consents under Section 36 of the Electricity Act 1989³⁰) (UK Parliament, 2017b⁴³), the Conservation of Offshore Marine Habitats and Species Regulations 2017 (UK Parliament, 2017c⁴⁴) (beyond 12 nm), and the Wildlife and Countryside Act 1981 (as amended) (UK Parliament, 1981⁴⁵).
- 2.6.6.3 Following the UK’s departure from the EU on 31 December 2020, the UK is no longer an EU Member State. Notwithstanding, the Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (Scottish Parliament, 2019c⁴⁶) and the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Scottish Parliament,

2019d⁴⁷) have transferred functions from the European Commission to the appropriate authorities in the UK/Scotland, with SACs and SPAs in the UK no longer forming part of the EU's Natura 2000 ecological network. These Habitats Regulations have created the UK's National Site Network on land and at sea, including both the inshore and offshore marine areas in the UK. This includes all existing SACs and SPAs, and new SACs and SPAs designated under the Habitats Regulations, noting policy on the protections and standards afforded to these sites remains unchanged. These European sites are still protected in Scotland and the rest of the UK, and the terms "European site", "European marine site" and "European offshore marine site" have been retained.

- 2.6.6.4 Under Scottish Government policy, Ramsar sites are also protected under the same statutory regimes, although there is no need to consider Ramsar sites separately if they overlap with SACs and/or SPAs. Ramsar sites are wetlands of international importance designated under the Ramsar Convention (adopted in 1971 and came into force in 1975), providing a framework for the conservation and wise use of wetlands and their resources.
- 2.6.6.5 The Habitats Regulations require that wherever a plan, project or activity, that is not directly connected to, or necessary to the management of a European/Ramsar site, have a Likely Significant Effect (LSE) on a European/Ramsar site (directly, indirectly, alone or in-combination with other plans, projects or activities), then an Appropriate Assessment (AA) of the implications of that site in view of that site's Conservation Objectives must be undertaken by the competent authority. The HRA process, comprising Stage 1 (HRA Screening) and, if required, Stage 2 (AA), must be carried out before consent or authorisation can be given for the proposed development and there is no regulatory timescale for the competent authority to provide a HRA consent.
- 2.6.6.6 HRA Screening has been undertaken to identify designated sites that are protected for their conservation interests and their qualifying features that have potential connectivity to the Proposed Development (Offshore) and the Proposed Development (Onshore) (refer to Application Document 12: Offshore HRA Screening and Application Document 10: Proposed Development (Onshore) Habitat Regulations Appraisal Stage 1 Screening Report to assess whether LSE to these designated sites from potential impacts could be ruled out.

- 2.6.6.7 Report to Inform Appropriate Assessment (RIAA) for the Proposed Development (Onshore) and the Proposed Development (Offshore) where potential LSE could not be ruled out has also been undertakenⁱⁱ. The RIAA assesses whether the Proposed Development will have an adverse effect on site integrity of the designated sites screened in for assessment in order to fulfil the requirements of HRA.
- 2.6.6.8 The HRA process has been progressed alongside the EIA, but is reported upon separately. The EIA and HRA have drawn from, and cross referenced, similar ecological information.

2.7 Other Consents and Licences

- 2.7.1.1 Other consents and licences will be required for the Proposed Development. The section below details those consents likely to be required.

2.7.1 Sites of Special Scientific Interest

- 2.7.1.1 Sites of Special Scientific Interest (SSSI) are areas of land or water which have been designated for their natural features in reference to its flora, fauna, geology or geomorphology. SSSIs are designated by NatureScot under the Nature Conservation (Scotland) Act 2004 (Scottish Parliament, 2004⁴⁹), which requires the identification of any activities likely to damage the natural features of an SSSI.
- 2.7.1.2 Activities that are likely to damage the natural features are listed for each SSSI by NatureScot as Operations Requiring Consent. Operations Requiring Consent require a consent from either the relevant local authority or from NatureScot under Sections 15 and 16 of the Nature Conservation (Scotland) Act 2004 (Scottish Parliament, 2004⁴⁹).
- 2.7.1.3 An application for Operations Requiring Consent from either the relevant local authority or NatureScot must include a description of:
- The nature of the operation
 - The proposed dates of commencement and completion; and
 - The land on which it is proposed to carry out the operation.

ⁱⁱ Refer to Application Document 11. Proposed Development (Onshore) Report to Inform Appropriate Assessment, Application Document 13. Caledonia North Report to Inform Appropriate Assessment, and Application Document 14. Caledonia South Report to Inform Appropriate Assessment

- 2.7.1.4 In the case of receiving consent from the relevant local authority, consent can be obtained either through the granting of planning permission under Part III of the Town and Country Planning (Scotland) Act 1997 (Scottish Parliament, 1997²⁹) or by written permission under Section 15 of the Nature Conservation (Scotland) Act 2004 (Scottish Parliament, 2004⁴⁹). In either case, the relevant local authority must notify NatureScot of an application for Operations Requiring Consent.
- 2.7.1.5 The Cullen to Stake Ness Coast SSSI overlaps at the Landfall Site location. The Landfall Site will require the construction of a HDD launch pit within a construction compound and four Transition Joint Bays (TJB) on land behind the cliffs, which will lie outwith the SSSI area. Consent would be required from NatureScot or the relevant local authority for works within the SSSI, as the activities would fall under site specific Operations Requiring Consent (NatureScot, 2011⁴⁸).
- 2.7.1.6 Only Horizontal Directional Drilling is anticipated to be required within the SSSI, which would require consent under Operations Requiring Consent (ORC) 21 relating to the installation of below ground cables and ORC 23 relating to the undertaking of engineering works, including drilling. An assessment of the potential effects on the SSSI is considered in Volume 2, Chapter 2: Marine and Coastal Processes and Volume 5, Chapter 7: Geology, Soils and Contaminated Land.
- 2.7.1.7 Either the submission of the onshore planning application will constitute a request for consent or an application will be submitted directly to NatureScot. This will be determined and agreed with Aberdeenshire Council and NatureScot prior to the submission of the planning application.

2.7.2 European Protected Species

- 2.7.2.1 European protected species (EPS) are animals and plants which were listed within Annex IV of the Habitats Directive and as such protected under the Habitats Regulations. Under these Regulations certain activities likely to cause disturbance or injury to EPS (e.g., through the introduction of underwater noise) which would otherwise constitute an offence, can be carried out legally under an EPS Licence, as follows:
- Within 12 nm of the coast (Scottish Territorial Water): An EPS Licence may be required under the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) where there is potential for the presence of vessels or underwater noise from the proposed survey activities to injure or cause disturbance to an EPS or for construction activities overall (including overall vessel disturbance). EPS Licences are granted by NatureScot (for scientific research) or MD-LOT on behalf of the Scottish Ministers (e.g., for commercial activities such as geophysical surveys); and

- Outside 12 nm (Scottish Offshore Region): An EPS Licence may be required under the Conservation of Offshore Marine Habitats and Species Regulations 2017 (UK Parliament, 2017b) where there is potential for the presence of vessels or underwater noise from the proposed survey activities to injure or cause significant disturbance to an EPS (population level effect rather than individual animals) or for construction activities overall (for piling and overall vessel disturbance). MD-LOT is the licencing authority for such EPS Licences.

2.7.2.2 Caledonia OWF will apply for EPS Licences as appropriate, including for relevant construction works. Should additional pre-construction or post-construction licences be required (e.g., survey works), these will be discussed and agreed with the relevant consenting authority during the pre-construction phase of the Proposed Development.

2.7.3 Basking Shark

2.7.3.1 Basking sharks (*Cetorhinus maximus*) are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended)⁴⁵ which prohibits the killing, injuring or taking by any method of those wild animals listed on Schedule 5 of the Act. The Nature Conservation (Scotland) Act 2004 (Scottish Parliament, 2004⁴⁹), Part 3 and Schedule 6 made amendments to the Wildlife and Countryside Act 1981 (as amended), strengthening the legal protection for threatened species to include 'reckless' acts. The Act makes it an offence to intentionally or recklessly disturb basking sharks.

2.7.3.2 Licensing requirements under the Wildlife and Countryside Act 1981 (as amended) (UK Parliament, 1981) are similar to those for EPS described above (see Section 1.8.3). For Basking sharks, a licence is required for commercial survey activities (e.g., geophysical surveys) and MD-LOT (on behalf of the Scottish Ministers) is the licensing authority under the Wildlife and Countryside Act 1981 (as amended).

2.7.3.3 Caledonia OWF will apply for a licence for works where required.

2.7.4 Safety Zones

2.7.4.1 The Energy Act 2004 (UK Parliament, 2004⁵⁰) makes provision for, among other aspects, the development, regulation and encouragement of the use of renewable energy sources and giving effect to international agreements relating to pipelines and offshore installations.

2.7.4.2 Under Section 95 of the Energy Act 2004, where a renewable energy installation is proposed to be constructed, and the Scottish Ministers consider it appropriate for safety reasons, designated areas may be declared as safety zones. Safety zones are intended to ensure the safety of the renewable energy installation or other installations in the vicinity during construction, operation, extension or decommissioning. Safety zones may exclude non-OWF vessels from navigating through a designated area for a specific period. The Proposed Development (Offshore) expects to apply for standard safety zones (up to 500m) during construction and major maintenance activities, and around certain offshore structures (i.e., floating WTGs and OSPs) during the operational phase.

2.7.5 Decommissioning

2.7.5.1 Sections 105 to 114 of the Energy Act 2004 require a decommissioning scheme for an offshore renewable energy installation in Scottish Waters to be approved by the Scottish Ministers.

2.7.6 Controlled Activities Regulations

2.7.6.1 Proposed engineering works within the water environment will require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (Scottish Parliament, 2011⁵¹). Caledonia OWF will submit the relevant documentation and associated permissions/licences at the detailed design stage.

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