

Pentland floating offshore wind farm

Volume 2: Offshore EIAR

Chapter 2: Policy and Legislative Context



OFFSHORE EIAR (VOLUME 2): MAIN REPORT

CHAPTER 2: POLICY AND LEGISLATIVE CONTEXT

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GLOSSARY OF PROJECT TERMS

Key Terms	Definition
Dounreay Tri Floating Wind Demonstration Project (the 'Dounreay Tri Project')	The 2017 consented project that was previously owned by Dounreay Tri Limited (in administration) and acquired by Highland Wind Limited (HWL) in 2020. The Dounreay Tri Project consent was for two demonstrator floating Wind Turbine Generators (WTGs) with a marine licence that overlaps with the Offshore Development, as defined. The offshore components of the Dounreay Tri Project consent are no longer being implemented.
Highland Wind Limited	The Developer of the Project (defined below) and the Applicant for the associated consents and licences.
Landfall	The point where the Offshore Export Cable(s) from the PFOWF Array Area, as defined, will be brought ashore.
Offshore Export Cable(s)	The cable(s) that transmits electricity produced by the WTGs to landfall.
Offshore Export Cable Corridor (OECC)	The area within which the Offshore Export Cable(s) will be located.
Offshore Site	The area encompassing the PFOWF Array Area and OECC, as defined.
Onshore Site	The area encompassing the PFOWF Onshore Transmission Infrastructure, as defined.
Pentland Floating Offshore Wind Farm (PFOWF) Array and Offshore Export Cable(s) (the 'Offshore Development')	All offshore components of the Project (WTGs, inter-array and Offshore Export Cable(s), floating substructures, and all other associated offshore infrastructure) required during operation of the Project, for which HWL are seeking consent. The Offshore Development is the focus of this Environmental Impact Assessment Report.
PFOWF Array	All WTGs, inter-array cables, mooring lines, floating sub-structures and supporting subsea infrastructure within the PFOWF Array Area, as defined, excluding the Offshore Export Cable(s).
PFOWF Array Area	The area where the WTGs will be located within the Offshore Site, as defined.
PFOWF Onshore Transmission Infrastructure (the 'Onshore Development')	All onshore components of the Project, including horizontal directional drilling, onshore cables (i.e. those above mean low water springs), transition joint bay, cable joint bays, substation, construction compound, and access (and all other associated infrastructure) across all project phases from development to decommissioning, for which HWL are seeking consent from The Highland Council.
PFOWF Project (the 'Project')	The combined Offshore Development and Onshore Development, as defined.

ACRONYMS AND ABBREVIATIONS

CaSPlan	Caithness and Sutherland Local Development Plan
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EU	European Union
First Minister	First Minister of the Scottish Government
G7	Group of Seven
GHG	Greenhouse Gas
GW	Gigawatt
HRA	Habitats Regulations Appraisal
HWL	Highland Wind Limited
HwLDP	Highland-Wide Local Development Plan
IPCC	Intergovernmental Panel on Climate Change
km	kilometre
LSE	Likely Significant Effect
M	metre
MHWS	Mean High Water Springs
MPA	Marine Protected Areas
MS	Marine Scotland
MS-LOT	Marine Scotland Licensing Operations Team
MW	Megawatts
nm	nautical miles
NMP	National Marine Plan
NPF	National Planning Framework
NPF3	National Planning Framework 3
NPF4	National Planning Framework 4
Offshore EIAR	Offshore Environmental Impact Assessment Report
PAC	Pre-application Consultation
RED I	Renewable Energy Directive (2009/28/EC)
RED II	Renewable Energy Directive (2018/2001/EU)
RIAA	Report to Inform Appropriate Assessment
RMP	Regional Marine Plan
S.36	Section 36 Consent
SAC	Special Areas of Conservation
SMP	Sectoral Marine Plan
SPA	Special Protection Area
SPP	Scottish Planning Policy
THC	The Highland Council
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change
WTG	Wind Turbine Generator

2 POLICY AND LEGISLATIVE CONTEXT

2.1 Introduction

This chapter of the Offshore Environmental Impact Assessment Report (Offshore EIAR) sets out the key legislation, policies, and other material considerations applicable to the Offshore Development. Additional legislation, policies, and other material considerations for specific receptors are listed within the relevant technical assessment chapters of this document (Chapters 7 to 21).

The key legislation and policies covered within this chapter include:

- > An overview of the international frameworks, European Union (EU), and United Kingdom (UK) policy and legislation that support the context of the application;
- > Scottish marine policy and legislation;
- > Regional marine plans;
- > Scottish offshore wind consenting process;
- > Environmental Impact Assessment (EIA) legislation; and
- > Habitats regulations.

2.2 Need for the Development

In April 2019, the First Minister of the Scottish Government (First Minister) declared a climate emergency (CED, 2019a). Two days later, the UK Parliament formally declared an environmental and climate emergency (CED, 2019b), publicly stating their concern about climate change and its consequences.

In August 2021, the Intergovernmental Panel on Climate Change (IPCC) issued the Working Group I contribution to the Sixth Assessment Report (AR6), Climate Change 2021: The Physical Science Basis. This first instalment to AR6 further confirmed that climate change is a global issue, resulting from greenhouse gas (GHG) emissions released into the atmosphere, and largely due to human activity, including the combustion of fossil fuels. Evidence of the effects of climate change includes widespread and rapid changes in the atmosphere, ocean, cryosphere, and biosphere. The Working Group I report emphasised that global surface temperatures will continue to increase until at least mid-century under all emissions scenarios considered. Absent deep, sustained reductions in carbon dioxide and other GHG emissions, global warming is expected to reach or exceed 1.5°C and 2°C during the 21st century (IPCC, 2021).

These findings prompted the First Minister to write to the UK Prime Minister detailing the urgency with which the four nations of the UK must work together and ensure leadership to limit the global temperature rise to 1.5°C in the longer term. The First Minister emphasised that:

“the answer to these challenges - given the urgency of the climate emergency - cannot be business as usual. Instead, we must take decisions and make investments now to support - and accelerate - the development of these alternative [energy sources].”
(Scottish Government, 2021a).

The UK hosted the 26th United Nations Change Conference of the Parties (COP26) in Glasgow, Scotland, in November 2021. The COP26 summit focused on accelerating action towards achieving the goals of the Paris Agreement (see Section 2.3.3) and the United Nations Framework Convention on Climate Change (UNFCCC) (see Section 2.3.1). The COP26 outcome was the Glasgow Climate Pact, a series of decisions and resolutions that build on the Paris Agreement and establish what needs to be done to accelerate action on climate change within this decade. Whilst every Party at COP26 – representing almost 200 countries – agreed to the Glasgow Climate Pact, the pact itself is not legally binding.

The First Minister delivered an address at COP26, detailing how Scotland will continue playing its full part in tackling climate change. The address reaffirmed Scotland's renewable energy potential and the role that renewable energy developments, including offshore wind, can play in realising Scotland's targets of becoming a net-zero country by 2045 at the latest. The First Minister's remarks underscored the vital need for Scotland to:

“accelerate the development of alternative sources of energy...to reduce reliance on an unsustainable source of energy - but also to seize the economic opportunities that the transition [from oil and gas] offers us.” (Scottish Government, 2021b).

In April 2022, the IPCC released the Working Group III contribution to AR6, Climate Change 2022: Mitigation of Climate Change. This third instalment to AR6 stressed the importance of taking immediate action to mitigate the effects of climate change. The Working Group III report states with high confidence that:

“reducing GHG emissions across the full energy sector requires major transitions, including a substantial reduction in overall fossil fuel use, the deployment of low-emission energy sources, switching to alternative energy carriers, and energy efficiency and conservation. The continued installation of unabated fossil fuel infrastructure will ‘lock-in’ GHG emissions.” (IPCC, 2022).

The key drivers underpinning the need for renewable energy given the climate emergency follow from the international policies and obligations set out in the following sections of this chapter. These are as follows:

- > A need to tackle the climate emergency and significantly reduce GHG by increasing reliance on zero or low carbon energy sources and phasing out high carbon energy sources (e.g. fossil fuel power stations);
- > The need for energy security, which includes:
 - o The need to tackle the climate emergency;
 - o The need to secure energy supply;
 - o The need for new energy infrastructure; and
 - o The need to maximise economic and supply opportunities in Scotland and the UK.

The Offshore Development, as a renewable energy source, is aligned with these drivers and requirements and will contribute to ensuring the delivery of low carbon energy in support of net-zero emission targets. This is detailed further within Chapter 20: Climate Change and Carbon.

2.3 International Frameworks

2.3.1 UN Framework Convention on Climate Change

The UNFCCC is an international environmental treaty for addressing climate change. Signed in 1992, and subsequently ratified by 197 countries, it was established to combat 'dangerous' human interference with the climate system by stabilising GHG concentrations in the atmosphere. The UNFCCC was primarily designed to support the development of future agreements, protocols, and amendments that would impose obligations and enforceable requirements to reduce GHG emissions on state parties.

2.3.2 The Kyoto Protocol

The UK is a signatory to the Kyoto Protocol, a legally binding international agreement that commits state parties to specific emissions reduction targets. The protocol came into effect in 2005 and its commitments were incorporated into UK law by the Climate Change Act 2008 and Scottish law by the Climate Change (Scotland) Act 2009. These acts initially required GHG emissions to be reduced by 80% below 1990 levels by 2050.

The UK's Climate Change Act 2008 was amended in 2019 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to require GHG emissions reductions of at least 100% below 1990 levels by 2050 (i.e. net-zero by 2050).

That same year, the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, which amended the Climate Change (Scotland) Act 2009, was passed. It goes a step further by requiring emissions reductions of 100% by 2045, five years earlier than the amended target set by the Climate Change Act 2008.

The Kyoto Protocol's first commitment period began in 2008 and ended in 2012. The second commitment period began in 2013 and ended in 2020. The Kyoto Protocol has been superseded by the Paris Agreement (see Section 2.3.3).

2.3.3 The Paris Agreement

The Paris Agreement (in full, Paris Agreement Under the United Nations Framework Convention on Climate Change) is a legally binding international treaty that sets out to limit global warming to well below 2°C and pursue efforts to limit it to 1.5°C. It also sets long-term goals to provide financing to developing countries to implement mitigation measures, improve resiliency, and adapt to climate impacts. The Paris Agreement is notable as it is the first-ever universal, legally binding global climate change agreement. Adopted by 196 Parties at COP21 in Paris, the Paris Agreement has been ratified by 193 countries, and it entered into force on 4th November 2016.

2.4 European Legislation

2.4.1 Brexit

On 31st January 2020, after triggering Article 50 of the Lisbon Treaty, the UK formally left the EU, in what is often referred to as 'Brexit'. Since formally leaving the EU, the UK Government has committed to implement international environmental obligations in accordance with the European Union (Withdrawal) Act 2018 and to maintain existing environmental and legislative commitments. On this basis, the EU's existing renewable energy targets for the UK, including those established by the Renewable Energy Directive (2009/28/EC) (as described below), remain applicable.

2.4.2 EU Renewable Energy Directive

The Renewable Energy Directive (2009/28/EC) (RED I) was enacted in 2009 and the mandated levels of renewable energy use in EU countries between 2009 and 2021. RED I was revised in 2018 with the passage of the Renewable Energy Directive (2018/2001/EU) (RED II). Under RED II, the UK is committed to sourcing 32% of its total energy needs from renewable sources by 2030. The UK and Scottish Governments have also made legally binding commitments through the Climate Change Act 2008 and the Climate Change (Scotland) Act 2009 (as described below).

2.5 UK Legislation and Marine Policy

2.5.1 Climate Change Act 2008

The Climate Change Act 2008, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, requires the UK to reduce emissions by at least 100% below 1990 levels by 2050. The act provides a legal framework for ensuring that the UK Government meets its commitments to tackle climate change, and its passage established the UK as the first Group of Seven (i.e. G7) nation to set such a goal.

2.5.2 The Energy Act 2013

The Energy Act 2013 outlines the UK's commitment to a low carbon energy industry and investments in low carbon electricity generation. The act establishes the legislative framework to enable secure, affordable, low-carbon energy. It includes provisions for the following:

- > The Secretary of State is granted authority to set a 2030 decarbonisation target range for electricity in secondary legislation.
- > Electricity Market Reform, which consists of measures aimed at attracting the £110 billion investment needed for the low-carbon transition. It introduces Contracts for Difference, which are long-term contracts that are designed to encourage investment in low-carbon electricity generation.

2.5.3 UK Marine Policy Statement

The UK Marine Policy Statement (UK Government, 2011), which was created and adopted by the UK Government and devolved administrations, facilitates an integrated approach to marine planning across the UK and sets out the high-level framework for preparing marine plans and taking decisions affecting the marine environment. Importantly, the UK Marine Policy Statement outlines the requirement for marine plans within UK waters to be developed taking into account environmental, social, and economic objectives.

2.6 Scottish Legislation and Marine Policy

2.6.1 Context

On 28th April 2019, the First Minister made history by declaring a climate emergency, the first government in the world to do so (CED, 2019a). In line with this declaration and the associated challenges of climate change, energy supply and security of supply concerns are driving renewable energy policy 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 Europe, the UK, and Scotland.

2.6.2 Climate Change (Scotland) Act 2009

The Climate Change (Scotland) Act 2009 originally set a legally binding target for reducing GHG emissions by 80% below 1990 levels by 2050. As amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, the act now includes a net-zero emissions target whereby GHG emissions must be 100% lower than 1990 levels by 2045. The act also places sustainable development duties on Scottish Ministers and public bodies relating to climate change. Offshore wind's contribution towards achieving the government's GHG emission reduction commitments has been considered in Chapter 20: Climate Change and Carbon.

2.6.3 Scottish Targets for Reducing Emissions

The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 revised and established new GHG emissions reduction targets. The act allows Scotland to contribute to the Paris Agreement goals of limiting global warming to well below 2°C and pursuing efforts to limit it to 1.5°C. In Scotland, the Emissions Reductions Targets include a reduction of all GHG to net-zero by 2045 with interim targets for reductions of at least 75% by 2030 and 90% by 2040.

2.6.4 The Scottish Energy Strategy

Scotland's Energy Strategy: The Future of Energy in Scotland (2017 Strategy) (Scottish Government, 2017) sets out a vision for the energy system in Scotland to 2050. Among other things, it sets a 2030 target for the equivalent of 50% of the energy for Scotland's heat, transport, and electricity consumption to be supplied by renewable sources. In accordance with the 2017 Strategy, Scotland's Energy Strategy Position Statement (Position Statement) was published in 2021 (Scottish Government, 2021c). The Position Statement notes that:

“Since the publication of the 2017 strategy, the Scottish Government has committed to achieving our ambitious targets of net zero greenhouse gas emissions by 2045 and a 75% reduction by 2030. In light of the economic crisis created by the COVID-19 pandemic, the Scottish Government is now striving to deliver a green economic recovery aligned to those net zero ambitions.”

The Position Statement sets out the programme of work required across the energy sector to support the energy targets and outlines key energy priorities for Scotland, including priorities for renewable energy. The priority of relevance to the Offshore Development is the delivery of the actions from the Offshore Wind Policy Statement, which was published in October 2020 (Scottish Government, 2020a).

The Position Statement also states that the 2017 Strategy will remain in place until an Energy Strategy refresh is adopted by the Scottish Ministers.

2.6.5 Offshore Wind Policy Statement

The Offshore Wind Energy Policy Statement (Scottish Government, 2020a) sets out ambitions to capitalise on offshore wind development and discusses the role this technology could play in meeting the net-zero by 2045 target. It builds upon the ambitions outlined in the 2017 Strategy, which establishes the 2050 energy vision. The 2017 Strategy is integral to the implementation of the Offshore Wind Policy Statement, through the identification of suitable offshore wind farm development areas. The policy statement also highlights the floating wind opportunities in Scotland, stating that:

“There is huge economic opportunity attached to floating offshore wind – Crown Estate Scotland’s Macroeconomic Benefits of Floating Offshore Wind report suggests that the UK floating offshore wind market has potential to support 17,000 jobs and £33.6 billion of Gross Value Added (GVA), with particular potential for deployment in Scotland’s 462,000 km² of waters, much of which are more than 60m in depth. Globally, the market is set to grow to at least 4 GW of capacity by 2030 and 55 GW by 2050, offering an export opportunity to Scotland’s supply chain which is estimated at around £550 million per annum by 2050.”

The Offshore Development, as a floating offshore wind project, will therefore contribute to these benefits. This is discussed further in Chapter 19: Socio-economics, Recreation, and Tourism and Chapter 20: Climate Change and Carbon.

2.6.6 National Marine Plan

In March 2015, the Scottish Government published Scotland’s National Marine Plan – a Single Framework for Managing our Seas (NMP) (Scottish Government, 2015). The NMP sets out strategic policies for the sustainable development of Scotland’s marine resources out to 200 nautical miles (nm) (370 kilometres [km]). As required, the NMP is compatible with the UK Marine Policy Statement (UK Government, 2011) and existing marine plans across the UK.

2.6.7 Sectoral Marine Plan for Offshore Wind Energy

The first Sectoral Marine Plan for Offshore Wind Energy (Blue Seas Green Energy) (Scottish Government, 2011) was adopted in 2011. In July 2013, Marine Scotland (MS) published the Draft Sectoral Marine Plan for Offshore Wind, Wave and Tidal Energy in Scottish Waters (Scottish Government, 2013). It identified potential future options for commercial-scale (i.e. greater than 100 megawatts [MW]) offshore wind energy developments.

The final Sectoral Marine Plan for Offshore Wind Energy (SMP) was published in October 2020 (Scottish Government, 2020b). The SMP builds on the work undertaken in the development of the 2011 and 2013 plans and incorporates recent technological, policy, regulatory, and market developments to develop a new strategic planning process.

The SMP seeks to contribute to the achievement of Scottish and UK climate change policy objectives and targets through the provision of a spatial strategy to inform the seabed leasing process for commercial offshore wind energy in Scottish territorial waters. It aims to maximise the benefits for Scotland, and its communities and people, whilst minimising the potential adverse effects on other marine users, economic sectors, and the environment that may result from further commercial-scale offshore wind development. The SMP identifies 15 final plan options across four Scottish regions that are capable of generating several gigawatts (GW) of renewable energy. There is the potential for up to 10 GW to be deployed to reflect the anticipated future demand.

The SMP has been developed in accordance with the strategic aims of the NMP (Scottish Government, 2015), which addresses the potential for interactions between renewable energy development and other marine users.

2.6.8 Regional Marine Plans

Regional Marine Plans (RMPs) are currently being prepared within Scottish Marine Regions where a Regional Marine Planning Partnership has been established. The planning competence of these partnerships extends out to 12 nm (22 km). RMPs must be developed in accordance with the NMP unless relevant considerations indicate otherwise. The Offshore Development falls under the North Coast Region; however, an RMP for the North Coast has not yet been developed.

2.6.9 Pilot Pentland Firth and Orkney Waters Marine Spatial Plan

The Pilot Pentland Firth and Orkney Waters Marine Spatial Plan (Scottish Government, 2016), developed by MS, Orkney Islands Council, and The Highland Council (THC), sets out an integrated planning policy framework to guide marine development and activities and management decisions, whilst ensuring the quality of the marine environment is protected. The plan identifies most of the north coast, including the Offshore Development location, as a potential offshore renewable energy generation activity area.

As the plan is anticipated to inform the development of the North Coast Regional Marine Plan, Highland Wind Limited (HWL) has referred to it to ensure best practice in delivering its planning policy framework.

2.6.10 National Planning Framework 3

Published in June 2014, National Planning Framework 3 (NPF3) (Scottish Government, 2014a) provides a statutory framework for Scotland's long-term spatial development priorities for the next 20 to 30 years. Statutory Development Plans must have regard to the National Planning Framework (NPF), and Scottish Ministers expect planning decisions to support its delivery.

Orkney, Pentland Firth, and North Caithness are identified as an area of coordinated action in NPF3 and a location of particular significance to the delivery of the Scottish Government's low carbon strategy. NPF3 states that:

“the area is an internationally renowned historic and natural environment, with significant future prospects for growth and innovation. There are unparalleled opportunities for marine renewable energy development, generating significant new business and employment opportunities for the surrounding coastal and island communities.”

A draft National Planning Framework 4 (NPF4) was submitted for consultation in November 2021 and the consultation concluded in March 2022. When adopted, NPF4 will set out the Scottish Government's priorities and policies for the planning system up to 2045 and will detail how the approach to planning and development will help to achieve a net-zero, sustainable Scotland by 2045. NPF4 differs from previous NPFs in two ways: it incorporates the Scottish Planning Policy (SPP), any SPP revisions, and the NPF into a single document, and it will form a part of the statutory development plan.

2.6.11 Scottish Planning Policy

The Scottish Government published a new SPP on 23rd June 2014. It sets out Scottish Government policy on how nationally important land use matters should be addressed and outlines priorities for land use planning

(Scottish Government, 2014b). The SPP should therefore be afforded significant weight in the determination process for planning applications; however, the SPP acknowledges that ‘it is for the decision-maker to determine the appropriate weight in each case’.

The SPP sits alongside other key Scottish Government documents, including the NPF3 and Circulars. The SPP emphasises the merits of sustainable development and the need to deliver heat and electricity in a low-carbon manner through supportive policies in Development Plans. For example, the SPP notes that:

- > ‘Our spatial strategy facilitates the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector’ (SPP, paragraph 152);
- > ‘Efficient supply of low carbon and low-cost heat and generation of heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions’ (SPP, paragraph 153);
- > ‘The planning system should support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity’ (SPP, paragraph 154);
- > ‘The planning system should guide development to appropriate locations’ (SPP, paragraph 154);
- > ‘Should help reduce emissions and energy use...from new infrastructure by enabling development at appropriate locations that contribute to:
 - o Energy efficiency;
 - o Heat recovery;
 - o Efficient energy supply and storage;
 - o Electricity and heat from renewable sources’ (SPP, paragraph 154); and
- > ‘Strategic development plans should support national priorities for the construction or improvement of strategic energy infrastructure, including generation, storage, transmission, and distribution networks’ (SPP, paragraph 156).

Any future revisions to the SPP will be incorporated into the final NPF4 (currently in draft as detailed above). It is clear from the SPP that the Scottish Government is committed to developing further renewable energy projects.

2.7 Local Development Plans

2.7.1 Highland-Wide Local Development Plan (2012)

Approved by Scottish Ministers, the Highland-Wide Local Development Plan (HwLDP) came into force in April 2012. It sets out broad strategic themes within its vision statement that seek to guide and inform development in the Highland local administrative area until 2030 (THC, 2012).

Updates to the HwLDP began in 2016 but were put on hold to allow for incorporation of new emerging legislation and policies, including the Planning (Scotland) Act 2019 and NPF4. As such, the review of the HwLDP under the new arrangements for local development plans is anticipated to commence in 2022.

The Offshore Development is directly associated with a number of HwLDP policies. Of these, the most relevant is Policy 67: Renewable Energy Developments. Other key policies for the Offshore Development within the HwLDP are set out in Table 2.1.

Table 2.1 Policies within the HwLDP applicable to the Offshore Development

Policy	Details
Policy 49 – Coastal Development	This policy sets a framework for ensuring the sustainable use and development of coastal areas. It requires the siting and design of development proposals for the coast or nearshore waters to consider existing interests and ensure the best use of resources. Proposals should

Policy	Details
	also take into account existing and planned marine activities in the area. Proposals will be assessed against the requirements of the Highland Coastal Development Strategy, which, at present, is non-statutory advice but may be adopted as Supplementary Guidance to the HwLDP.
Policy 57 - Natural, Built and Cultural Heritage	This policy considers impacts on natural, built, and cultural heritage designations and features. These are split into three categories, including local/regional importance (e.g. North Cliffs Special Protection Area and Sites of Special Scientific Interest at Red Point Coast, Sandside Bay, and Strathy Coast).
Policy 61 - Landscape	This policy sets out specific requirements for new developments to reflect the landscape characteristics and the special qualities identified by NatureScot in the Landscape Character Assessments which are relevant to the Offshore Development.
Policy 67 - Renewable Energy Developments	This policy notes THC's support, in principle, for renewable energy development. This support, however, is subject to clearly addressing important issues and criteria.

Finally, the Highland Coastal Development Strategy (THC, 2010), identifies the development of the marine renewables industry as a key opportunity for the North Coast due to the potential energy generation. The vision identified in the document includes a diverse range of renewable energy developments and businesses to 'develop a truly mixed renewable energy economy' including offshore wind farms. This is also considered important for retaining a coastal population.

2.7.2 Caithness and Sutherland Local Development Plan (2018)

Local development plans are required to be read in conjunction with the HwLDP. The Caithness and Sutherland Local Development Plan (CaSPlan) was formally adopted by THC in 2018 as part of the HwLDP (THC, 2018). The CaSPlan will be used to guide decisions on future development in the Highlands. The CaSPlan focuses on where development should and should not occur over the next 10 to 20 years.

The strategy and policies presented within the CaSPlan make strong reference to the renewable energy industry in terms of the growth opportunity it presents for the economy. Further references in the CaSPlan recognise the contribution the area can make towards meeting the aim of a 'low carbon' Highlands by 2025. These policies and the CaSPlan strategy are of relevance to and are supportive of HWL's Offshore Development proposal.

2.8 Consenting Legislation

As the Offshore Development is an offshore generating station with a capacity of greater than 1 MW, it requires the following consents and marine licences:

- > A Section 36 (S. 36) Consent under the Electricity Act 1989; and
- > Marine Licences under the Marine (Scotland) Act 2010 as the development is within 12 nm (22 km) of the coast.

The consent and marine licences are described below. Should additional pre-construction licences be required, these will be discussed and agreed with the relevant licensing authority during the pre-construction.

2.8.1 Section 36 of the Electricity Act 1989

To construct and operate an electricity generating station, such as a wind farm, with a capacity greater than 1 MW in Scottish Territorial Waters, consent is required under S.36 of the Electricity Act 1989 (as amended). An application for consent under S.36 in Scottish Territorial Waters is made to Marine Scotland Licensing Operations Team (MS-LOT) on behalf of the Scottish Ministers.

The application for the Offshore Development is for the construction and operation of up to seven floating Wind Turbine Generators (WTGs) with an anticipated generating capacity of around 100 MW within Scottish Territorial Waters. The application is supported by this Offshore EIA, which was prepared in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, as amended. A S.36 Consent and associated consent conditions will allow for the installation, operation and maintenance, and decommissioning of the WTGs and inter-array cables associated with the Offshore Development.

2.8.2 Marine Licence

The Marine (Scotland) Act 2010, which applies to Scottish Territorial Waters (between 0 and 12 nm [0 and 22 km] from mean high water springs [MHWS]), states that a Marine Licence is required to construct, alter, or improve any works, or deposit any object in or over the sea, or on or under the seabed. As the Offshore Development is seaward of the MHWS and lies within 12 nm (22 km) of the coast, a Marine Licence will be required to deposit the WTG anchors and mooring lines and to install the Offshore Export Cable(s) in/on the seabed.

As with the S.36 Consent application above, the Marine Licence application will be made to MS-LOT. This Offshore EIA is also prepared in accordance with the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017, as amended.

2.8.2.1 Marine Protected Areas

The Marine (Scotland) Act 2010 contains provisions to designate Nature Conservation Marine Protected Areas, Demonstration and Research Marine Protected Areas, and Historic Marine Protected Areas (collectively, MPAs) within territorial waters. These MPAs protect a wide range of habitats, species, geology, and undersea landforms in Scottish waters.

Under the Marine (Scotland) Act 2010 for which the marine licences for the Offshore Development are being sought, MS is required to consider whether a licensable activity is Capable of Affecting (other than insignificantly) a protected feature of an MPA or any protected ecological or geomorphological process on which the conservation of any protected feature of an MPA is dependant. As such, this Offshore EIA includes an assessment of any effects on MPAs from the Offshore Development, where relevant, within the applicable technical chapters to aid MS's assessment.

2.8.3 Pre-Application Consultation

The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 and Sections 22 to 24 of the Marine (Scotland) Act 2010 require Pre-application Consultation (PAC) to be undertaken in respect of developments of a certain scale or involving particular works. The process provides opportunities to receive feedback from the public and third sector organisations that can then be addressed in the application and supporting Environmental Impact Assessment Report (EIA).

Details of the PAC process undertaken to inform this Offshore EIA are presented in Chapter 4: Stakeholder Engagement and within the associated PAC Report accompanying the application.

2.9 Environmental Impact Assessment Legislation

EIA requirements are defined in the EIA Directive (85/337/EEC), as codified by EIA Directive (2011/92/EU) and amended by EU Directive (2014/52/EU); these requirements have been transposed into Scottish law.

The purpose of the EIA Directive is to ensure that the potential effects of a project on the environment are taken into consideration before development consent is granted. If a development is deemed to have the potential to cause a significant effect on the environment by virtue of its scale, size, and/or location, then an EIA is required. The results of any such EIA must be provided by the developer to the decision-maker in the form of an EIA. The competent authority cannot grant consent for an EIA development without considering the EIA.

EIA Directive requirements are enacted through relevant UK legislation for electricity generation projects requiring consent under S.36 of the Electricity Act 1989 by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) and in relation to marine licensing by the Marine

Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended), known collectively as the 'EIA Regulations'. The EIA Regulations set out the statutory process and minimum requirements for an EIA, with which this Offshore EIAR has complied.

An EIA is specifically required (Schedule 2 of the Marine Works EIA 2017 [Scotland] Regulations) for installations for the harnessing of wind power for energy production (wind farms) if:

- > The development involves the installation of more than two WTGs; or
- > The hub height of any WTG or height of any other structure exceeds 15 metres (m).

The Offshore Development will consist of more than two WTGs with a hub height of over 15 m; therefore, an EIA is required. The main stages in the EIA process, which have been followed in the development of this Offshore EIAR, are:

- > Scoping to determine the content of this Offshore EIAR and the matters to be addressed by the EIA (the Scoping Report for the Pentland Floating Offshore Wind Farm was submitted by HWL to MS-LOT in December 2020 [HWL, 2020], subsequently, receipt of the Scoping Opinion was received by MS-LOT in September 2021 [MS-LOT, 2021]. HWL submitted a Scoping Report Addendum to MS-LOT in December 2021 [HWL, 2021] to convey proposed changes to the Offshore Development design that had occurred since the original Scoping Report was submitted, subsequently, a second Scoping Opinion was received from MS-LOT in May 2022 [MS-LOT, 2022]. Particulars of the Scoping Addendum are provided in Chapter 3: Site Selection and Alternatives and Chapter 6: EIA Methodology);
- > Data review involving compiling and reviewing available data and/or undertaking baseline surveys to generate site-specific data;
- > Assessment and design iteration whereby the potential significant effects of the Offshore Development during the construction, operation and maintenance, and decommissioning stages are assessed. Feedback is provided to the design and engineering team(s) to modify the development in order to avoid, prevent, reduce, or, as a last resort, offset any significant adverse effects on the environment;
- > Assessment of the construction methodology and the final design of the Offshore Development;
- > Identifying any residual effects and any further mitigation requirements; and
- > Preparation of the EIAR (this report).

Further information on the EIA Regulations and EIA guidance in relation to the EIA process is detailed within Chapter 6: EIA Methodology.

2.10 Habitats Legislation

2.10.1 Habitat and Birds Directive

The Council Directive (92/43/EEC) (the 'Habitats Directive') was adopted in 1992, and its aim is to maintain or restore the natural habitats and wild flora and fauna species listed on the Annexes of the Directive at a favourable conservation status.

The EU Directive (2009/147/EC) on the conservation of wild birds (the 'Birds Directive') provides a framework for the conservation and management of wild birds within Europe.

These Directives have been transposed into Scottish law by various regulations; those of relevance to the Offshore Development include:

- > The Conservation (Natural Habitats etc.) Regulations 1994 (as amended);
- > The Conservation of Habitats and Species Regulations 2017; and
- > The Wildlife and Countryside Act 1981.

These are hereafter referred to as the 'Habitats Regulations'.

Both the Habitats Directive and the Birds Directive form a network of designated ‘European sites’. Under this legislation, these sites include Special Areas of Conservation (SACs), Special Protected Areas (SPAs), and Ramsar Sites. As these directives aim to maintain the biodiversity of European sites to a favourable conservation status, EU Member States must afford these sites robust protection measures.

Following Brexit, the Habitats Regulations remain in force. This includes the general provisions for the protection of European sites, policy and standards, and the procedural requirements to undertake Habitats Regulations Appraisal (HRA) to assess the implications of plans or projects for European sites (as described in Section 2.10.2).

Recent legislative amendments focused on the changes necessary to ensure that the Habitat Regulations remain operable now that the UK has left the EU; however, there have been some changes to terminologyⁱ and Scottish Ministers now exercise some functions which were previously carried out at EU level. Within the UK, the Habitats Regulations now apply to the ‘UK National Site Network’, which covers SACs, SPAs, and Ramsar sites designated at various points in time before Brexit (i.e. UK sites that formed part of the EU Natura 2000 network prior to the UK’s exit from the EU) and any sites designated under the Habitats Directive post-Brexit.

2.10.2 Habitats Regulations Appraisal

Where there is potential for a project to have an adverse effect on a SAC, SPA, or Ramsar site, including proposed or candidate sites (e.g. Candidate SACs), an Appropriate Assessment is required per the UK legislation that gave effect to the Habitats Directive (as detailed above), and which continues to apply post-Brexit (i.e. the Habitats Regulations), to ascertain whether a project will adversely affect the integrity of a site given the conservation objectives of the site.

In accordance with the Habitat Regulations, and as part of the HRA process, where it is identified that there is potential for a Likely Significant Effect (LSE) on a designated site, the applicant is required to provide a Report to Inform Appropriate Assessment (RIAA). The RIAA details information on the effects of the project on the integrity of a European site to the Competent Authority (i.e. MS) to enable them to undertake an Appropriate Assessment of the project.

As such, HWL has produced an HRA RIAA (HWL, 2022) to support the S. 36 Consent and Marine Licences being sought for the Offshore Development. This has been submitted to MS alongside this Offshore EIAR. The HRA RIAA identifies designated sites that are protected for their conservation interests and their qualifying features that have potential connectivity to the Offshore Development (within which the S.36 Consent and Marine Licences are being sought) that are to be assessed for LSE under the Habitats Regulations to fulfil the requirements of HRA.

2.11 Other Permits and Licensing Requirements

Additional permits and licensing may be required for the Offshore Development. These include, but not limited to:

- > European Protected Species / Basking Shark Licences (see Chapter 11: Marine Mammals and Other Megafauna);
- > Safety Zone Applications (see Chapter 5: Project Description); and
- > Decommissioning Programme (see Chapter 5: Project Description).

The legislative context under which these will be sought, if required, will be further detailed in the relevant applications.

ⁱ As detailed at: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/12/eu-exit-habitats-regulations-scotland-2/documents/>.

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