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Marine Scotland - Licensing Operations Team Scoping Opinion

**Scoping Opinion adopted by the Scottish Ministers
under:**

**The Marine Works (Environmental Impact Assessment)
(Scotland) Regulations 2017**

and

**The Electricity Works (Environmental Impact
Assessment) (Scotland) Regulations 2017**

**Fall of Warness Tidal Test Site, European Marine Energy
Centre, Orkney**

07 December 2022

Contents

1. Introduction	3
1.1 Background	3
2. The Proposed Development.....	5
2.1 Introduction	5
2.2 Description of the Proposed Development.....	5
2.3 Onshore/Planning	7
2.4 The Scottish Ministers' Comments.....	7
3. Contents of the EIA Report	11
3.1 Introduction	11
3.2 EIA Scope	11
3.3 Mitigation and Monitoring	11
3.4 Risks of Major Accidents and/or Disasters.....	12
3.5 Climate and Greenhouse Gases	12
4. Consultation	14
4.1 The Consultation Process	14
4.2 Responses received.....	15
5. Interests to be considered within the EIA Report	16
5.1 Introduction	16
5.2 Hydrodynamic and Physical Processes	16
5.3 Benthic Environment.....	17
5.4 Fish and Shellfish.....	18
5.5 Offshore Ornithology	19
5.6 Basking Sharks	22
5.7 Cetaceans	23
5.8 Seals	25
5.9 Otters	27
5.10 Commercial Fisheries	27
5.11 Seascape, Coastal Character and Visual Amenity.....	28
5.12 Marine Archaeology and Cultural Heritage	28
5.13 Socio-economic, Other Sea Users and Tourism	29
5.14 Additional EIA Matters.....	30
6. Application and EIA Report.....	31
6.1 General	31
7. Multi-Stage Consent and Regulatory Approval.....	32

7.1	Background	32
	Appendix I: Consultation Responses & Advice.....	33
	Appendix II: Gap Analysis	34
	<i>Please refer to separate document provided alongside the Scoping Opinion .</i>	<i>34</i>

1. Introduction

1.1 Background

- 1.1.1 On 24 May 2022, the Scottish Ministers received a scoping report (“the Scoping Report”) from the European Marine Energy Centre Ltd (“the Developer”) as part of its request for a scoping opinion relating to Fall of Warness Tidal Test Site, European Marine Energy Centre, Orkney (“the Proposed Development”). The Scottish Ministers considered the content of the Scoping Report as sufficient and in accordance with regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 MW Regulations”), and regulation 12 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 EW Regulations”) collectively referred to as (“the EIA Regulations”).
- 1.1.2 This scoping opinion is adopted by the Scottish Ministers under the EIA Regulations (“Scoping Opinion”) in response to the Developer’s request and should be read in conjunction with the Scoping Report. The matters contained in the Scoping Report have been carefully considered by the Scottish Ministers and use has been made of professional judgment, based on expert advice from stakeholders and Marine Scotland in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Development.
- 1.1.3 The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the EIA Regulations, taken into account the information provided by the Developer, in particular, information in respect of the specific characteristics of the Proposed Development, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken.
- 1.1.4 In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Development. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Developer to submit additional information in connection with any EIA Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (“the 1989 Act”) and marine licences under The Marine (Scotland) Act 2010 (“the 2010 Act”).

- 1.1.5 In the event that the Developer does not submit applications for a s.36 consent under the 1989 Act and marine licences under the 2010 Act for the Proposed Development within 12 months of the date of this Scoping Opinion, the Scottish Ministers strongly recommend that the Developer seeks further advice from them regarding the validity of the Scoping Opinion.

2. The Proposed Development

2.1 Introduction

2.1.1 This section provides a summary of the description of the Proposed Development provided by the Developer in the Scoping Report together with the Scottish Ministers' general comments in response. The details of the Proposed Development in the Scoping Report have not been verified by the Scottish Ministers and are assumed to be accurate.

2.2 Description of the Proposed Development

2.2.1 The Proposed Development does not relate to a new project, but rather is a proposed change to the existing Fall of Warness tidal test site, west of Eday, Orkney to extend the generating station currently permitted under the existing s.36 consent granted on 22 March 2016 ("the Existing Development"). The scale of the change however requires that the application be considered as a new application for s.36 consent rather than a variation to the Existing Development. The Existing Development currently provides eight tidal test berths in an area 2 kilometres ("km") across and approximately 4 km in length. 11 kilovolt sub-sea cables extend from the middle of the tidal stream to an electricity substation on the island of Eday.

2.2.2 The Proposed Development will comprise an offshore generating station for the testing of tidal energy devices with a generating capacity up to 50 MW and project duration up to 2040. The Proposed Development involves a significant increase in many of the parameters within the project envelope previously consented for the Existing Development. As the Proposed Development will have a capacity of greater than 1 MW, it requires the Scottish Ministers' consent to allow construction, extension and operation. The Proposed Development will also require marine licences granted by the Scottish Ministers under the 2010 Act, to permit 'licensable marine activities' for the Proposed Development and deposit of objects in or over the sea, or on or under the sea bed. Individual developers coming to access the site will apply separately for marine licences to construct, alter or improve their devices.

2.2.3 The parameters of the Proposed Development include:

- Maximum of 20 berths;
- Maximum of 35 simultaneous tidal energy devices ("TED");
- Maximum swept area of each TED of 1,500 square metres (m²);
- Minimum rotor depth of 2.5 metres ("m") clearance of each TED from the sea surface;

- A sea surface area for surface piercing elements of the TED, when in operational mode, no greater than 780 m²;
- Eight electrical hubs, with a maximum total area of 500 m² per hub;
- Maximum 18 m distance above sea surface (at mean low water springs) for surface-piercing elements of the TED and electrical hub, excluding navigational and communication equipment;
- Maximum total mooring footprint area of 0.1 km² per array;
- Maximum total mooring direct seabed coverage area of 3,000 m² per TED;
- Maximum total foundation direct seabed coverage of 750 m² per TED;
- Foundation and mooring methods using non-percussive drilling and gravity/ embedment-based anchor techniques;
- Simultaneous noisy installation activities at a maximum of four berths;
- Simultaneous inspection and maintenance activities at a maximum of 4 berths;
- Deployment of a maximum of five temporary floating platforms;
- Maximum of 20 subsea cables with a maximum length of 5 km per berth; and
- A site boundary corresponding with that of the Existing Development.

2.2.4 The Proposed Development involves pre-installation activities with a typical duration of up to 1 week; installation activities with a typical duration of up to 1 month per device (with a maximum of 7 days of drilling per device); inspection and maintenance activities at regular intervals over 3-12 months; temporary retrieval and redeployment of nacelle, gravity foundations, anchors or scientific equipment with a typical duration of up to 1 month; and inspection, maintenance and replacement of cables and protection with a typical duration of up to 1 month.

2.2.5 It is noted that the Scoping Report details the 'Proposed Development' but does not clearly establish all activities for which 'regulatory approval'¹ will be sought. Regulatory approvals will be required for all construction activities, whether as part of the initial construction or any subsequent alteration or improvement including any deposit on, or removal from on, or under, the seabed of substances, any dredging and deposit, and any use of explosive substances. Any reference to the 'Proposed Development' in the Scoping Opinion should be taken, as appropriate, to include all activities in connection with the construction, operation, maintenance (including 'change-outs' of components) and decommissioning of the 'Proposed Development' for which a regulatory approval will be needed.

¹ Regulatory approval is defined as a 'marine licence' in The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

2.3 Onshore/Planning

- 2.3.1 The Scottish Ministers are aware the Developer has not sought a separate scoping opinion from Orkney Islands Council for the associated onshore works. The Developer has confirmed that there are no proposed future onshore works associated with the Proposed Development.

2.4 The Scottish Ministers' Comments

Description of the Proposed Development

- 2.4.1 The Scottish Ministers would like to highlight and mirror the comments raised by NatureScot in relation to the significant increase in many of the parameters within the project envelope compared with the Existing Development. The Scottish Ministers advise that in order to enable a direct comparison between the Existing Development and the Proposed Development, that detailed comparative information should be provided within the EIA Report, including the location of the new berths and cables. The advice provided in this Scoping Opinion is proportionate to the level of detail provided in the Scoping Report.
- 2.4.2 Figure 3-1 of the Scoping Report shows the boundary of the Existing Development. The Scottish Ministers are operating under the assumption that no amendment to the overall site boundary is proposed. The Scottish Ministers advise that if the site boundary is to be extended then the Developer should seek further advice from the Scottish Ministers on the validity of this Scoping Opinion.
- 2.4.3 Section 3.3 of the Scoping Report provides detail on the number of subsea cables at the Existing Development and the approximate location of each test berth. The Scottish Ministers note that at section 3.4 of the Scoping Report that the Proposed Development is to be operated with an increased maximum of 20 berths accommodating up to 35 simultaneous devices. The Scottish Ministers advise therefore that any additional subsea cables required for the additional berths should be included as part of the application and must be fully assessed within the EIA Report for the Proposed Development. The EIA Report must detail the chosen cable routes and include a detailed assessment of the cable installation methods under consideration and the impacts of each method at each potential landfall site. The EIA Report must also outline the steps taken to mitigate any environmental impacts resulting from the cable landfall. Detail should be included on anticipated cable burial and protection, including the range of burial depths considered as part of the assessment and anticipated maximum quantities and locations of cable and scour protection.
- 2.4.4 The Scottish Ministers note from section 3.4 of the Scoping Report that the Developer does not intend to cover seabed preparation activities and

geotechnical and geophysical surveys as part of the Proposed Development. While the Scottish Ministers acknowledge that the Fall of Warness is not a new site, if further geophysical and geotechnical surveys and seabed preparation is required then as much detail as is available should be included in the EIA Report. The environmental effects of these, including any in combination effects must be assessed. Should seabed preparation involve dredging, the EIA Report must identify the quantities of dredged material and identify the likely location for deposit. The Developer may also be required to submit pre-dredge sample analysis, this should include supporting characterisation of the new or existing deposit sites. If boulder clearance is likely to be required, the EIA Report must provide the anticipated estimate of boulders to be cleared (including how much uncertainty may be associated with the figures presented). Clear narrative must be provided within the EIA Report to show how this has been estimated.

- 2.4.5 If there is any possibility for the requirement of Unexploded Ordnance (“UXO”) clearance, the EIA Report must also include consideration of the options which will be assessed, the differences amongst them and an assessment of the environmental effects of these options, including in combination effects with other projects. In this regard the Scottish Ministers advise that that the EIA Report must include a worst case of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show the consistent performance of the preferred low order or deflagration method. The Scottish Ministers refer to the Joint SNCB/DEFRA/MS statement – Marine environment: unexploded ordnance clearance² in this regard.
- 2.4.6 The EIA Report must provide the estimate of expected residues and emissions, for example drill cuttings where considered in the design envelope. Specific reference should be made to water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases, where relevant. This information should be provided in a clear and consistent fashion and may be integrated into the relevant aspect assessments.

Design Envelope

- 2.4.7 The Scottish Ministers note the Developer’s intention to apply a ‘Design Envelope’ approach. Where the details of the Proposed Development cannot be defined precisely, the Developer will apply a worst case scenario, as set out in Section 3.4 of the Scoping Report.

² [Marine environment: unexploded ordnance clearance joint interim position statement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604222/marine_environment_unexploded_ordnance_clearance_joint_interim_position_statement_-_gov.uk.pdf)

- 2.4.8 The Scottish Ministers advise that where flexibility in the design envelope is required, this must be defined within the EIA Report and the reasons for requiring such flexibility clearly stated. The parameters of the Proposed Development must be clearly and consistently defined in the application for the s.36 consent and marine licences and the accompanying EIA Report.
- 2.4.9 The Scottish Ministers will determine the applications based on the worst case scenario. The EIA may reduce the degree of design flexibility required and the detail may be further refined in a method statement to be submitted to the Scottish Ministers, for their approval, before works commence. Please note however, the information provided in Section 7 below regarding multi-stage consent and regulatory approval.
- 2.4.10 It is a matter for the Developer, in preparing the EIA Report, to consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. If the Proposed Development or any associated activities materially change prior to the submission of the EIA Report, the Developer may wish to consider requesting a new scoping opinion.

Alternatives

- 2.4.11 The EIA Regulations require that the EIA Report include 'a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Developer, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects'. The Scottish Ministers acknowledge section 3.2 of the Developer's Scoping Report setting out the consideration of alternatives to date together with the planned activities that are proposed to inform the EIA Report further. The Scottish Ministers advise however that these considerations must include how decommissioning has been taken into account within the design options. The Scottish Ministers advise that this must be based on the presumption of as close to full removal as possible of all infrastructure and assets and should consider the methods and processes of doing so.
- 2.4.12 For the avoidance of doubt, the Scottish Ministers advise that the EIA Report must include an up to date consideration of the reasonable alternatives studied as the parameters of the Proposed Development have been refined. This includes but is not limited to the identification of the potential device layouts within the area, the parameters of the export cables, the cable corridor options and the landfall location or locations. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed

Development and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

3. Contents of the EIA Report

3.1 Introduction

3.1.1 This section provides the Scottish Ministers' general comments on the approach and content of information to be provided in the Developer's EIA Report, separate to the comments on the specific receptor topics discussed in section 5 of this Scoping Opinion. Within the Scoping Report effects are referred to as "not important" / "potentially important" etc. the Scottish Ministers encourage the use of language which accords with the EIA Regulations, and therefore advise that effects must be described in terms of their significance.

3.2 EIA Scope

3.2.1 Matters are not scoped out unless specifically addressed and justified by the Developer and confirmed as being scoped out by the Scottish Ministers. The matters scoped out should be documented and an appropriate justification noted in the EIA Report.

3.3 Mitigation and Monitoring

3.3.1 Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.

3.3.2 The EIA Report should clearly demonstrate how the Developer has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. The Scottish Ministers advise that where the mitigation is envisaged to form part of a management or mitigation plan, the EIA Report must set out these plans or the reliance on these in sufficient detail so the significance of the residual effect can be assessed and evaluated. This should also include identification of any monitoring and remedial actions (if relevant) in the event that predicted residual effects differ to actual monitored outcomes. Commitment to develop plans without sufficient detail is not considered to be suitable mitigation in itself.

3.3.3 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.

- 3.3.4 Where potential impacts on the environment have been fully investigated but found to be of little or no significance, it is sufficient to validate that part of the assessment by detailing in the EIA Report, the work that has been undertaken, the results, what impact, if any, has been identified and why it is not significant.

3.4 Risks of Major Accidents and/or Disasters

- 3.4.1 The EIA Report must include a description and assessment of the likely significant effects deriving from the vulnerability of the Proposed Development to major accidents and disasters. The Developer should make use of appropriate guidance, including the recent Institute of Environmental Management and Assessment (“IEMA”) ‘Major Accidents and Disasters in EIA: A Primer’, to better understand the likelihood of an occurrence and the Proposed Development susceptibility to potential major accidents and hazards. The description and assessment should consider the vulnerability of the Proposed Development to a potential accident or disaster and also the Proposed Development potential to cause an accident or disaster.
- 3.4.2 The Scottish Ministers advise that existing sources of risk assessment or other relevant studies should be used to establish the baseline rather than collecting survey data and note the IEMA Primer provides further advice on this. This should include the review of the identified hazards from your baseline assessment, the level of risk attributed to the identified hazards and the relevant receptors to be considered.
- 3.4.3 The assessment must detail how significance has been defined and detail the inclusions and exclusions within the assessment. Any mitigation measures that will be employed to prevent, reduce or control significant effects should be included in the EIA Report.

3.5 Climate and Greenhouse Gases

- 3.5.1 The Scoping Report proposes that the impact of climate change effects will not be considered further within the EIA Report and there will be no standalone topic or chapter on climate. The Scottish Ministers are however mindful that Greenhouse Gas (“GHG”) emissions from all projects contribute to climate change. In this regard, the Scottish Ministers highlight the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions And Evaluating Their Significance” (“IEMA GHG Guidance”), which states that “GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit, as a such any GHG emissions or reductions from a project might be considered significant.” The Scottish Ministers have considered this together with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the requirement of the EIA Regulations to assess significant effects from the Proposed Development on

climate. The Scottish Ministers therefore advise that the EIA Report must include a GHG Assessment which should be based on a Life Cycle Assessment (“LCA”) approach and note that the IEMA GHG Guidance provides further insight on this matter. The Scottish Ministers highlight however that this should include the pre-construction, construction, operation and decommissioning phases, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Development.

4. Consultation

4.1 The Consultation Process

4.1.1 Following receipt of the Scoping Report, the Scottish Ministers, in accordance with the EIA Regulations, initiated a 30 day consultation process, which commenced on 14 June 2022. The following bodies were consulted, those marked in bold provided a response and those marked in italics sent nil returns or stated they had no comments:

- **British Telecom (“BT”)**
- **Chamber of Shipping (“CoS”)**
- **Crown Estate Scotland**
- Fisheries Management Scotland
- Fishery Office – Kirkwall
- **Historic Environment Scotland (“HES”)**
- Inshore Fishery Group – Orkney
- Marine Safety Forum
- **Maritime Coastguard Agency (“MCA”)**
- Ministry of Defence
- **NatureScot**
- **Northern Lighthouse Board (“NLB”)**
- Orkney Creel Fisheries Association
- Orkney Ferries
- Orkney Fishermen’s Society Ltd
- Orkney Harbour Authority
- **Orkney Islands Council**
- *Orkney Marinas*
- **Royal Yachting Association (“RYA”)**
- **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)**
- Scottish Canoe Scotland
- Scottish Fisherman’s Federation
- Scottish Surfing Federation
- Scottish Wildlife Trust
- **Scottish Environment Protection Agency**
- Sport Scotland
- Surfers Against Sewage
- Visit Scotland
- *Whale and Dolphin Conservation*
- Birsay Community Council
- Eday Community Council
- Evie and Rendall Community Council

- Firth and Stenness Community Council
- Flotta Community Council
- Graemsay, Hoy and Walls Community Council
- Harray and Sandwick Community Council
- Holm Community Council
- *Kirkwall and St Ola Community Council*
- North Ronaldsay Community Council
- Orphir Community Council
- Papa Westray Community Council
- Rousay, Egilsay, Wyre and Gairsay Community Council
- Sanday Community Council
- Shapinsay Community Council
- South Ronaldsay and Burray Community Council
- St Andrews and Deerness Community Council
- Stromness Community Council
- Stronsay Community Council
- Westray Community Council

4.1.2 Specific advice was sought from Marine Scotland Science (“MSS”), the Marine Scotland – Marine Analytical Unit (“MAU”) and Transport Scotland (“TS”).

4.2 Responses received

4.2.1 From the list above a total of 11 responses were received. Advice was also provided by MSS, MAU and TS. The purpose of the consultation was to seek representations to aid the Scottish Ministers’ consideration of which potential effects should be scoped in or out of the EIA Report.

4.2.2 The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the EIA Regulations. The sections below highlight issues which are of particular importance with regards to the EIA Report and the s.36 consent and marine licence applications. The representations and advice received are attached in Appendix I and each must be read in full for detailed requirements from individual consultees.

5. Interests to be considered within the EIA Report

5.1 Introduction

5.1.1 This section contains the Scottish Ministers' opinion on whether the impacts identified in the Scoping Report are scoped in or out of the EIA Report. The Scottish Ministers advise that the representations from consultees and advice from MAU, MSS and TS must be considered in conjunction with the Scoping Opinion and with the expectation that recommendations and advice as directed through this Scoping Opinion are implemented.

5.2 Hydrodynamic and Physical Processes

5.2.1 The Scottish Ministers consider that insufficient information has been provided regarding cable landfall method(s) for the Proposed Development at the EMEC facility on Eday. The Scottish Ministers advise that the project envelope in the EIA Report must contain detailed information on the proposed method(s) for cable landfall and directs the Developer to the representation from NatureScot in this regard.

5.2.2 With regard to the baseline information, the Scottish Ministers direct the Developer to representation from NatureScot highlighting modelling published in 2021 by the Dynamic Coast 2 mapping project which takes account of future coastal change and ongoing sea level rise. The Scottish Ministers advise that implications of these projections should be fully considered by the Developer, particularly in relation to buried cables, and any additional mitigation required must be included in the EIA Report. The Scottish Ministers are broadly content with the impacts that have been scoped in and out in tables 5-2 and 5-3 of the Scoping Report, however, advise that potential interruption to erosion and deposition at the coastal edge and beach due to cable protection, whether at installation or in the future must also be scoped in. This view is supported by the NatureScot representation.

5.2.3 Table 5-4 of the Scoping Report scopes out potential effects of the Wyre and Rousay Sounds Nature Conservation Marine Protected Area ("NCMPA") due to its distance from the Proposed Development. The Scottish Ministers agree with the NatureScot representation and advise that this NCMPA must be fully considered in the assessment as its overlapping maerl and marine geomorphology features could be affected by changes to processes beyond the NCMPA boundary.

5.2.4 With regards to cumulative impacts, the Scottish Ministers direct the Developer to the MSS advice. The Scottish Ministers advise that consideration must be given to the water column impacts for the scenario of the Proposed Development being fully occupied, in combination with other

proposed developments around Orkney, especially in Westray Firth, Lashy sound and Stronsay Firth as these developments would experience tidal interactions with the Proposed Development. The potential impact on tidal elevation, speeds and phases across the Orkney region must be included in this assessment.

- 5.2.5 In regard to the approach to assessment, the Scottish Ministers agree with NatureScot representation and advise that, due to the number of uncertainties associated with such a wide project envelope, the need for modelling to inform the EIA must not be ruled out. The Scottish Ministers also agree with MSS advice and advise that the use of a 2D hydrodynamic model must be considered to study potential changes in tidal speeds, elevations and phases, for the scenario that the Proposed Development is fully occupied and, in combination with other developments around Orkney. The Scottish Ministers direct the Developer to the MSS advice and NatureScot representation and advise that the Developer must fully consider the advice provided..

5.3 Benthic Environment

- 5.3.1 The Scottish Ministers are largely content with the data sources in Table 6-1 of the Scoping Report, however, direct the Developer to the MSS advice and representation from NatureScot and Orkney Islands Council, regarding the possibility that two Priority Marine Features (“PMF’s”), maerl beds and seagrass, may be present in the subtidal area.
- 5.3.2 The Scottish Ministers agree with representation from Orkney Islands Council that there may be a lack of up to date information on the status of the benthic environment and direct the Developer to consider the additional data sources detailed in the MSS advice, in the assessment. The Scottish Ministers also agree with representation from NatureScot and advise that if any infrastructure is to be installed or devices deployed within the locations where maerl and/or seagrass PMFs could be present, then the assessment must consider the impacts on these and baseline characterisation surveys may be required. Additionally, the Scottish Ministers direct the Developer to the MSS advice and advise that if characterisation surveys are required to fill in the gaps of existing data then these must extend to the shallow areas, just outside the site boundary, off the south east coast of Eday. The Scottish Ministers encourage the Developer to consider collaboration with Project Seagrass to add value to the survey efforts.
- 5.3.3 The potential effects on benthic receptors from device deployment and decommissioning and device operation and maintenance are described in Tables 6-2 and 6-3 of the Scoping Report. The Scottish Ministers are content with the effect pathways scoped in, however do not agree with the Developers

proposal to scope out either the introductions/facilitation or marine non-native species (“MNNS”), or Electromagnetic Field (“EMF”) effects on benthic species.

- 5.3.4 The Scottish Ministers acknowledge that there are currently processes in place to manage the risk of introduction and/or expansion of MNNS. However, the Scottish Ministers agree with the NatureScot and RSPB representations and advise that the procedures in place to manage the risk of introduction and/or expansion of MNNS must be scoped in and updated in light of the substantial expansion of the Proposed Development.
- 5.3.5 The Developer is directed to the MSS advice noting there is a growing body of evidence around the potential impact of EMF at different trophic levels including benthic species. Given the uncertainty around the issue of EMF and the increase in the number and overall length of cables proposed, the Scottish Ministers advise that the effects of EMF on benthic species must be scoped into the EIA Report. Further, the Developer must consider the studies referenced in the MSS advice in the assessment.
- 5.3.6 The Scottish Ministers agree with the conclusions in Table 6-4 of the Scoping Report that there is no connectivity with any Special Area of Conservation (“SAC”) or Sites of Special Scientific Interest (“SSSI”) with benthic qualifying features. However, the Scottish Ministers do not agree that the Wyre and Rousay Sounds NCMPA will not be impacted and advise that its overlapping maerl and marine geomorphology features could be affected by changes beyond the NCMPA boundary and therefore this site must be fully considered in the EIA Report. This view is supported by the NatureScot representation.

5.4 Fish and Shellfish

- 5.4.1 With regard to the baseline information, the Scottish Ministers highlight the additional data sources to be published by the ScotMER fish and fisheries group detailed in the NatureScot representation and advise that these should be considered to inform assessment of fish and shellfish.
- 5.4.2 With regards to the Developers consideration of protected sites, the Scottish Ministers agree with the inclusion of the River Thurso and River Naver SACs in the forthcoming assessment. However, in addition to these sites, the Scottish Ministers advise that there may be potential connectivity with other SACs for Atlantic salmon. Due to the potential for connectivity, the Scottish Ministers advise that the Developer must consider Berriedale & Langwell SAC, Borgie SAC and Little Gruinard River SAC in the assessment. Additionally, the Scottish Ministers highlight the monitor and tracking projects referenced in representation from NatureScot and advise that the Developer must fully

consider the findings in the assessment and use them to guide the HRA for the SACs found to have connectivity.

- 5.4.3 PMFs are identified within the Scoping Report in Table 7.5 as an appraisal mechanism, however, there is no discussion of PMFs within the baseline overview or included within the key data sources. The Scottish Ministers highlight the NatureScot representation that in addition to being qualifying features of European sites, Atlantic salmon, European eel and sea trout are PMFs. European eel is listed as 'critically endangered' on the IUCN Red list and is therefore a conservation priority, and sea trout are a UK Biodiversity Action Plan priority species. The Scottish Ministers agree with representation from NatureScot and advise that all three of these species must be considered in the EIA Report with respect to their life history stages and potential impact routes. The Scottish Ministers also advise that the Developer must include the sources referenced in the NatureScot representation with regards to migration routes and behaviour and the effects of noise and EMF on both European eels and sea trout in the assessment.
- 5.4.4 The Scottish Ministers are content that other fish species considered by NatureScot such as European river and sea lamprey, sparring, and allis and twaite shad, can be scoped out.
- 5.4.5 Potential effects on fish and shellfish pathways are described in Table 7-3 and Table 7-4 of the Scoping Report. The Scottish Ministers agree with the potential impacts which have been identified however, advise that the NatureScot representation and MSS advice on both marine and diadromous fish regarding barrier effects, noise and electromagnetic fields, sediment and collision with turbine blades must be fully considered and addressed in the EIA Report. The Scottish Ministers also highlight the MSS advice regarding the assumptions made regarding diadromous fish and advise that this should be duly considered.
- 5.4.6 The Scottish Ministers agree with representation from NatureScot and are content with the approach to the cumulative impact assessment outlined in section 7.5 of the Scoping Report.
- 5.4.7 In regard to the approach to assessment, the Scottish Ministers advise that the information identified in the NatureScot representation must be fully considered by the Developer and highlight in particular the likely requirement for operational noise modelling to inform the EIA.

5.5 Offshore Ornithology

- 5.5.1 With regard to baseline characterisation, the Scottish Ministers highlight the representations by NatureScot and RSPB Scotland and the MSS advice. The

Scottish Ministers advise that the data sources identified in Table 8-1 are relevant as to provide regional context. The Scottish Ministers however advise that the main data sources identified in Table 8-1 of the Scoping Report that are proposed to be used to characterise the at-sea abundance and distribution of marine birds within the Proposed Development are insufficient and outdated. Furthermore, the Scottish Ministers acknowledge the Developers proposal to use Seabird Count census data to adjust abundance estimates from previous survey results at the Proposed Development to account for recent changes, however do not consider this approach sufficient. The Scottish Ministers agree with representation from NatureScot and advise that this approach has several weaknesses, including, the omission of several types of marine birds and a failure to consider the impact on many species of breeding seabirds due to the current unprecedented Highly Pathogenic Avian Influenza (“HPAI”) epidemic. In addition, the Scottish Ministers highlight the RSPB Scotland representation and MSS advice in relation to at-sea densities not only being determined by population abundance but also inter alia changes in the environment including prey distribution.

- 5.5.2 The Scottish Ministers advise that taking into account the outdated survey data and the scale of the Proposed Development, that new baseline ornithology surveys are required in order to inform robust impact assessments within the EIA Report. In line with the NatureScot representation a minimum of one full year of new baseline data must be collected. The Scottish Ministers highlight that the existing survey data together with the relevant data on bird densities and/or behavioural responses to turbines derived from post consent monitoring of deployments at the Existing Development could justifiably be used to inform the design of such surveys. The Scottish Ministers advise the Developer to engage with NatureScot in this regard to ensure that any new data to be collected is fit for purpose and that agreement is reached on how densities are calculated to inform the assessment. In addition, the Scottish Ministers highlight representation regarding the impact of the HPAI and advise the Developer that further discussion is required with NatureScot, to determine how the impacts of HPAI should be considered in the EIA Report.
- 5.5.3 With regards to collision risk modelling, the Scottish Ministers are content with the approach which appears to be in line with the NatureScot “Assessing collision risk between underwater turbines and marine wildlife” guidance for use in determination of ornithological impacts arising from tidal stream devices and represents the best approaches currently available. The Scottish Ministers however advise the Developer that the collision risk modelling approaches for tidal developments are subject to considerable uncertainty given the lack of validation data and refer the Developer further to the RSPB Scotland representation in this regard. The Scottish Ministers acknowledge that the Developer is in discussions with NatureScot with regards to the

proposed approach to collision risk modelling and the development of associated scenarios and advise that the results of these discussions must be fully implemented into the assessment. In addition, the EIA Report must also include consideration of any evidence on avoidance behaviours derived from post-consent monitoring of deployments to date at the Proposed Development and other tidal lease sites. This is a view supported by the NatureScot representation.

- 5.5.4 Within Table 8-2 of the Scoping Report, the Developer summarises the occurrence of seabird and waterfowl species at the Proposed Development. The Scottish Ministers advise that this is a reasonable qualitative summary of the ornithological characteristics of the Proposed Development however, direct the Developer to the comments within the NatureScot representation. Furthermore, the Scottish Ministers direct the Developer to the NatureScot representation with regards to the additional priority species which must be included in the ornithological impact assessment within the EIA Report.
- 5.5.5 Within Tables 8-4 and 8-5 of the Scoping Report, the Developer considers the potential importance of the main effect pathways for particular ornithological features during different phases of the Proposed Development. The Scottish Ministers are broadly content with the conclusions reached however, advise that disturbance and displacement impacts out with the Proposed Development site that may be associated with vessel movements to and from the Proposed Development must be scoped in for assessment within the EIA Report. The predicted routes and frequency of such vessel movements under the various scenarios being developed must be detailed and assessed within the EIA Report. These views are supported by the MSS advice and NatureScot representation. The Scottish Ministers direct the Developer further to the NatureScot representation, which must be fully addressed in the EIA Report, with respect to the specific points raised regarding potential effects (disturbance, seabed habitat loss, collision with tidal device and displacement from fixed structures). In addition, the Scottish Ministers advise that there must be particular focus on the potential for disturbance of wintering waterfowl and breeding red-throated diver features of the North Orkney and/or Scapa Flow Special Protected Areas (“SPAs”) and highlight the additional information sources the Developer must consider, with respect to behavioural sensitivities to disturbance provided by NatureScot.
- 5.5.6 Within section 8.5 of the Scoping Report, the Developer references Table 4-2 which lists the indicative developments for inclusion in the in combination assessment relevant to the Proposed Development. The Scottish Ministers are broadly content with the developments listed for consideration and advise that this appears relevant to consideration of ornithological impacts. However, the Scottish Ministers advise that in addition to the proposed developments,

novel or increased vessel movements associated with those developments must be considered in combination with those arising from the Proposed Development. This is a view supported by the NatureScot representation.

- 5.5.7 With regards to section 8.2.3 of the Scoping Report, the Scottish Ministers disagree with the approach to HRA screening. The Scottish Ministers advise that this is based on the restriction of consideration of colony SPAs only to those within 100km of the Proposed Development and the proposed adoption of High, Moderate, Low and None categories of theoretical potential connectivity with only those SPA features categorised as Moderate or High screened in. This view is supported by the NatureScot advice. The Scottish Ministers advise that foraging ranges of breeding seabirds (including red-throated divers) should be used to produce a long list of SPA qualifying seabirds with connectivity to the Proposed Development. The Scottish Ministers highlight that this list may subsequently be refined as updated baseline information is collected and information on impact pathways and species sensitivities is considered. Furthermore, the Scottish Ministers advise that this method may also be used to assess connectivity to other protected seabird colonies such as SSSIs and for regionally important colonies for wider EIA assessment. The Scottish Ministers direct the Developer to the NatureScot representation and guidance on the recommended metric for establishing connectivity and the potential connectivity of the Proposed Development on several seabird colony SPAs and advise that NatureScot advice on these topics must be fully implemented.

5.6 Basking Sharks

- 5.6.1 The Scottish Ministers are content with the baseline data sources listed in Table 9-1, section 9.2.1, of the Scoping Report.
- 5.6.2 In Tables 9-2 and 9-3 of the Scoping Report, the Developer summarises the potential impacts to basking sharks identified during different phases of the Proposed Development. The Scottish Ministers are broadly content with impact pathways identified as 'potentially important' and therefore scoped in for further assessment in the EIA Report. In addition, the Scottish Ministers advise that in line with the NatureScot representation, entanglement of basking sharks in ghost fishing gear which may become caught on devices must be scoped in for further assessment during the construction and operation phase. Additionally, the Scottish Ministers highlight representation from NatureScot regarding the lack of studies addressing how animals, including basking sharks, react to arrays. The Scottish Ministers therefore advise that the potential barrier effects caused by the tidal devices and associated infrastructure must be scoped in for further assessment in the EIA Report for the operation and maintenance phases.

- 5.6.3 The Scottish Ministers agree with representation from NatureScot and are content with the approach to the cumulative assessment as outlined in section 9.5 of the Scoping Report.
- 5.6.4 In regards to assessment methodologies, the Scottish Ministers acknowledge that the Developer is already in discussions with NatureScot with regards to the proposed approach to collision risk modelling and the development of associated scenarios and advise that the results of these discussions must be fully implemented into the assessment. In addition, the EIA Report must also include consideration of any evidence on avoidance behaviours derived from post-consent monitoring of deployments to date at Fall of Warness and other tidal lease sites. This is a view supported by the NatureScot representation.
- 5.6.5 The Scottish Ministers agree with the proposed approach of a desk based review of noisy activities during the installation and decommissioning phases, as detailed in section 9.6 of the Scoping Report and further advise that this assessment must clearly detail the level of installation activity, including likely duration of any simultaneous or sequential drilling. This view is supported by NatureScot. The Scottish Ministers however, do not agree that a desk based review is sufficient for the assessment of noise during the operation and maintenance phases. The Scottish Ministers highlight the representation from NatureScot concerning the lack of information about the sound characteristics of most of the devices included in the Project Envelope and the resulting likelihood of modelling being required for the assessment of operational noise. The Scottish Ministers advise that the NatureScot representation must be fully considered and implemented in the EIA Report. For the avoidance of doubt, the Scottish Ministers advise that the worst case scenario of 35 simultaneous devices operating in the area, and the resulting cumulative impact of this on the soundscape of the Proposed Development, must be assessed. In addition, this assessment must consider the possibility of whether the operational noise could result in displacement and/or avoidance of the area. The Scottish Ministers advise the Developer to consider the sources provided in the representation from NatureScot.

5.7 Cetaceans

- 5.7.1 The Scottish Ministers are content with the baseline data sources listed in Table 10-1 within section 10-2 of the Scoping Report.
- 5.7.2 In Tables 10-2 and 10-3 of the Scoping Report, the Developer summarises the potential impacts to cetaceans identified during different phases of the Proposed Development. The Scottish Ministers are broadly content with the impact pathways identified as 'potentially important' and therefore scoped in for further assessment in the EIA Report. In addition, the Scottish Ministers

advise that in line with the NatureScot representation and MSS advice, entanglement of cetaceans in ghost fishing gear which may become caught on devices must be scoped in for further assessment during the construction and operation phase. The Scottish Ministers also highlight the representation from NatureScot regarding the lack of studies addressing how animals, including cetaceans, react to arrays. The Scottish Ministers therefore advise that the potential barrier effects caused by the tidal devices and associated infrastructure must be scoped in for further assessment in the EIA Report for the operation and maintenance phases.

- 5.7.3 The Scottish Ministers direct the Developer to representation from NatureScot with regards to section 10.2.3 Protected Sites, of the Scoping Report. NatureScot believe there has been a typing mistake in paragraph 2 of page 79, however confirms its agreement with the Developer that bottlenose dolphins encountered are more likely to be of the offshore population. In its representation, NatureScot also confirms that there are no connectivity issues with the NCMAs due to the distance between them and the Proposed Development.
- 5.7.4 The Scottish Ministers agree with representation from NatureScot and are content with the approach to the cumulative impact assessment as outlined in section 10.5 of the Scoping Report.
- 5.7.5 In relation to assessment methodologies, the Scottish Ministers acknowledge that the Developer is already in discussions with NatureScot with regards to the proposed approach to collision risk modelling and the development of associated scenarios and advise that the results of these discussions must be fully implemented into the assessment. In addition, the EIA Report must also include consideration of any evidence on avoidance behaviours derived from post-consent monitoring of deployments to date at the Proposed Development and other tidal lease sites, as per representation from NatureScot. Further to this, mortality thresholds derived from Onoufriou *et al.* (2019) must be considered to scale collision rate into an estimate of likely population level impact. This is in line with the MSS advice.
- 5.7.6 The Scottish Ministers agree with the proposed approach of a desk based review of noisy activities during the installation and decommissioning phases and advise that this assessment must clearly detail the level of installation activity, including likely duration of any simultaneous or sequential drilling. This view is supported by NatureScot. In addition, the Scottish Ministers direct the Developer to the representation from NatureScot and advise that due to the continuous nature of drilling there may be a risk of accumulated Permanent Threshold Shift (“PTS”) that must be addressed in the assessment. The Scottish Ministers advise that the assessment must fully address the points

raised for consideration by the NatureScot representation in this regard. Finally, in regards to the noise assessment for the operation and maintenance phase of the Proposed Development, the Scottish Ministers advise that the proposed approach of a desk based review is insufficient. The Scottish Ministers highlight representation from NatureScot pertaining to the lack of information about the sound characteristics of most of the devices included in the Project Envelope and the resulting likelihood of modelling being required for the operational noise phase. The Scottish Ministers advise that the NatureScot representation must be fully considered and addressed in the EIA Report. For the avoidance of doubt, the Scottish Ministers advise that the worst case scenario of 35 simultaneous devices operating in the area, and the resulting cumulative impact of this on the soundscape of the Proposed Development, must be assessed in relation to the risk of PTS during the installation and decommissioning phases and during the operation and maintenance phases. This assessment is likely to require modelling. In addition, this assessment must consider the possibility of whether the operational noise could result in displacement and/or avoidance of the area. The Scottish Ministers advise the Developer to consider the sources provided in the representation from NatureScot.

5.8 Seals

- 5.8.1 The Scottish Ministers are broadly content with the baseline data sources listed in Table 11-1 of section 11.2.1 of the Scoping Report. However, advise that in addition to those listed, Carter *et al.* (2022) must be included in the key data sources and used for seal density and estimated abundance as per the MSS advice.
- 5.8.2 In Tables 11-2 and 11-3 of the Scoping Report, the Developer summarises the potential impacts to grey seal and harbour seal identified during different phases of the Proposed Development. The Scottish Ministers are broadly content with impact pathways identified as 'potentially important' and therefore scoped in for further assessment in the EIA Report. In addition, the Scottish Ministers advise that, in line with the NatureScot representation and MSS advice, entanglement of seals in ghost fishing gear which may become caught on devices must be scoped in for further assessment during the construction and operation phase. The Scottish Ministers also highlight representation from NatureScot regarding the lack of studies addressing how animals, including seals, react to arrays. The Scottish Ministers therefore advise that the potential barrier effects caused by the tidal devices and associated infrastructure must be scoped in for further assessment in the EIA Report during the operation and maintenance phases. The assessment must take into account the designated seal haulouts within the area of the Proposed Development and how seals currently using those haulouts may react. Furthermore, the Scottish

Ministers advise that changes to hydrodynamic and sediment regime are also scoped in for further assessment in the EIA Report for operation and maintenance phases. Finally, the Scottish Ministers agree with the proposal to scope in vessel transit and manoeuvring and further advise that due to the presence of designated seal haul out sites and increasing vessel numbers, a vessel management plan must be developed and included in the EIA Report. This is in line with the NatureScot representation.

- 5.8.3 The Scottish Ministers direct the Developer to representation from NatureScot regarding the protected sites identified in section 11.2.3 of the Scoping Report. The Developer proposes that a large proportion of harbour seals present at the Proposed Development are not associated with the Sanday SAC. The Scottish Ministers agree with representation from NatureScot and advise that there is no evidence to support these assumptions and therefore advise that, connectivity between the Proposed Development and Sanday SAC with respect to harbour seals must be scoped in for further assessment. Further, the Scottish Ministers advise the Developer to fully consider the sources referenced in the NatureScot representation with regards to tagging data from Sanday.
- 5.8.4 The Scottish Ministers agree with the representation from NatureScot and are broadly content with the cumulative impact assessment detailed in section 11.5 of the Scoping Report. In addition and in line with the Orkney Islands Council representation, the Scottish Ministers advise that the cumulative impacts of the existing site, and the modifications proposed e.g. more devices/infrastructure, more servicing etc, on harbour seal populations, including those of the Sanday SAC, and the nearby seal haul outs and breeding colony seal haul outs for both species should be carefully considered.
- 5.8.5 In regards to assessment methodologies, the Scottish Ministers acknowledge that the Developer is already in discussions with NatureScot with regards to the proposed approach to collision risk modelling and the development of associated scenarios and advise that the results of these discussions must be fully implemented into the assessment. In addition, the EIA Report must also include consideration of any evidence on avoidance behaviours derived from post-consent monitoring of deployments to date at the Proposed Development and other tidal lease sites, as per representation from NatureScot. Further to this, mortality thresholds derived from Onoufriou *et al.* (2019) must be considered to scale collision rate into an estimate of likely population level impact. This is in line with the MSS advice.
- 5.8.6 The Scottish Ministers agree with the proposed approach of a desk based review of noisy activities during the installation and decommissioning phases,

as detailed in section 11.6 of the Scoping Report, and further advise that this assessment must clearly detail the level of installation activity, including likely duration of any simultaneous or sequential drilling. This view is supported by NatureScot. The Scottish Ministers however, do not agree that a desk based review is sufficient for the assessment of noise during the operation and maintenance phases. The Scottish Ministers highlight representation from NatureScot concerning the lack of information about the characteristics of most of the devices included in the Project Envelope and the resulting likelihood of modelling being required for the operational noise phase. The Scottish Ministers advise that the NatureScot representations must be fully considered and implemented in the EIA Report. For the avoidance of doubt, the Scottish Ministers advise that the worst case scenario of 35 simultaneous devices operating in the area, and the resulting cumulative impact of this on the soundscape of the Proposed Development, must be assessed. This assessment is likely to require modelling. In addition, this assessment must consider the possibility of whether the operational noise could result in displacement and/or avoidance of the area. The Scottish Ministers advise the Developer to consider the sources provided in the representation from NatureScot.

5.9 Otters

- 5.9.1 The Scottish Ministers are content with the data sources identified in section 12.2 of the Scoping Report however, advise that the additional source of information identified in the NatureScot representation must be fully considered by the Developer.
- 5.9.2 Within Table 12-2 of the Scoping Report, the Developer considers the potential impacts to otters during the different phases of the Proposed Development which it proposes to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer's overall proposal to scope out all potential impacts to otters. The Scottish Ministers advise that due to the potential for future installation and maintenance of additional subsea cables, there is likely to be potential impact to protected otter shelters and advise that the impacts on otters from cable installation must be assessed in the EIA Report, as supported by the NatureScot representation. The Scottish Ministers highlight the requirement for appropriate otter surveys and mitigation outlined in the NatureScot representation and advise that this must be fully addressed by the Developer.

5.10 Commercial Fisheries

- 5.10.1 Within tables 13-2 and 13-3 of the Scoping Report, the Developer summarises the potential impacts on commercial fisheries during the different phases of the Proposed Development. All impacts identified by the Developer are

proposed to be scoped out for assessment within the EIA Report. The Scottish Ministers agree that all potential impacts can be scoped out for further assessment within the EIA Report on the premise that the site boundary is not being extended. Should the Proposed Development site boundary change in any way the MSS advice as regards spatial implications for commercial fisheries must be fully considered.

5.11 Seascape, Coastal Character and Visual Amenity

- 5.11.1 With regard to the study area as defined in figure 14-1 of the Scoping Report, the Scottish Ministers are content that a maximum 5 km radius around the outer edge of the Proposed Development site boundary is sufficient to capture the likely effects to arise from the Proposed Development. The Scottish Ministers are also content with the relevant baseline data sources contained within table 14-1 of the Scoping Report. These views are supported by the NatureScot representation.
- 5.11.2 With regards to viewpoints the Scottish Ministers highlight the NatureScot representation and advise that consideration must be given to the inclusion of an additional viewpoint from the south at Ness of Ork, Shapinsay, looking towards the Proposed Development within the EIA Report, and refer the Developer further to the NatureScot representation in this regard.
- 5.11.3 Within table 14-3 of the Scoping Report, the Developer details the potential impacts on seascape, coastal character and visual amenity which it proposed to scope in for assessment within the EIA Report. The Scottish Ministers are broadly content with the impacts proposed to be scoped in; however, would highlight the representation of NatureScot with regard to the effect of view of lighting on visual amenity experienced at night. The Scottish Ministers advise that consideration of this must be made within the EIA Report.
- 5.11.4 In relation to the proposed approach to the EIA Report, the Scottish Ministers advise that the Developer must give further consideration to the indicative visualisations proposed in section 14.6.1 of the Scoping Report. The Scottish Ministers direct the Developer further to the NatureScot representation and requirements in this regard.

5.12 Marine Archaeology and Cultural Heritage

- 5.12.1 Within tables 15-2 and Table 15-3 of the Scoping Report, the Developer summaries the potential impacts on marine archaeology and cultural heritage during the different phases of the Proposed Development. All impacts identified by the Developer are proposed to be scoped out for assessment within the EIA Report. The Scottish Ministers are content that based on the monitoring and management measures to be implemented at section 15.7 of

the Scoping Report, all identified impacts can be scoped out for further assessment within the EIA Report. This view is supported by the HES representation.

5.13 Socio-economic, Other Sea Users and Tourism

- 5.13.1 The Scottish Ministers highlight the MCA representation with regard to the EMEC Fall of Warness Navigational Risk Assessment to be accompanied along with the EIA Report. The Scottish Ministers advise that this must be updated with up to date traffic data and reflect the current MCA guidance and, in addition, the EIA Report itself must supply detail on the potential impact on navigational issues for both commercial and recreational craft. The Scottish Ministers direct the Developer further to the MCA representation in this regard. Furthermore, the Scottish Ministers note the representations of the NLB and the RYA Scotland.
- 5.13.2 Within tables 16-2 and 16-3 of the Scoping Report the Developer details the potential impacts to socio-economics, other sea users and tourism from activities during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Scottish Ministers broadly agree with the impacts detailed and scoped in in relation to other sea users and tourism. The Scottish Ministers would highlight the BT representation with regard to an existing BT link that passes the inside southern part of the Proposed Development and that this must be considered within the EIA Report.
- 5.13.3 With regard to the potential impacts to socio-economics, the Scottish Ministers advise that no consideration of key data sources, baseline information or justification on the potential effect pathways to be scoped in or out for further assessment within the EIA Report has been provided. The Scottish Ministers advise that socio-economic impacts are scoped in and direct the Developer to the MAU advice with regard to the assessment of socio-economics within the EIA Report. The Scottish Ministers highlight the upcoming MAU guidance due to be published and advise the Developer to consider this, if it is available, within the assessment of the EIA Report.
- 5.13.4 In relation to mitigation and monitoring, the Scottish Ministers at this stage, advise that further work is required in terms of identifying and assessing socio-economic impacts and therefore, consideration and identification of potential mitigation measures must be addressed through the Socio-Economic Impact Assessment process within the EIA Report.

5.14 Additional EIA Matters

Natural Disasters

- 5.14.1 The Developer considers major accidents and disasters associated with all phases of the Proposed Development at section 17.2 of the Scoping Report. The Scottish Ministers disagree that the assessment in relation to major accidents and disasters in relation to the Proposed Development can be scoped out of the EIA Report. The Scottish Ministers advise that the Developer considers major accidents and disasters associated with the Proposed Development and that this is scoped in for further assessment within the EIA Report. Further details regarding this are provided at section 3.4 of this Scoping Opinion.

Human Health

- 5.14.2 Within section 17.3 of the Scoping Report the Developer considers the Proposed Development with respect to air quality, noise and vibration. The Scottish Ministers are broadly content with the information and justification identified and agree that all impacts as detailed in Tables 17-2 and 17-3 can be scoped out for further assessment within the EIA Report.

Climate

- 5.14.3 The Developer considers the potential effects of the Proposed Development relating to climate change at section 17.4 of the Scoping Report. The Developer proposes that the impact of climate change effects will not be considered further within the EIA Report. The Scottish Ministers, however, advise that the EIA Report must include a GHG Assessment which should be based on a LCA approach, noting that the IEMA GHG Guidance provides further insight on this matter. Further details regarding this are provided at section 3.5 of this Scoping Opinion.

6. Application and EIA Report

6.1 General

- 6.1.1 The EIA Report must be in accordance with the EIA Regulations and the Scottish Ministers draw your attention in particular to, regulation 6 of the 2017 MW Regulations and regulation 5 of the 2017 EW Regulations. In accordance with the EIA Regulations, the Scottish Ministers advise that the EIA Report must be based on this Scoping Opinion.
- 6.1.2 The Scottish Ministers note the need to carry out an assessment under the Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Habitats and Species Regulations 2017. This assessment must be coordinated with the EIA in accordance with the EIA Regulations.
- 6.1.3 The Scottish Ministers strongly advise the production of a HRA screening report for the Proposed Development and recommend that this should be submitted for comment at the earliest opportunity and in advance of the submission of the EIA Report in order to fully inform the HRA advice for the Proposed Development.
- 6.1.4 A gap analysis template is attached at Appendix II to record the environmental concerns identified during the scoping process. This template should be completed and used to inform the preparation of the EIA Report. As part of the submission of the EIA Report the Scottish Ministers advise that the Developer must provide confirmation of how this Scoping Opinion is reflected in the EIA Report.

7. Multi-Stage Consent and Regulatory Approval

7.1 Background

- 7.1.1 The EIA Regulations contain provisions regulating the assessment of environmental impacts. A multi-stage consent or regulatory approval process arises where an approval procedure comprises more than one stage; one stage involving a principal decision and one or more other stages involving implementing decision(s) within the parameters set by the principal decision. While the effects which works may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision, if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.
- 7.1.2 The definition in the 2017 EW Regulations is as follows (the definition in the 2017 MW Regulations provides for the same but in relation to “regulatory approvals”): *“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun*”.
- 7.1.3 A section 36 consent or marine licences, if granted, by the Scottish Ministers for the Proposed Development, may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS. When making an application for multi-stage consent or regulatory approval the Developer must satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA Report.
- 7.1.4 If during the consideration of information provided in support of an application for multi-stage consent or regulatory approval the Scottish Ministers consider that the development may have significant environmental effects which have not previously been identified in the EIA Report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information will fall to be dealt with as additional information under the EIA Regulations, and procedures for consultation, public participation, public notice and decision notice of additional information will apply.

Signed

Gayle Holland
7 December 2022

Authorised by the Scottish Ministers to sign in that behalf.

Appendix I: Consultation Responses & Advice

Please refer to separate document provided alongside the Scoping Opinion

Appendix II: Gap Analysis

Please refer to separate document provided alongside the Scoping Opinion