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Dear Mr Baird, **CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE EMEC FALL OF WARNESS SITE, ADJACENT TO THE ISLAND OF EDAY, ORKNEY**

Defined Terms used in this letter and Annexes 1 & 2 are contained in **Annex 3**.

### **THE APPLICATION**

I refer to the Application (“the Application”) made by The European Marine Energy Centre Limited (Company Number SC249331) (“the Company”) (“EMEC”), received on 19<sup>th</sup> December 2014, for consent under section 36 (“S36”) of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of The European Marine Energy Centre Fall of Warness (“the Development”), adjacent to the Island of Eday, Orkney (Annex 1, Figure 1).

The Application submitted is for the construction and operation of a tidal energy test centre with a generating capacity of up to 10 megawatts (“MW”) at the existing EMEC site, Fall of Warness, adjacent to the Island of Eday, Orkney.

I note that the Application is not accompanied by a Marine Licence application for any deposits which will be considered under the Marine (Scotland) Act 2010 (“the 2010 Act”). It is my understanding that the EMEC infrastructure is already in place and that the intention of obtaining a S36 consent for the Site is to allow developers wishing to test devices with a capacity over 1 MW, subject to the design envelope assessed within

the Environmental Statement (“ES”), to submit only a marine licence application thereby streamlining the route to testing marine energy devices within Scottish waters.

## **STATUTORY AND REGULATORY FRAMEWORK** **The Scotland Act 1998, The Scotland Act 1998 (Transfer of Functions to the**

## **Scottish Ministers etc.) Order 1999 and The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006**

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved S36 consent functions under the Electricity Act (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of S36 consent functions as provided under the 1999 Order and then, one day later, retransferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

## **The Electricity Act 1989**

Any proposal to construct, extend or operate a generating station situated in internal waters or the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 MW requires consent under S36 of the Electricity Act. This substituted reduced capacity is implemented through the Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002. A consent under S36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in or determined by or under the consent.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on licence holders or persons authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

Paragraph 3 of Schedule 9 to the Electricity Act also provides that the Scottish Ministers must have regard to the desirability of preserving natural beauty etc. and the extent to which the person by whom the proposals were formulated has complied with their duty to mitigate the effects of the proposals. When exercising any relevant functions a licence holder, a person authorised by an exemption to generate or supply electricity and the Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

Under Schedule 8 of the Electricity Act and the Electricity (Applications for Consent) Regulations 1990 (as amended) (“the 1990 Regulations”), notice of applications for S36 consent must be published by the applicant in one or more local newspapers, in one or more national newspapers, and in the Edinburgh Gazette to allow representations to be made to the Application. Under Schedule 8 to the Electricity Act, the Scottish Ministers must serve notice of any Application for consent upon any relevant Planning Authority.

Paragraph 2(2) of Schedule 8 to the Electricity Act provides that where a relevant planning authority notifies the Scottish Ministers that they object to an application for S36 consent and where they do not withdraw their objection then the Scottish Ministers must cause a public inquiry to be held in respect of the Application. In such circumstances before determining whether to give their consent the Scottish Ministers must consider the objections and the report of the person who held the public inquiry.

The location and extent of the proposed Development to which the Application for S36 relates (being wholly offshore) means that the proposed Development is not within the area of any local Planning Authority. The Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, did however, consult with the Planning Authority most local to the Development. The Scottish Ministers are not, therefore, obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a public inquiry to be held. The nearest local Planning Authority did not object to the Application. If they had objected to the Application, and even then if they did not withdraw their objections, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

The Scottish Ministers are, however, required under paragraph 3(2) of Schedule 8 to the Electricity Act to consider all objections received, together with all other material considerations, with a view to determining whether a public inquiry should be held in respect of the Application. Paragraph 3(2) of Schedule 8 provides that if the Scottish Ministers think it appropriate to do so, they shall cause a public inquiry to be held, either in addition to, or instead of, any other hearing or opportunity of stating objections to the Application.

You can be satisfied that all the necessary tests set out within the Electricity Act when assessing the Application and all procedural requirements have been complied with.

### **Marine (Scotland) Act 2010**

The Marine (Scotland) Act 2010 (“the 2010 Act”) regulates activities in the internal waters and territorial sea adjacent to Scotland in terms of marine environment issues.

Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act, licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

The Company has not applied for a Marine Licence under the 2010 Act in this case. Individual developers will apply for project specific marine licences when they seek to deploy their device at the Fall of Warness site.

### **Climate Change (Scotland) Act 2009**

Under Part 2 of the 2010 Act, the Scottish Ministers have general duties to carry out their functions in a way best calculated to achieve the sustainable development, including the protection and, where appropriate, the enhancement of the health of the area. The Scottish Ministers, when exercising any function that affects the Scottish marine area under the 2010 Act, the Climate Change (Scotland) Act 2009, or any other enactment, must act in a way best calculated to mitigate and adapt to climate change so far as is consistent with the purpose of the function concerned. Under the Climate Change (Scotland) Act 2009 annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions.

The Scottish Ministers are satisfied that in assessing the Application, they have acted in accordance with their general duties, and they have exercised their functions in compliance with the requirements of the Climate Change (Scotland) Act 2009 (as amended).

### **Environmental Impact Assessment Directive; The Electricity (Applications for Consent) Regulations 1990 and The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)**

The Environmental Impact Assessment Directive, which is targeted at projects which are likely to have significant effects on the environment, identifies projects which require an Environmental Impact Assessment (“EIA”) to be undertaken. The Company identified the proposed Development as one requiring an ES in terms of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) (“the 2000 Regulations”).

The proposal for the Development has been publicised, to include making the 2014 ES available to the public, in terms of the 2000 Regulations. The Scottish Ministers are satisfied that an ES has been produced and the applicable procedures regarding publicity and consultation all as laid down in the 2000 Regulations, the 1990 Regulations have been followed.

The Scottish Ministers have, in compliance with the 2000 Regulations, consulted with Scottish Natural Heritage (“SNH”), the Scottish Environment Protection Agency (“SEPA”), the Planning Authority most local to the offshore development and in whose

jurisdiction the onshore development is located, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the Application in accordance with the regulatory requirements. The Scottish Ministers have taken into consideration the environmental information, including the ES, and the representations received from the statutory consultative bodies and from all other persons.

The Scottish Ministers have, in compliance with the 2000 Regulations, obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 25<sup>th</sup> February 2015.

The Scottish Ministers have also consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application, on the ES.

The Scottish Ministers are satisfied that the regulatory requirements have been met.

### **The Habitats Directive and the Wild Birds Directive**

Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and wild fauna and flora (as amended) (“the Habitats Directive”) and Council Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds (as amended and codified) (“the Wild Birds Directive”) have, in relation to the marine environment in waters out to the seaward limit of the territorial sea adjacent to Scotland, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) (“the 1994 Regulations”) for devolved matters, the Conservation of Habitats and Species Regulations 2010 (“the 2010 Regulations”) for reserved matters and for S36 consents, and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended) (“the 2007 Regulations”) for developments out with 12 nm (in waters beyond the territorial sea). The 1994, 2007 and Regulations are known collectively as “the Habitats Regulations”. As the Application is for an S36 consent and as the Development is to be sited in internal waters adjacent to Scotland it is the 2010 Regulations which are applicable. The 1994 Regulations will, however, apply in relation to any applications for marine licences for the Development, hence the approach taken in the Appropriate Assessment (“AA”).

The key mechanism for securing compliance with the Habitats Directive and the Wild Birds Directive is the carrying out of an AA as required under Article 6(3) of the Habitats Directive, being an assessment of a project’s implications for European protected sites in view of such sites’ conservation objectives. Article 7 of the Habitats Directive applies the obligations arising under Article 6(2), (3) and (4) of that Directive to the Wild Birds Directive. Under the 2010 Regulations this is provided by regulation 61 and under the 1994 Regulations this is provided by 48. Developments in, or adjacent to European protected sites, or in locations which have the potential to affect such sites, must undergo what is commonly referred to as a Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages, and if the proposal is likely to have a significant effect on a protected site, then an AA must be carried out.

SNH flagged up issues in relation to the Habitats Directive. This is because the Development has the potential to have an impact on a number of sites designated as

Special Protection Areas (“SPA”) under the Wild Birds Directive and Special Areas of Conservation (“SAC”) designated under the Habitats Directive. In the view of SNH, the Development is likely to have a significant effect on the qualifying interests of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA, the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA; therefore an AA would be required.

In line with advice from SNH, and to ensure compliance with European Union (“EU”) obligations under the Habitats Directive and the Wild Birds Directive, MS-LOT, on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect the site integrity of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA, the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA. Conditions can also be imposed on any grant of consent ensuring that such sites are protected from damage. SNH was consulted on the AA and agreed with all of the conclusions that have been reached (at **ANNEX E – APPROPRIATE ASSESSMENT**). The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

## **APPLICABLE POLICIES AND GUIDANCE Marine area**

### Integrated Coastal Zone Management

The UK Marine Policy Statement 2011 (“the Statement”) states that UK Administrations are committed to ensuring that coastal areas, and activities taking place within them, are managed in an integrated and holistic way in line with the principles of Integrated Coastal Zone Management (“ICZM”). ICZM is an EU led strategy delivered at a local level and deals with the coastal and marine environment in a sustainable way. ICZM seeks, over the long term, to balance environmental, economic, social, cultural and recreational objectives. The Scottish Ministers are satisfied that the proposal is in accordance with the aims of ICZM.

### The UK Marine Policy Statement 2011

The Statement, prepared and adopted in accordance with Chapter 1 of Part 3 of the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”), requires that when Scottish Ministers take authorisation decisions that affect, or might affect, the marine area they must do so in accordance with the Statement.

The Statement which was jointly adopted by the UK Administrations sets out the overall objectives for marine decision making. It specifies issues that decisionmakers need to consider when examining and determining applications for energy infrastructure at sea, namely – the national level of need for energy infrastructure as set out in the Scottish National Planning Framework; the positive wider environmental, societal and economic benefits of low carbon electricity generation; that renewable energy resources can only be developed where the resource exists and where economically feasible; and the potential impact of inward investment in offshore wind, wave, tidal stream and tidal range energy related manufacturing and deployment activity. The associated opportunities on the regeneration of local and national economies need also to be considered.

Chapter 3, paragraphs 3.3.1 to 3.3.6, 3.3.16 to 3.3.18 and 3.3.20 to 3.3.25 of the Statement are relevant and have been considered by The Scottish Ministers as part of the assessment of the Application.

Existing terrestrial planning regimes generally extend to mean low water spring tides (“MLWS”). The marine plan area boundaries extend up to the level of mean high water spring tides (“MHWS”). The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and plans when assessing the Application for the purpose of ensuring consistency in approach.

The Scottish Ministers have had full regard to the Statement when assessing the Application and therefore considers that the Development accords with the Statement, particularly paragraphs 3.3.1 to 3.3.6, 3.3.16 to 3.3.18 and 3.3.20 to 3.3.25 of the Statement which are of particular relevance.

### National Marine Plan

The National Marine Plan, developed in accordance with the 2010 Act and the Marine and Coastal Access Act 2009 (“the 2009 Act”), provides a comprehensive statutory planning framework for all activities out to 200 nm.

Scottish Ministers must make authorisation and enforcement decisions, or any other decision that affects the marine environment, in accordance with the National Marine Plan.

The National Marine Plan sets out a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of the Plan.

Consideration has been given to chapter 4 and 11 of the National Marine Plan as part of the assessment of the Application.

## Other Marine Policy

The proposed Development will provide benefits to the offshore marine industry which are reflected within Scotland's Marine Energy Action Plan. Scotland has considerable potential for offshore renewable energy developments in the wave and tide sector. Estimates indicate that Scotland contains up to 25% of Europe's tidal stream resource and 10% of Europe's wave resource (Marine Energy Group, Marine Energy Action Plan, 2012).

The large scale investment in offshore renewables, particularly through the Renewable Energy Investment Fund ("REIF"), is helping to reindustrialise Scotland's more remote communities. The development of marine energy also represents one of the biggest opportunities for sustainable economic growth in Scotland for a generation. Scotland's ports and harbours present viable locations to service the associated construction and maintenance activities for offshore renewable energy. In addition, Scottish research institutions provide a base of academic excellence for delivering technological advancements and technology transfer and are also well placed to benefit from the creation of this new industry around Scotland.

Published in June 2012, the Marine Energy Action Plan sets out the opportunities, challenges and priority recommendations for action for the wave and tidal sector to realise Scotland's full potential for wave and tidal energy. A Marine Energy Strategy for wave and tidal is currently being prepared by officials in consultation with industry, which aims to highlight the progress that has been made but also focus on the continuing challenges the industry needs to overcome.

## Terrestrial Policy

The Scottish Ministers have had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing this Application for the purpose of ensuring consistency in approach.

## Scottish Planning Policy

Scottish Planning Policy ("SPP") sets out the Scottish Government's planning policy on renewable energy development. Whilst it makes clear that the criteria against which applications should be assessed will vary depending upon the scale of the development and its relationship to the characteristics of the surrounding area, it states that these are likely to include impacts on landscapes and the historic environment, ecology (including birds, mammals and fish), biodiversity and nature conservation; the water environment; communities; aviation; telecommunications; noise; shadow flicker and any cumulative impacts that are likely to arise. It also makes clear that the scope for a development to contribute to national or local economic development should be a material consideration when considering an application.



The Scottish Ministers are satisfied that these matters have been addressed in full both within the Application, the ES, and within the responses received to the consultations by the closest onshore Planning Authority, SEPA, SNH, and other relevant bodies.

### National Planning Framework 3

Scotland's National Planning Framework 3 ("NPF3") is the national spatial plan for delivering the Scottish Government's Economic Strategy. The Main Issues Report sets out the ambition for Scotland to be a low carbon country, and emphasises the role of planning in enabling development of renewable energy onshore and offshore. NPF3 includes a proposal for national development to support onshore infrastructure for offshore renewable energy, as well as wider electricity grid enhancements. NPF3 also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

The Main Issues Report was published for consultation in April 2013 and the Proposed NPF3 was laid in the Scottish Parliament on 14th January 2014. This was subject to a sixty (60) day Parliamentary scrutiny ending on 22nd March 2014. Having taken account the views of Parliament, the Scottish Government published the finalised NPF3 on 23rd June 2014.

NPF3 sets the context for development planning in Scotland and provides a framework for the spatial development of Scotland as a whole, setting out the Scottish Government's development priorities over the next 20-30 years. It also identifies national developments which support the development strategy. Consideration has been given to Chapter 3 of NPF3 as part of the assessment of the Application.

NPF3 sets out the ambition for Scotland to move towards a low carbon country placing emphasis on the development of onshore and offshore renewable energy. NPF3 recognises the significant wind resource available in Scotland and reflects targets to meet at least 30% of overall energy demand from renewable sources by 2020 including generating the equivalent of at least 100% of gross electricity consumption from renewables with an interim target of 50% by 2015. NPF3 also identifies targets to source 11% of heat demand and 10% of transport fuels from renewable sources by 2020.

NPF3 aims for Scotland to be a world leader in offshore renewable energy and expects that, in time, the pace of onshore wind development will be overtaken by the development of marine energy including wind, wave and tidal energy projects. NPF3 notes that Scotland possess almost 25% of Europe's tidal resource and already has infrastructure in place to test nascent technologies prior to the development of commercial arrays.

### Orkney Local Development Plan 2014

The Orkney Local Development Plan ("OLDP") set out a vision and spatial strategy for the development of land in Orkney over the next 10 – 20 years and includes

information on the policies which Orkney Islands Council will use in determining planning applications. The potential for exploitation of the renewable resources available in the Orkney region is noted within the OLDP.

Policy SD6 – ‘Renewable and Low Carbon Energy Developments’ refers to the potential that exists for Orkney to make a positive contribution to Scottish Government targets for the development of heat and energy technologies as laid down in NPF3. SD6 notes that supplementary guidance will be produced in relation to onshore infrastructure requirements related to marine renewable energy developments, upgrades to the electricity grid and additional transmission infrastructure within Orkney. This will provide further guidance on issues such as location, siting and design considerations including landscape, seascape and natural heritage impacts, amenity considerations and cumulative effects.

Where it can be demonstrated that, through appropriate mitigation, that the proposal will not result in significant effects, including environmental effects, either individually or cumulatively, development of onshore infrastructure required for offshore marine renewable energy developments will be supported.

### Summary

The Scottish Ministers consider the policies as outlined above are broadly supportive of the Development.

## **CONSULTATION**

In accordance with the statutory requirements of the 1990 Regulations and the 2000 Regulations, notices of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Notice of the Application for S36 consent is required to be served on any relevant Planning Authority under Schedule 8 to the Electricity Act.

Notifications were sent to Orkney Islands Council, as the local Planning Authority where the export cable comes ashore, as well as to SNH and SEPA.

A formal consultation process was undertaken by the Scottish Ministers. This commenced in January 2015 and related to the Application for S36 consent. The consultation process ended in April 2015 when the final consultee provided comment subject to extension.

## **Representations and objections**

### Public Representations

No public representations were received by MS-LOT during the course of the public consultation exercise.

### Consultee Representations

During the consultation, no objections were received from the consultees although points of concern were raised on some aspects.

### Material Considerations

MS-LOT has carefully considered the issues in connection with the Application and has identified the material considerations, for the purposes of deciding whether it is appropriate to cause a Public Local Inquiry (“PLI”) to be held or for making a decision on the Application for consent under S36 of the Electricity Act.

MS-LOT are content that the material considerations have been addressed in the Application, the ES, and within the responses received to the consultations by the closest onshore Planning Authority, SEPA, SNH and other relevant bodies. The material considerations have been addressed below.

### Public Local Inquiry

Paragraph 2(2) of Schedule 8 to the Electricity Act provides that where a relevant Planning Authority made a valid objection and did not withdraw it, you must convene a PLI, which must be confined to so much of the Application as it relates to land within the area of the authority whom the objection was made (except in so far as you direct otherwise) before you may determine the Application, the Scottish Ministers must consider the objection and the report of the public inquiry.

The local Planning Authority was consulted on the Application, Orkney Islands Council (“OIC”), did not raise any objection to the Development.

Even if OIC had objected, and did not withdraw their objection, a PLI is not a statutory requirement in this case due to the fact that the Development to which the Application for S36 consent relates falls outwith OICs’ jurisdiction. Paragraph 7A of Schedule 8 to the Act provides that paragraph 2(2) of the Schedule does not apply in cases like this where no part of the place to which the Application for S36 consent relates is within the area of the local Planning authority.

Paragraph 3(2) of Schedule 8 to the Electricity Act provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of the 1990 Regulations in those cases where a PLI must not be convened by them in terms of paragraph 2(2) of Schedule 8 (i.e. those cases where the Planning Authority either has not objected or objected and withdrawn their objection or where the “relevant planning authority” is the Scottish Ministers on account of the fact that all of the Development to which the S36 application relates is to be located at sea), then the Scottish Ministers

“shall consider those objections together with all other material considerations” with a view to determining whether a PLI should be held with respect to the Application and, if they think it appropriate to do so, they shall cause a PLI to be held.

The Scottish Ministers have received no objections to the Development as outlined above.

### Summary

In addition to the points of concern raised during the consultation, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers’ consideration of the Application. The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES and in the consultation responses received from the closest onshore Planning Authority, SEPA, SNH and other relevant bodies, together with all other representations. The Scottish Ministers do not consider that a PLI is required in order to inform them further in that regard. The Scottish Ministers consider that no further information is required to determine the Application. Furthermore, there is no obligation to hold a PLI in connection with the Development under the applicable legislation.

### **DETERMINATION ON WHETHER TO CAUSE A PLI TO BE HELD**

In the circumstances, the Scottish Ministers are satisfied that-

1. they possess sufficient information on the Development in order to determine the Application;
2. an inquiry into the issues raised by consultees would not be likely to provide any further factual information to assist the Scottish Ministers to resolve any issues raised by the Application or to change their views on these matters;
3. they have had regard to the various material considerations relevant to the Application; and
4. both consultees and members of the public have been afforded every opportunity to provide information and to make representations.

Accordingly, having regard to all material considerations in this Application, the Scottish Ministers have decided that it is not appropriate to cause a public inquiry to be held.

### **THE SCOTTISH MINISTERS’ CONSIDERATION OF THE ENVIRONMENTAL**

## **INFORMATION**

The Scottish Ministers are satisfied that an ES has been produced in accordance with the 2000 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES and the representations received from the consultative bodies, including SNH, SEPA, and OIC and from all other persons.

## **THE SCOTTISH MINISTERS' CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE**

When considering an application for S36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether the development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Directive and Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

With regard to the Development, SNH advised that the Development is likely to have a significant effect upon the qualifying interest of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA, the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA. As the recognised competent authority under European legislation, the Scottish Ministers, through MSLOT, have considered the relevant information and undertaken an AA. On the basis of the AA, MS-LOT concludes that the Development would not adversely affect the integrity of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa

Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA provided the mitigation measures outlined are implemented by means of enforceable conditions attached either to this consent (**Annex 2**) or to any Marine Licence applied for under the consent and within the bounds of the design envelope assessed. Under the Habitats Regulations the relevant statutory nature conservation bodies must be consulted. This has been carried out and SNH agreed with all the conclusions reached in the AA.

In the case of this Development the key decision for the Scottish Ministers has been the test laid down under article 6(3) of the Habitats Directive (and transposed by the

Habitats Regulations) which applies to the effects of projects on SPAs and SACs. The Scottish Ministers and their statutory nature conservation advisers are satisfied that the test in article 6(3) is met, and that the relevant provisions in the Habitats Directive and the Habitats Regulations are being complied with. The precautionary principle, which is inherent in article 6 of the Habitats Directive and is evident from the approach taken in the AA, has been applied and complied with in full.

The Scottish Ministers are convinced that, by the attachment of conditions to the consent and to any Marine Licence granted following the issue of this consent and within the bounds of the design envelope assessed, the Development will not adversely affect the integrity of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA, the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA. The Scottish Ministers are satisfied that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

## **THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION**

The Scottish Ministers' consideration of the Application and the material considerations are set out below.

For the reasons already set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also satisfied that all applicable statutory regulations have been complied with, and that the Development would not adversely affect the integrity of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA, the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA, the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA.

### **The impacts on marine mammals**

The Scottish Ministers note that techniques used in the construction and the operation of most offshore tidal renewable energy installations have the potential to impact on marine mammals. The construction of the Development will be considered under individual marine licence applications. Such applications will fall under the design envelope assessed for this consent.

SNH and Whale and Dolphin Conservation ("WDC") advised that a key concern was the potential for marine mammals and basking sharks to collide with the operational

turbines. The impact upon harbour seals from the Sanday SAC and the Faray and Holm of Faray SAC, was considered in the AA. The AA concluded that the Development will not adversely affect the integrity of the Sanday SAC and the Faray and Holm of Faray SAC. Conditions recommended from the AA will be included in any future marine licences that may be granted for the Fall of Warness site.

SNH and WDC also raised concerns regarding possible corkscrew injuries being caused to seals, however based on the scientific evidence presented in a recently published report<sup>1</sup> it is considered very likely that the use of vessels with ducted propellers may not pose any increased risk to seals over and above normal shipping activities (as it had been previously advised). The report provides evidence that these injuries may be caused by grey seal predation. Mitigation measures and monitoring such as WDCs recommended Seal Corkscrew Injury Monitoring Scheme (“SCIMS”) are therefore no longer necessary in this regard for the proposal, although all possible care should be taken in the vicinity of major seal breeding and haul-out sites to avoid collisions.

Impacts on cetacean species were also considered by the Company. EMEC will not be undertaking any construction activities themselves however any future deployment of tidal energy convertors at the Site may require a licence to disturb European Protected Species (“EPS”) to be obtained by the relevant applicant.

A response from WDC to the ES consultation highlighted concerns over the Sanday SAC harbour seal population and advised that until the cause of the decline of harbour seals in Orkney and the north and east of Scotland has been established there should be no more anthropogenic pressure placed on the population. WDC also raised concerns about MS issuing licences to shoot seals in this area where the Potential Biological Removal (“PBR”) is very low and the population is declining. It should be noted that MS-LOT has taken the decision not to issue any harbour seal licences in the Orkney and North Coast management unit this year. MS-LOT agree with the SNH view that with predicted collisions of 0.34 animals per year under an assumed 98% avoidance rate and predominance of U-shaped dives, the annual collision rates are unlikely to be statistically distinguishable from natural mortality of animals from the SAC. In addition there is a high likelihood that a large proportion of seals using the Fall of Warness are not associated with the SAC.

WDC commented that a PBR of 17 harbour seals for the North Coast and Orkney harbour seal population is unacceptable, especially for a declining population. Scottish Government takes its advice on the values that should be set for PBR from the Natural Environment Research Council (“NERC”) Special Committee on Seals (“SCOS”). SCOS reviews these values and the recovery factors used annually, taking account of the size and status of the population within the management unit. SNH commented that at the time of writing collision rates were within the PBR limits defined under Marine Scotland’s seal licensing system. It should be noted that the PBR for harbour seals has since reduced to 11 – SNH have since been contacted in the event that this

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<sup>1</sup> <http://www.smru.st-and.ac.uk/documents/2173.pdf>

altered their advice however the advice remains unchanged for the scenarios and Collision Risk Modelling (“CRM”) outlined in the ES at that time.

SNH will be consulted on the Vessel Management Plan (“VMP”) and Environmental Monitoring Plan (“EMP”) where they form a condition of any Marine Licence granted under the 2010 Act or any development to be deployed at the Fall of Warness site. These plans will detail the mitigation measures proposed to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with any development.

Scottish Ministers are satisfied that any further marine mammal mitigation and monitoring deemed necessary, as per the AA, will also be included as conditions on individual marine licences. This will include any necessary applications allowing the disturbance of EPS.

The Scottish Ministers consider, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures that there are no outstanding concerns in relation to the Development’s impact on marine mammals which would require consent to be withheld.

#### *The impacts on birds*

The potential impacts of the Development on bird species were considered in detail by MS-LOT and nature conservation advisors during the assessment of the Application. No objections were raised with regards to ornithological impacts.

SNH advise that the Development is likely to have a significant effect on the qualifying interests of a number of SPAs. Whilst SNH advise LSE, the appraisal carried out demonstrates that the proposal will not adversely affect the integrity of any of the aforementioned SPAs if subject to the mitigation (where relevant) as outlined below.

The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) in response to the ES consultation raise concerns regarding the use of the 98% avoidance rate in the SNH/EMEC appraisal. The RSPB advise that the assessment should accommodate the uncertainties by considering a wider range of avoidance rates when forming its conclusions to ensure the risks to the environment are addressed appropriately and it is likely that this range at the lower end should be under 90%. The RSPB also advise that at the maximum scenario a precautionary approach may result in instances of significant adverse effects on national and international features of nature conservation interest.

The appraisal completed by SNH and EMEC included 50%, 90%, 95%, 98% and 99%, and impacts on SPA qualifying interests are discussed for 90-99% avoidance within the appraisal. The in-combination assessment completed in the AA uses the 95% avoidance rate which MS-LOT consider to be precautionary.



Having carried out the AA (considering all the advice received from SNH and Marine Scotland Science (“MSS”)) it can be ascertained with sufficient confidence that the Development, subject to appropriate conditions being included within individual project consents, will not adversely affect the integrity of the protected sites mentioned above. SNH, when consulted on the AA, agreed with all conclusions reached in the AA.

Any company applying for a marine licence for the EMEC site following the granting of this S36 consent will be required to produce a Project Environmental Monitoring Programme (“PEMP”) as part of the licence conditions (**Annex 2**) to monitor interactions of diving birds with the operational turbines.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed for individual marine licenses, there are no outstanding concerns in relation to the Development’s impact on birds which would require consent to be withheld.

#### *The impacts on commercial fishing activity*

Whilst no responses were received from consulted fisheries bodies including the Inshore Fisheries Group(s), Scottish Fishermen’s Federation (“SFF”) or Scottish Fishermen’s Organisation (“SFO”), MSS comment that the Fall of Warness site is already an established site, the boundaries of which were modified and established following discussion with local fishermen and fisheries organisations. MSS comment that it is likely that the Site has displaced some fishing activity but that this was considered as an acceptable compromise and that the proposals in the ES which would allow different types of devices, and not alter the footprint, are presumably considered an acceptable status quo from a fisheries perspective.

The Scottish Ministers consider that, having taken account of the information provided by the Company and the responses of the consultative bodies, there are no outstanding concerns in relation to the Development’s impact on commercial fishing activity which would require consent to be withheld.

#### *Visual impacts of the offshore development*

SNH, the Scottish Ministers’ statutory advisors on visual impacts on designated landscape features, was consulted on the Development and did not raise any comments with respect to landscape and visual grounds.

As the offshore aspect of the Development is almost exclusively underwater, there are not considered to be any significant impacts to consider in terms of landscape and visual effects. Any additional onshore works, not considered as part of this application, will require a separate planning application to be made to Orkney Islands Council who will consider landscape and visual impacts associated with the terrestrial element of the proposal.

As considered within the Application, surface piercing Tidal Energy Converters (“TECs”) may be installed. However this did not raise any objections from SNH on landscape or visual grounds.

The Scottish Ministers consider that, having taken account of the information provided by the Company and the responses of the consultative bodies, there are no outstanding concerns in relation to the Development’s visual impacts which would require consent to be withheld.

### Economic Benefits

Scottish Planning Policy (“SPP”) advises that economic benefits are material issues which must be taken into account as part of the determination process.

SPP also confirms the Scottish Ministers’ aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland’s manufacturing capacity, to develop new indigenous industries, particularly in rural areas, and to provide significant export opportunities. The planning system has a key role in supporting this aim and the Scottish Ministers have considered material details as to how the Development can contribute to local or national economic development priorities as stated in SPP.

The operation of the tidal test centre will have a number of economic benefits. Each developer utilising the Site will have a small number of staff working in Orkney for varying lengths of time that will generate both personal and business expenditure in Orkney. The facility will also support the on-going development of the renewable energy sector in Orkney and provide a test facility of national importance to the development of tidal energy, which will, for example, help manufacturers/developers to sustain and create jobs.

The Scottish Ministers have taken account of the economic information provided by the Company and consider that there are no reasons in relation to this that would require consent to be withheld.

### Impacts on Navigational Interests

Both the Northern Lighthouse Board (“NLB”) and the Royal Yachting Association (“RYA”) responded to the consultation request and neither objected. NLB did, however, note that developments would still be required to apply for individual marine licences to deploy devices at the Site and advised that such applications should be accompanied by a relevant and up to date navigational risk assessment (“NRA”) that conforms to Marine Guidance Note 543 and takes into account any reduced clearance depths between the devices(s) (including subsea infrastructure) and Lowest Astronomical Tide (“LAT”).

Any formal marking and lighting recommendations will be made on a case by case basis and will be conditioned as appropriate on any marine licence associated with the Site.

SNH commented that underwater lighting has the potential to affect northern gannet, great cormorant, common guillemot, razorbill and Atlantic puffin from their corresponding SPAs. Any such mitigation or monitoring regarding the use of underwater lighting will be considered on any marine licences associated with the Site.

## **Summary**

The Scottish Ministers consider the following as principal issues material to the merits of the S36 consent application made under the Electricity Act:

- The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- The Company's ES and the consultation process has identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any Decommissioning Programme is required under the Energy Act 2004, such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Secretary of State within 6 months from the date of this consent (**Annex 2**). Following the grant of this consent, any electricity generating device granted a marine licence, and deployed within the Fall of Warness site, will also require its own decommissioning plan to be approved by the Secretary of State;
- The Scottish Ministers have considered material details as to how the Development can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;
- The Scottish Ministers have considered fully and carefully the Application and accompanying documents and all relevant responses from consultees; and
- On the basis of the AA, the Scottish Ministers have ascertained to the appropriate level of scientific certainty that the Development (in light of mitigating measures and conditions proposed) will not adversely affect the integrity of the Sanday SAC, the Faray and Holm of Faray SAC, the Calf of Eday SPA the Copinsay SPA, the East Caithness Cliffs SPA, the Fair Isle SPA,

the Hermaness, Saxa Vord and Valla Field SPA, the Hoy SPA, the Marwick Head SPA, the North Caithness Cliffs SPA, the North Rona and Sula Sgeir SPA, the Noss SPA, the Papa Westray (North Hill & Holm) SPA, the Rousay SPA, the Sule Skerry and Sule Stack SPA and the West Westray SPA, in view of the sites' conservation objectives.

## **THE SCOTTISH MINISTERS' DETERMINATION**

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under S36 of the Electricity Act for the construction and operation of the Development, with a permitted capacity of up to **10 MW** (as described in **Annex 1**).

In accordance with the 2000 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette; and one or more newspapers circulating in the locality of the Development. The Company must provide copies of the public notices to the Scottish Ministers.

In reaching their decision, the Scottish Ministers have had regard to all representations and relevant material considerations and, subject to the conditions included in this consent (Annex 2) and imposed on any individual project marine licence, are satisfied that it is appropriate for the Company to hold a 10 MW generic site wide consent at the existing EMEC site, Fall of Warness, adjacent to the Island of Eday, Orkney, all in the manner as set out in the Application and as described in **Annex 1**.

Copies of this letter and the consent have been sent to Orkney Islands Council as the onshore Planning Authority with jurisdiction over land closest to the Development. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website.

<http://www.gov.scot/Topics/marine/Licensing/marine/scoping/EMEC/Fall-of-Warness>

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to applications for judicial review can be found at Chapter 58 of the Court of Session rules on the website of the Scottish Courts

<http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

**JAMES McKIE**

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

17<sup>th</sup> March 2016

## **ANNEX 1**

### **DESCRIPTION OF THE DEVELOPMENT**

The Development, located as shown on Figure 1 below, shall have a permitted generating capacity of up to 10 MW and shall comprise a tidal-powered electricity generator test station at the Fall of Warness, adjacent to the Island of Eday, Orkney, including a maximum potential of:

1. 18 rotors; on
2. 12 tidal energy devices; across
3. 9 berths
4. With an open rotor diameter of 25 m; or
5. an appropriately substituted annular blade diameter; and
6. a minimum depth of 2.5 m clearance from the sea surface.

all as specified in the Application imposed by the Scottish Ministers. References to “the Development” in this consent shall be construed accordingly.

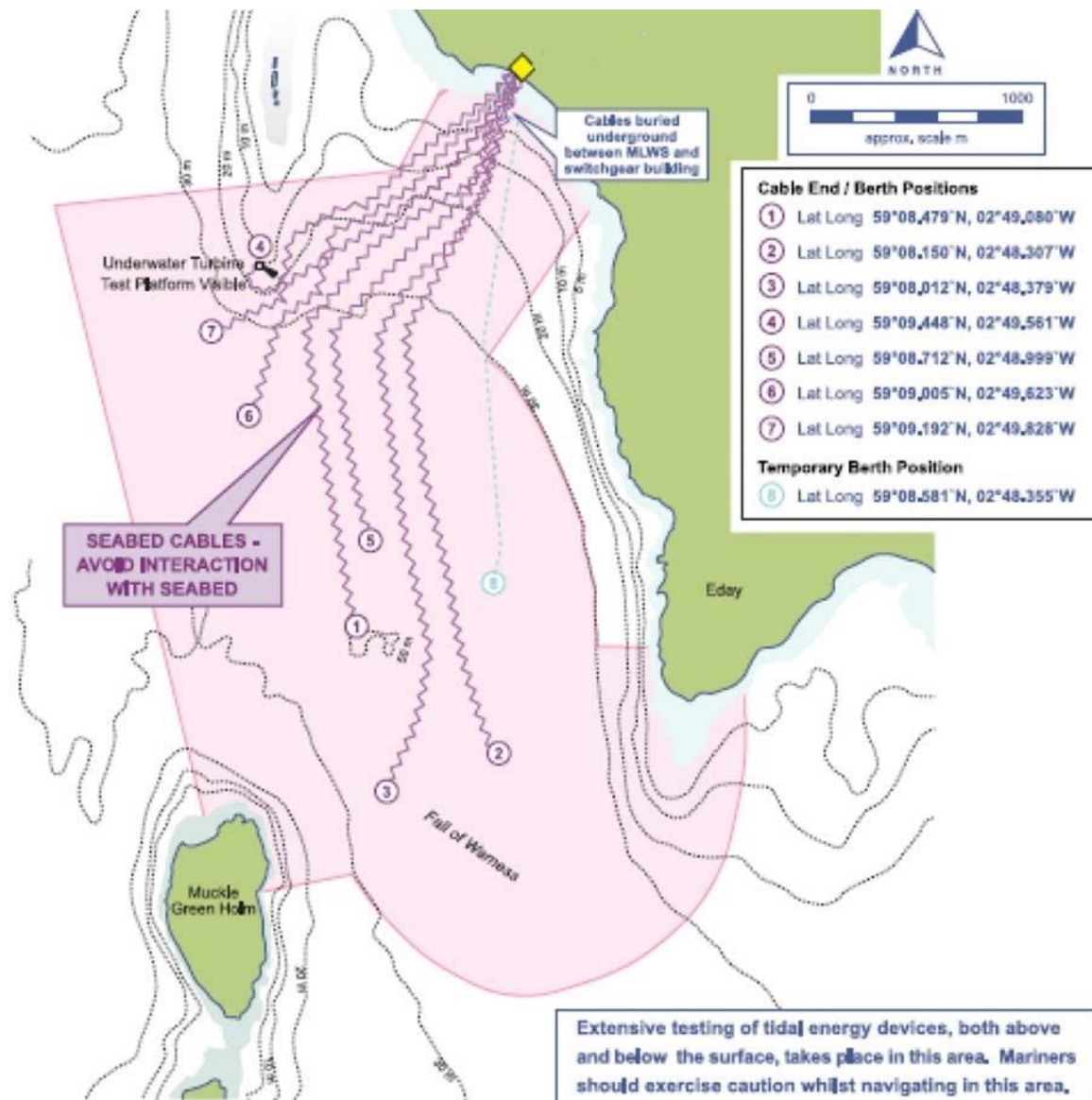


Figure 1. Development Location

## ANNEX 2

### PART 1 – CONDITIONS OF THE SECTION 36 CONSENT

The consent granted in accordance with S36 of the Electricity Act 1989 is subject to the following conditions:

1. The consent is for a period from the date this consent is granted until the date occurring **7 10** years after the date of consent.

**Reason: To define the duration of the consent.**

2. Where the Secretary of State has, following consultation with the Scottish Ministers, given notice requiring the Company to submit to the Secretary of State a Decommissioning Programme, pursuant to section 105(2) and (5) of the Energy Act 2004, then within 6 months from the date of this consent, the Company must submit to the Secretary of State a Decommissioning Programme in compliance with that notice.

**Reason:** *To ensure that a decommissioning plan is submitted to the Secretary of State where the Secretary of State has, following consultation with the Scottish Ministers, so required.*

3. The Company is not permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant (with or without conditions) or refuse such authorisation as they, at their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company must send the Scottish Ministers a certified copy of the assignment no later than 14 days of written confirmation from the Scottish Ministers of an assignment being granted.

**Reason:** *To safeguard the obligations of the consent if transferred to another company.*

4. If any serious health and safety incident occurs on the Site requiring the Company to report it to the Health and Safety Executive, then the Company must also notify the Scottish Ministers of the incident within 24 hours of the Company becoming aware of the incident occurring.

In the event of any breach of any health and safety or environmental obligations relating to the Development during the period of this consent, then the Company must provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/or those which are proposed to be taken to rectify the breach, within 24 hours of the incident occurring.

**Reason:** *To keep the Scottish Ministers informed of any such incidents which may be in the public interest.*

5. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES and Annex 1 of this letter, except in so far as amended by the terms of this S36 consent.

**Reason:** *To ensure that the Development is carried out in accordance with the approved details.*



6. As far as reasonably practicable, the Company must, on being given reasonable notice by the Scottish Ministers (of at least 72 hours), provide transportation to, and from, the Site for any persons authorised by the Scottish Ministers to inspect the Site.

**Reason:** *To ensure access to the Site for the purpose of inspection.*

7. The Company must, prior to any alterations being made to the positions of any of the berths, provide notification of any such alterations to the United Kingdom Hydrographic Office (“UKHO”) for nautical charting purposes.

**Reason:** *For navigational safety.*

### **Annex 3 DEFINITIONS AND GLOSSARY OF TERMS**

In this decision letter, to include in Annexes 1 and 2:

“AA” means Appropriate Assessment.

“the Application” means the Application letter and Environmental Statement submitted to the Scottish Ministers by The European Marine Energy Centre Ltd, on 19th December 2014.

“the Company” means The European Marine Energy Centre Limited, Old Academy Business Centre, Back Road, Stromness, ORKNEY, KW16 3AW Registration Number: SC249331.

“Construction” means as defined at section 64(1) of the Electricity Act 1989, read with section 104 of the Energy Act 2004.

“CRM” means Collision Risk Modelling.

“Decommissioning Programme” means the programme for decommissioning the relevant object, to be submitted by the Company to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended).

“the Development” means the European Marine Energy Centre at the Fall of Warness, adjacent to the Island of Eday, the Orkney Islands, as described in Annex 1.

“EIA” means Environmental Impact Assessment.

“EPS” means European Protected Species.

“EA” means the Environmental Appraisal submitted to the Scottish Ministers by The European Marine Energy Centre Ltd on 19th December 2014 as part of the Application as defined above.

“ES” means the Environmental Statement and supporting Environmental Appraisal document submitted to the Scottish Ministers by The European Marine Energy Centre Ltd on 19th December 2014 as part of the Application as defined above.

“HRA” means Habitats Regulations Appraisal.

“LAT” means Lowest Astronomical Tide.

“MHWS” means Mean High Water Springs.

“MLWS” means Mean Low Water Springs.

“MW” means megawatt.

“nm” means nautical mile.

“NRA” means Navigational Risk Assessment.

“the Planning Authority” means Orkney Islands Council.

“PLI” means Public Local Inquiry.

“PMF” means Priority Marine Features.

“REIF” means Renewable Energy Investment Fund.

“S36” means S36 under the Electricity Act 1989.

“SAC” means Special Area of Conservation.

“Scottish marine area” has the meaning given in section 1, as read with section 2, of the Marine (Scotland) Act 2010.

“the Site” means the area shown in Figure 1, attached to this consent at Annex 1.

“SPA” means Special Protection Area.

“TEC” means Tidal Energy Converter.

### **Organisations**

“EU” means European Union.

“MS-LOT” means Marine Scotland Licensing Operations Team.

“MSS” means Marine Scotland Science.

“NERC” means Natural Environment Research Council.

“NLB” means The Northern Lighthouse Board.

“OIC” means Orkney Islands Council.

“RSPB Scotland” means The Royal Society for the Protection of Birds Scotland.

“RYA” means The Royal Yachting Association.

“SCOS” means Special Committee on Seals.

“SFF” means Scottish Fishermen’s Federation.

“SFO” means Scottish Fishermen’s Organisation.

“SEPA” means The Scottish Environment Protection Agency.

“SNH” means Scottish Natural Heritage.

“UKHO” means United Kingdom Hydrographic Office.

“WDC” means Whale and Dolphin Conservation.

### **Plans, Programmes and Statements**

“EMMP” means Environmental Mitigation and Monitoring Plan.

“ICZM” means Integrated Coastal Zone Management.

“NPF3” means Scotland’s National Planning Framework 3.

“NSP” means Navigational Safety Plan.

“OLDP” Orkney Local Development Plan.

“PEMP” means Project Environmental Monitoring Programme.

“SPP” means Scottish Planning Policy.

“the Statement” means The UK Marine Policy Statement 2011.

“VMP” means Vessel Management Plan.

### **Legislation**

“Wild Birds Directive” means Council Directive 79/409/EEC of 2<sup>nd</sup> April 1979 on the conservation of wild birds, as amended and as codified by Directive 2009/147/EC of the European Parliament and of the Council of 30<sup>th</sup> November 2009.

“the Electricity Act” means the Electricity Act 1989 (as amended).

“Habitats Directive” means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and wild fauna and flora (as amended).

“the Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 1990 Regulations” means the Electricity (Applications for Consent) Regulations 1990 (as amended).

“the 1994 Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended).

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended).

“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 2010 Act” means Marine (Scotland) Act 2010.

“the 1999 Order” means The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”).

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010 (as amended).

“the 2009 Act” means the Marine and Coastal Access Act 2009 (as amended)