

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

**LICENCE FOR THE CONTINUED DEPOSIT OF MARINE RENEWABLES SUBSTANCES
OR OBJECTS IN THE SCOTTISH MARINE AREA**

Licence Number: **06437/17/0**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

**OpenHydro Group Ltd
Greenore Port
Greenore
Co Lout,
Ireland**

Under the Marine (Scotland) Act 2010,

To allow the deposits made under marine licence 04460/14/0 and as specified in Part 2 of this licence to remain on the seabed until full removal and decommissioning is carried out.

required in the execution of the works (including operation and maintenance) described in Part 2 of the Schedule attached to this licence. The issue of this licence is subject to conditions as set out in Part 3 of the Schedule

This licence remains in force from **28th July 2017** to **22nd March 2023** or until the Works have been decommissioned in accordance with an approved Decommissioning Programme prior to this date, and for which a separate marine licence is required.

[Redacted]

Signed: _____

 Roger May

For and on behalf of the Licensing Authority

Date of
issue: **28th July 2017**

1. PART 1 – GENERAL

1.1 Interpretation

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010, and,

- a) **“Licensee”** means OpenHydro Group Ltd having its registered offices at Greenore Port, Greenore, Co Lout, Ireland and having its registered number as IE392378;
- b) **“Licensable Marine Activity”** means the activities listed in section 21 of the 2010 Act authorised under this licence;
- c) **“MHWS”** means mean high water spring tide.
- d) **“the 2010 Act”** means the Marine (Scotland) Act 2010;
- e) **“the Application”** means the marine licence application and supporting information submitted to the Licensing Authority by OpenHydro Group Ltd, on 24th March 2017;
- f) **“Licensed Activity and “Licensed Activities”** means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under this licence;
- g) **“the Licensing Authority”** means the Scottish Ministers;
- h) **“Decommissioning of the Works”** includes removal of the Works from the seabed, demolishing the Works or dismantling the Works;
- i) **“Decommissioning Programme”** means the programme for decommissioning the Works, to be submitted by the Licensee to the appropriate authority under section 105(2) of the Energy Act 2004 (as amended);
- j) **“the Site”** means the area outlined in the figure contained in Part 4 of this licence and
- k) **“the Works”** refers to the deposits made under licence 04460/14/0

All geographical co-ordinates contained within this licence are in latitude and longitude format World Geodetic System 84 (“WGS84”).

1.2 Contacts

All correspondence or communications relating to this licence should be addressed to:

Marine Scotland
Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Email: MS.MarineRenewables@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed activities in connection with the Works. The issuing of this licence does not absolve the Licensee from obtaining such other authorisations and consents which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke this licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act.

Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer this licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry out a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –

- (a) the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure (*'force majeure'*), and
- (b) that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

2. PART 2 – THE WORKS

2.1 Title of the Works

The title of the Works to which this licence relates to is the 'OpenHydro Research Platform'

2.2 Description of the Works

The description of the Works, to which this licence relates to is the continued deposit of substance and objects deposited under licence 04460/14/0:

2.3 Location of the Works

Located at the European Marine Energy Centre (EMEC) tidal test facility at the Fall of Warness, situated West of the island of Eday in a narrow channel between the Westray Firth and Stronsay Firth, approximately 16 km from the Orkney Mainland, within the area bounded by joining the following points:

Fall of Warness lease area:

59° 09.780' N	002° 47.890' W	59° 09.250' N	002° 48.400' W
59° 08.360' N	002° 47.760' W	59° 08.370' N	002° 47.440' W
59° 08.370' N	002° 47.010' W	59° 07.600' N	002° 47.570' W
59° 07.860' N	002° 49.110' W	59° 07.820' N	002° 49.500' W
59° 07.910' N	002° 49.830' W	59° 09.590' N	002° 50.800' W
59° 09.740' N	002° 48.840' W	59° 10.010' N	002° 48.550' W

Location of Platform and associated deposits:

59° 09.43' N 002° 49.55' W

2.4 Deposits

This licence authorises the continued deposit of the undernoted substances and objects required in connection with the Works until full removal, subject to the maximum amounts as specified below:

PERMANENT DEPOSITS

Research platform and associated ballast constructed of the following:

- Steel tubular piles – 45 tonnes
- Steel platform – 22 tonnes
- Steel turbine – 13.1 tonnes
- Concrete – 13m³ / 50 tonnes
- Submarine cable and armour – 0.35 tonne
- Glass reinforced plastic – 2.5 tonne
- Copper – 0.3 tonne
- Magnetic compound – 0.75 tonne
- Plastic – 0.3 tonne

2.5 Persons responsible for the deposits of the substances or objects

The operators, vessels and vehicles engaging in the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

Name of Vessel or Vehicle Registration	Operator	Type(s)
TBC	TBC	TBC

2.6 Persons acting on behalf of the Licensee

The name and address of any agents, contractors or sub-contractors appointed to carry out any part, or all, of the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

Role	Company Name	Address	Contact Name
TBC	TBC	TBC	TBC

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 Compliance with the Licence and Application

The Licensee must maintain the Works in accordance with this Licence and the Application.

Reason: To ensure compliance with the marine licence and the application for the marine licence.

3.1.2 Licence conditions binding other parties

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the Works for which this licence has been granted in relation to those licensed activities authorised under item 5 in section 21(1) of the 2010 Act whether or not this licence has been transferred to that person.

Reason: To safeguard the obligations of the licence, in accordance with s.29(5) of the Marine (Scotland) Act 2010.

3.1.3 Vessels, agents, contractors and sub-contractors

The Licensee must provide, as soon as reasonably practicable in advance of their engagement in the Works authorised under this licence, the name and function of any vessel, agent, contractor or sub-contractor appointed to engage in the Works to the Licensing Authority. Where applicable the notification must include the vessel type, vessel IMO number and vessel owner or operating company.

The Licensee must ensure that any changes to the supplied details must be notified to the Licensing Authority, in writing, prior to any vessel, agent, contractor or sub-contractor engaging in the Works.

The Licensee must ensure that only those vessels, operators, agents, contractors or sub-contractors notified to the Licensing Authority are permitted to carry out any part of the Works.

The above details must be recorded in section 2.5 and 2.6 of this licence, if not provided at application these details and any subsequent changes will require a variation to the licence to update section 2.5 and 2.6 prior to engagement in the Works.

The Licensee must satisfy themselves that any masters of vessels operators, agents, contractors or sub-contractors are aware of the extent of the Works for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence. All masters of vessels or vehicle operators, agents, contractors and sub-contractors permitted to engage in the Works must abide by the conditions set out in this licence.

The Licensee must give a copy of this licence, and any subsequent variations made to this licence in accordance with section 30 of the 2010 Act to the masters of any vessels, agents, contractors or sub-contractors permitted to engage in the Works and must ensure that the licence and any such variations are read and understood by those persons.

Reason: To ensure all parties involved in the Works are aware of the licence and its conditions to reduce the risk of a breach of the licence, in accordance with s.39(1)(b) of the 2010 Act.

3.1.4 Force Majeure

Should the Licensee or any of their agents, contractors or sub-contractors, by any reason of *force majeure* deposit anywhere in the marine environment any substance or object, then the Licensee must notify the Licensing Authority of the full details of the circumstances of the deposit within 48 hours of the incident occurring (failing which as soon as reasonably practicable after that period of 48 hours has elapsed). *Force majeure* may be deemed to apply when, due to stress of weather or any other cause, the master of a vessel or vehicle operator determines that it is necessary to deposit the substance or object other than at the Site because the safety of human life or, as the case may be, the vessel, vehicle or marine structure is threatened. Under Annex II, Article 7 of the Convention for the Protection of the Marine Environment of the North-east Atlantic, the Licensing Authority is obliged to immediately report force majeure incidents to the Convention Commission.

Reason: To provide a defence for the Master to protect himself and his crew in bad weather conditions, in accordance with s.29(2)(a) of the 2010 Act.

3.1.5 Material alterations to the licence application

The Licensee must, where any information upon which the granting of this licence was based has after the granting of the licence altered in any material respect, notify the Licensing Authority of this fact, in writing, as soon as is practicable.

Reason: To ensure that the Works are carried out in accordance with the Application documentation, in accordance with s.29(2)(a) of the 2010 Act.

3.1.6 Submission of plans and specification of studies and surveys to the Licensing Authority

The Licensee must submit plans and the details and specifications of all studies and surveys that are required to be undertaken under this licence in relation to the Works, in writing, to the Licensing Authority for their written approval. Commencement of the studies or surveys and implementation of plans must not occur until the Licensing Authority has given its written approval to the Licensee.

Plans or the specification of studies and surveys prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Reason: To ensure that the Licensing Authority is kept informed of the progress of the Works, in accordance with s.29(3)(c) of the 2010 Act.

3.1.7 Submission of reports and notifications to the Licensing Authority

The Licensee must submit all reports and notifications to the Licensing Authority, in writing, as are required under this licence within the time periods specified in this licence. Where it would appear to the Licensee that there may be a delay in the submission of the reports or notifications to the Licensing Authority, then the Licensee must advise the Licensing Authority of this fact as soon as is practicable and no later than the time by which those reports or notifications ought to have been submitted to the Licensing Authority under the terms of this licence.

The reports must include executive summaries, assessments and conclusions and any data must, subject to any rules permitting non-disclosure, be made publically available by the Licensing Authority or by any such party appointed at their discretion.

Reports prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Reason: *To ensure that all reports and notifications are submitted within a reasonable timescale after the licence is granted, in accordance with s.29(3)(c) of the 2010 Act.*

3.1.8 Chemical usage

The Licensee must ensure that all chemicals which are to be utilised in the Works have been approved prior to use. All chemicals which are to be utilised in the Works must be selected from the List of Notified Chemicals assessed for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended). The Licensee must submit a report of all chemicals and quantities to be used (e.g. oils and fluorinated gases) during the removal and operation of the works to the Licensing Authority no later than one calendar month prior to the Commencement of the Works. Any changes to the types of chemicals which are proposed to be utilised must be consulted on with the Licensing Authority before the Commencement of the Works or, as the case may be, after the Commencement of the Works but prior to their utilisation.

Reason: *To minimise the environmental impact in the event of a release through the use of authorised chemicals in the interest of protecting the environment, in accordance with s.29(2)(b) of the 2010 Act.*

3.1.9 Fluorinated greenhouse gases

The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases (hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and other greenhouse gases that contain fluorine, listed in Annex I of Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015 (the Regulations), or mixtures containing any of those substances) must take precautions to prevent the unintentional release ('leakage') of those gases. They must take all measures which are technically and economically feasible to minimise leakage of fluorinated greenhouse gases.

Where a leakage of fluorinated greenhouse gases is detected, the Licensee must ensure that the equipment is repaired without undue delay.

The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases in quantities of 5 tonnes of CO₂ equivalent or more and not contained in foams must ensure that the equipment is checked for leaks in accordance with Annex 4 of the Regulations. Records of leak checks must be kept in accordance with Annex 6 of the Regulations. These records must be submitted to the Licensing Authority annually, and immediately in the event of discovery of any leak.

Where the equipment is subject to leak checks under Article 4(1) of the Regulations, and a leak in the equipment has been repaired, the Licensee must ensure that the equipment is checked by a certified person within one calendar month after the repair to verify that the repair has been effective. In such event, the Licensing Authority must be informed of the date of discovery, date of repair and date of inspection.

Reason: to ensure compliance of the Works with Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015, in accordance with s.29(2)(b) of the 2010 Act.

3.1.10 Environmental protection

The Licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to avoid or minimise any damage to the Scottish marine area caused as a result of the undertaking of the licensed activities.

The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate during all operation and maintenance activities authorised under this licence.

Reason: To ensure environmental impacts are minimised, in accordance with s.29(2)(b) of the 2010 Act.

3.1.11 Availability of the licence for inspection

The Licensee must ensure that copies of this licence and any subsequent amendments or variations are available for inspection at any reasonable time by any authorised marine enforcement officer at:

- a) the premises of the Licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the Licensee;
- c) any onshore premises directly associated with the Works; and
- d) aboard any vessels permitted to engage in the Works.

Reason: To ensure the licence is available for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

3.1.12 Inspection of the Works

Any persons authorised by the Licensing Authority, must be permitted to inspect the Works at any reasonable time. The Licensee must, as far as reasonably practicable, on being given reasonable notice by the Licensing Authority (of at least 72 hours), provide transportation to and from the Site for any persons authorised by the Licensing Authority to inspect the Site.

Reason: To ensure access to the Site for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

3.1.13 Emergencies

If the assistance of a Government Department (to include departments of Administrations other than the Scottish Government) is required to deal with any emergency arising from:

- a) the failure to mark and light the Works as required by this licence;
- b) the maintenance of the Works; or
- c) the drifting or wreck of the Works,

to include the broadcast of navigational warnings, then the Licensee is liable for any expenses incurred in securing such assistance.

Reason: To ensure licensee is aware of financial liabilities, in accordance with s.29(2)(b) of the 2010 Act

3.2 Conditions specific to the Works

3.2.1 Conditions applicable to all phases of the Works

3.2.1.1 Project Environmental Monitoring Programme (“PEMP”)

The Licensee must obtain the written approval of the Licensing Authority for the PEMP. Such approval may only be granted following consultation by the Licensing Authority, with Scottish Natural Heritage (“SNH”) and any other ecological advisors or organisations as required at the discretion of the Licensing Authority.

The PEMP must set out measures by which the Licensee must monitor the environmental impacts of the Works. Monitoring is required throughout the lifespan of the Works where this is deemed necessary by the Licensing Authority.

Monitoring must be done in such a way as to ensure that the data which is collected allows useful and valid comparisons between different phases of the Works. The Licensing Authority may agree that monitoring may be reduced or cease before the end of the lifespan of the Works.

The PEMP must cover, but not be limited to the following matters:

- a) Post-construction monitoring surveys as relevant in terms of the Application and any subsequent surveys for:
 - 1. Operational Noise;
 - 2. Collision Risk;
 - 3. Entanglement risk to wildlife;
 - 4. Displacement/disturbance of wildlife;
 - 5. Potential impacts on Designated Species and Areas;

All initial methodologies for the above monitoring must be approved, in writing, by the Licensing Authority in consultation with SNH. Any pre-consent surveys carried out by the Licensee to address any of the above species may be used in part to discharge this condition subject to the written approval by the Scottish Ministers.

The PEMP submitted at application is a live document and must be regularly reviewed by the Licensing Authority, at timescales to be determined by the Licensing Authority to identify the appropriateness of on-going monitoring. Following such reviews, the Licensing Authority may require the Licensee to amend the PEMP and submit such an amended PEMP, in writing, to the Licensing Authority for their written approval. Such approval may only be granted following consultation with SNH and any other ecological, or such other advisors as may be required at the discretion of the Licensing Authority. The PEMP, as amended from time to time, must be fully implemented by the Licensee at all times.

The Licensee must submit written reports and associated raw data of such monitoring surveys to the Licensing Authority at timescales to be determined by the Licensing Authority. Subject to any legal restrictions regarding the treatment of the information, the results are to be made publicly available by the Licensing Authority, or by such other party appointed at their discretion.

3.2.1.2 Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Works during the period of this licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority, including confirmation of remedial measures taken and / or 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, in accordance with s.29(3)(c) of 2010 Act.

3.2.1.3 Bunding and storage facilities

The Licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils and lubricating fluids associated with the plant and equipment into the marine environment.

Reason: To ensure pollution prevention is undertaken, in accordance with s.29(2)(b) of the 2010 Act.

3.2.1.4 Restoration of the Site to its original condition

The Licensee must take all reasonable, appropriate and practicable steps to restore the Site to its original condition before the Works were undertaken, or to as close to its original condition as is reasonably practicable, in accordance with the decommissioning programme to the satisfaction of the Licensing Authority. Should the Works be discontinued the Licensee must inform the Licensing Authority in writing of the discontinuation of the Works. A marine licence application will be required for the removal and decommissioning of the Works.

Reason: To mitigate the effects of the activity on the Site, in accordance with s.29(3)(e) of the 2010 Act.

3.2.1.4 Decommissioning Programme ("DP")

Where the appropriate authority has, following consultation with the Licensing Authority, given notice requiring the Licensee to submit to the appropriate authority a Decommissioning Programme ("DP"), pursuant to section 105(2) and (5) of the Energy Act 2004. The licensee should complete a DP and send a copy to the licensing authority.

Reason: To ensure the decommissioning and removal of the works in an appropriate and environmentally acceptable manner, and in the interests of safety and environmental protection in accordance with s.29(3)(c) of the 2010 Act.

3.2.1.5 Navigational Safety

The Licensee must in the case of damage to, or destruction or decay of, the Works notify the Licensing Authority, in writing, as soon as reasonably practicable following such damage, destruction or decay. The Licensee must carry out any remedial action as required by the Licensing Authority, and intimated to the Licensee in writing, which may include any requirement to display aids to navigation, following consultation with the MCA, the NLB or any such advisers as required by the Licensing Authority.

The Licensee must ensure that any vessels permitted to engage in the Works are marked in accordance with the International Rules for the Prevention of Collisions at Sea whilst under way, and in accordance with the UK Standard Marking Schedule for Offshore Installations if the vessel is secured to the seabed.

The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the Works without the prior written approval of the Office of Communications ("OfCom").

The device shall be marked as a special mark with the topside structure painted yellow and fitted with an all-round navigation light flashing yellow every five seconds (FI Y 5s) with a nominal range of 5 miles.

The Licensee must ensure that the navigable depth is not altered by more than 5% referenced to Chart Datum unless otherwise agreed, in writing, with the Licensing Authority in consultation with the MCA and NLB.

Reason: *To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.*

3.2.1.6 Operation and maintenance of the works

The Licensee must provide an operation and maintenance plan (OMP) and must operate and maintain the works in accordance with the approved OMP. Notification must be provided at least 3 months in advance of any maintenance of the Works where any additional deposits are required. In the event that these works are not assessed in the Application and are considered by the Licensing Authority as being material they will require further Marine Licences.

Reason: *To ensure compliance with the approved OMP to prevent decay of the Works and to ensure that any maintenance work is carried out under an appropriate licence in accordance with s.29(3)(b) of the 2010 Act.*

3.2.1.7 Removal of the works

This licence does not permit the Removal of the Works, for which a separate marine licence is required.

The Licensee must, no later than 3 months prior to any proposed removal works, submit a plan for the Removal of the Works, in writing, to the Licensing Authority, along with a marine licence application for the Removal of the Works.

Removal of the Works must not occur until the Licensing Authority has given its prior written approval to the plan and issued a marine licence.

Reason: *To ensure that removal of works is carried out under an appropriate licence, in accordance with s.29(3)(a) of the 2010 Act.*

3.2.1.8 Decommissioning

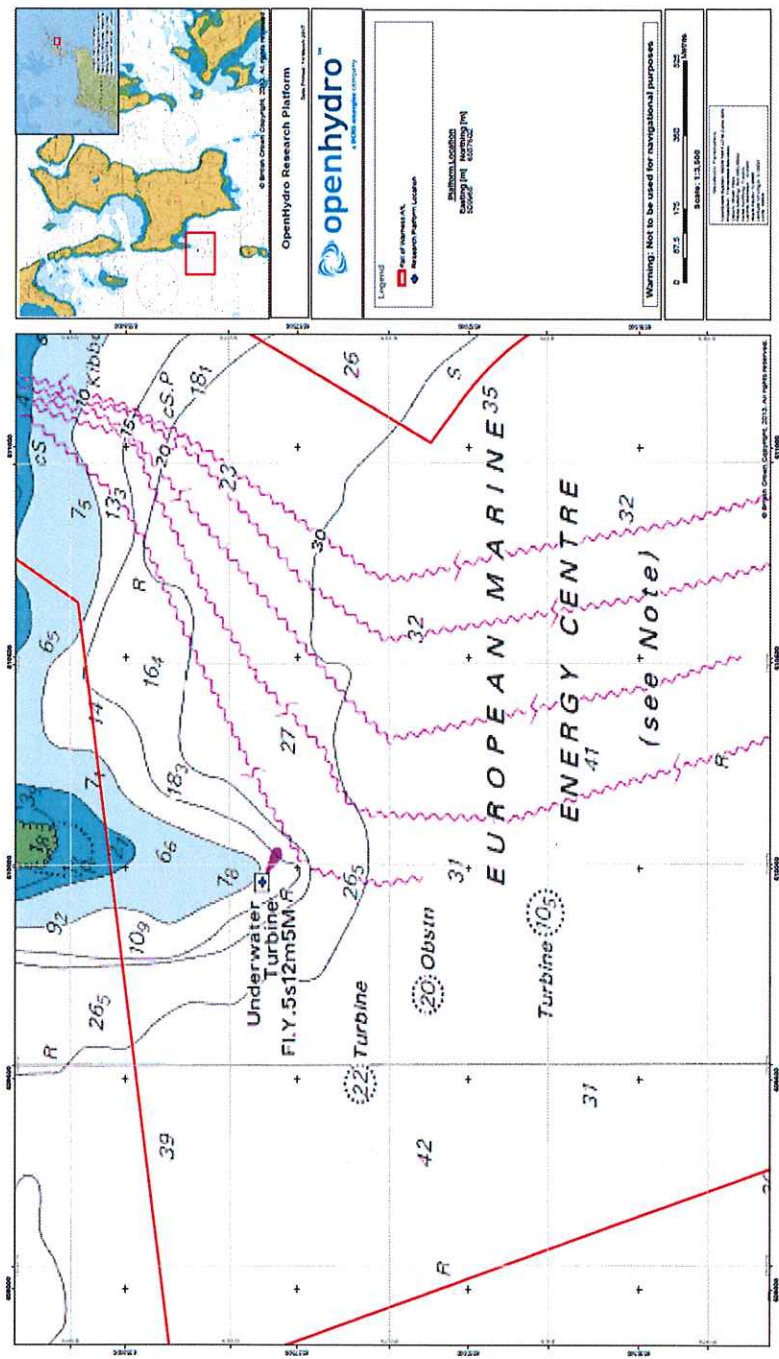
This licence does not permit the Decommissioning of the Works, for which a separate marine licence is required.

Reason: To ensure that decommissioning is carried out according to the approved decommissioning programme under an appropriate licence, in accordance with s.29(3)(d) of the 2010 Act

E: MS.MarineRenewables@gov.scot

4. PART 4 – PROJECT LOCATION

Figure 1 – Platform Location showing deployment site at Berth 4, Fall of Warness Site, European Marine Energy Centre, Eday, Orkney



marinescotland

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