

Marine Directorate - Licensing Operations Team Scoping Opinion

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

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

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

Westray Tidal Array

October 2024

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	6
2.4 The Scottish Ministers' Comments	6
3. Contents of the EIA Report	10
3.1 Introduction	10
3.2 EIA Scope	10
3.3 Mitigation and Monitoring	10
3.4 Climate and Greenhouse Gases	11
4. Consultation	12
4.1 The Consultation Process	12
4.2 Responses received	13
5. Interests to be considered within the EIA Report	14
5.1 Introduction	14
5.2 Marine Physical and Coastal Processes	14
5.3 Marine Water and Sediment Quality	15
5.4 Air Quality	15
5.5 Airborne Noise	15
5.6 Benthic Ecology	15
5.7 Fish and Shellfish Ecology	16
5.8 Marine Mammals and Megafauna	18
5.9 Ornithology	19
5.10 Commercial Fisheries	21
5.11 Shipping and Navigation	22
5.12 Archaeology and Cultural Heritage	24
5.13 Seascape, Landscape and Visual	25
5.14 Local Communities and Socio-economics	26
5.15 Tourism and Recreation	26
5.16 Other Sea Users	27
5.17 Military	27
5.18 Aviation and Radar	27

5.19	Human Health	27
5.20	Accidents and Disasters.....	28
6.	Application and EIA Report.....	29
6.1	General	29
7.	Multi-Stage Consent and Regulatory Approval	30
7.1	Background	30
	Appendix I: Consultation Responses & Advice.....	31
	Appendix II: Gap Analysis	32

1. Introduction

1.1 Background

- 1.1.1 On 1 December 2023, the Scottish Ministers received a scoping report (“the Scoping Report”) from Orbital Marine Power (“the Developer”) as part of its request for a scoping opinion relating to the Westray Tidal Array (“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 Directorate 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 a marine licence 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.
- 1.1.6 The Scottish Ministers advise that as more than one set of environmental impact assessment regulations apply the most stringent requirements must be adhered to in terms of, for example, consultation timelines and public notice requirements.

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 will comprise of an offshore generating station located within the Westray Firth, Orkney with up to 70 Orbital O2 style tidal turbine devices ("TTD") with up to 5 export cables. The export cables are proposed to pass through the confines of the established European Marine Energy Centre ("EMEC") Fall of Warness tidal test site with cable landfall and grid connection at the onshore connection point within the boundary of the EMEC facility. All offshore infrastructure associated with the Proposed Development will be situated entirely within 12 nautical miles ("nm") of mean high water springs. The Proposed Development will have a capacity greater than 1 megawatt ("MW") and, therefore, requires the Scottish Ministers' consent to allow its construction and operation. The Proposed Development will also require marine licences granted by the Scottish Ministers under the 2010 Act, to permit any and all 'licensable marine activities' carried on for the Proposed Development.

2.2.2 The Proposed Development will include the construction and operation of 70 TTD and all associated infrastructure. The key components of the Proposed Development include:

- Maximum of 70 TTDs;
- 2 rotors per TTD;
- Maximum rotor diameter of each TTD of 26 metres ("m");
- Maximum rotor blades per TTD of 4 (2 blades per rotor);
- Maximum rotor swept area of 534m² per rotor (1,068m² per device);
- Rated power per TTD of 2.4 MW;
- Maximum hull length per TTD of 88m;
- Maximum height above water of 1.6m;
- Maximum number of mooring lines per TTD of 4;
- Maximum mooring line length (each) of 225m;
- Maximum mooring spread 420m x 220m;
- Maximum number of anchors per TTD of 4 (one per mooring line);
- Minimum spacing between TTD at the sea surface of 130m
- Maximum of 5 export cables with a maximum length of 5km each; and
- Maximum of 15 inter-array cables each with a maximum length of 500m.

2.2.3 The Proposed Development will have an approximate installed capacity of up to 170 MW. The Proposed Development is likely to be constructed over a period of 5 years.

2.2.4 The operational lifetime of the Proposed Development is assumed to be 25 years followed by a period of decommissioning.

2.3 Onshore Planning

2.3.1 The Scottish Ministers are aware that the Developer has not sought a separate scoping opinion from Orkney Islands Council for the associated onshore transmission works. The Developer states in the Scoping Report that any new onshore infrastructure will form part of a future planning application. The Scottish Ministers advise that the EIA Report for the Proposed Development must consider cumulative impacts with the works associated with the onshore transmission infrastructure.

2.4 The Scottish Ministers' Comments

Description of the Proposed Development

2.4.1 Section 1.3 of the Scoping Report highlights a region in the south of the Proposed Development area which overlaps with the Proposed Development ambitions for the EMEC Fall of Warness tidal test site. The Scottish Ministers advise that the application and EIA Report must be clear on how this area of overlap will be managed and by whom. The Developer must fully detail within the application and EIA Report the engagement undertaken with EMEC in this regard.

2.4.2 The Scottish Ministers note that the Developer intends to connect to the National Grid within the EMEC Fall of Warness tidal test site. The associated export cables within the site are intended to form part of the consent application to be submitted by EMEC for the extension to its Fall of Warness site. The Developer states in section 1.3 of the Scoping Report that the Proposed Development application will only include the offshore infrastructure, comprising the array area and subtidal interconnector cable(s) between the Proposed Development and the EMEC Fall of Warness tidal test site. The Scottish Ministers advise that the export cables must be considered within an EIA and note that if it forms part of EMEC's application the Developer must assess them cumulatively within its EIA Report. Should the consenting strategy for the export cables change and they form part of the Developer's application then the effects must be considered within the EIA Report. The Scottish Ministers highlight that the export cables were not included in the Scoping Report and therefore the impacts have not been considered within this opinion and it is unclear to what extent the export cables are included within EMEC's scoping opinion dated December 2022. The Scottish Ministers advise that the assessment of export cables and consenting approach for these is confirmed prior to the submission of the application. The Scottish Ministers advise the Developer and EMEC to continue to engage with the Scottish Ministers on this aspect and the associated timeframes for the applications.

- 2.4.3 The Scottish Ministers note that the layout of the TTD array will be determined post-consent and advise that the EIA Report must include a full and detailed description of the TTD layout. If the TTD arrangement is not finalised at the time of submission of the EIA Report, it is important the EIA Report include a full and detailed description of all layout options being considered within the design envelope. The EIA Report must provide a full detailed description of the interaction of the Proposed Development with the EMEC Fall of Warness tidal test site infrastructure.
- 2.4.4 Section 4.2.4 of the Scoping Report states that the cables may be buried using a number of different methods including ploughing, jetting and rock-cutting or may be surface laid with rock pins used to keep the cable pinned to the seabed. If more than one method of burial is being considered, each should be detailed within the EIA Report. The Scottish Ministers advise the EIA Report include an estimate of the anticipated likelihood of suitable burial along cable routes and be clear on the range of depths that have been considered as part of the assessment. Clear narrative must be provided within the EIA Report to show how this has been estimated prior to any geophysical and geotechnical surveys that may be undertaken.
- 2.4.5 The Scottish Ministers note where burial of cables is not possible, cables will be covered by cable protection. If there is potential for cable protection to be used, the Scottish Ministers advise that this is assessed in the EIA Report and includes details regarding materials, quantities and location. In addition, any seabed levelling or removal of substance or objects from on or under the seabed, required for installation of both inter-array and export cables, will require consideration in the EIA Report and may require a marine licence. Should seabed preparation involve dredging, the EIA Report should include 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 and existing deposit sites.
- 2.4.6 In section 4.2.2.2 of the Scoping Report the Developer has acknowledged that scour protection will be placed around each anchor where required. For the avoidance of doubt the use of scour protection must be assessed in the EIA Report including details on materials, quantities and location. The EIA Report must also clearly describe the export cable area including the width, length, and location.
- 2.4.7 The Scottish Ministers note from section 4.2.3 of the Scoping Report that the TTDs will be constructed onshore and held in offsite 'holding locations' prior to being towed and installed within the Proposed Development area. Depending on the location of these offsite holding areas there could be potential impacts to natural heritage receptors. The Scottish Ministers are considering the permitting and assessment requirements for the assembly, operation, storage and ongoing maintenance of turbines in the sea and will provide further guidance on this.
- 2.4.8 Section 4.4 of the Scoping Report considers decommissioning of the Proposed Development. The Scottish Ministers advise that the EIA Report includes an

assessment of potential significant effects during the decommissioning phase. Any uncertainty on the impacts upon receptors from activities during decommissioning should be clearly explained, along with the implications for the assessment of significant effects.

- 2.4.9 Section 10.2 of the Scoping Report states that no unexploded ordnance (“UXO”) is expected within the Proposed Development. The Scottish Ministers advise that the EIA Report must describe and assess the environmental effects, including in-combination effects, of the range of surveys which may be required such as geophysical and geotechnical survey activities and UXO clearance. The EIA Report must also include consideration of the options which will be assessed in relation to UXO clearance, the differences amongst them and an assessment of the environmental effects of these options. In this regard, the Scottish Ministers advise that the EIA Report must include a worst case scenario of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show 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 clearance¹ in this regard, although highlight that this is currently being refreshed.
- 2.4.10 The EIA Report should provide an 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.
- 2.4.11 The Scottish Ministers note that the Developer plans to submit a separate offshore Habitats Regulations Appraisal (“HRA”) screening report. The Scottish Ministers recommend that the Developer submit a HRA screening report at the earliest opportunity and before submission of the EIA Report.
- 2.4.12 The Scottish Ministers advise that the EIA Report must provide a full description and consideration of the nature and scope of all operation and maintenance activities, including the types of activity, their frequency, how activities will be carried out for the Proposed Development and any anticipated cumulative impacts with neighbouring developments. Such proposed activities may require to be permitted by marine licence issued for the Proposed Development unless an exemption applies.
- 2.4.13 Regulatory approvals will be required for licensable activities including all construction activities, whether as part of the original construction or any subsequent alteration or improvement, 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 this Scoping Opinion should be taken, as appropriate, to include all activities in

¹ <https://www.gov.uk/government/publications/marine-environment-unexploded-ordnance-clearance-joint-interim-position-statement>

connection with the construction, alteration, improvement (including 'change-outs' of components) and decommissioning of the Proposed Development for which a regulatory approval will be needed. The Developer should give consideration to all activities related to the Proposed Development which require regulatory approval and ensure that these are applied for as appropriate.

Design Envelope

2.4.14 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 4.2 of the Scoping Report.

2.4.15 The Scottish Ministers advise that the Developer must make every attempt to narrow the range of options. 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. At the time of application, the parameters of the Proposed Development should not be so wide-ranging as to represent effectively different projects. To address any uncertainty, the EIA Report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case and the most likely scenario, together with the potential impacts arising from these, must also be described. 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.

2.4.16 The Scottish Ministers will determine the applications based on the worst case scenario. The EIA will reduce the degree of design flexibility required and the detail may be further refined in a Construction Method Statement ("CMS") 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. The CMS will 'freeze' the design of the project and will be reviewed by the Scottish Ministers to ensure that the worst case scenario described in the EIA Report is not exceeded.

2.4.17 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

2.4.18 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 note that the Developer's Scoping Report did not indicate any consideration of alternatives. The Scottish Ministers advise that the EIA Report must set out consideration of alternatives and 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.

- 2.4.19 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 TTD layouts within the array 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.

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 The Scottish Ministers note at Section 6.3.2 of the Scoping Report that the Developer commits to providing full details of mitigation measures relative to each technical chapter within the EIA Report. For the avoidance of doubt, 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 impact 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 Climate and Greenhouse Gases

- 3.4.1 The Scottish Ministers are mindful that Greenhouse Gas (“GHG”) emissions from all projects contribute to climate change. In this regard, the Scottish Ministers highlight the Institute of Environmental Management and Assessment (“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 22 December 2023. 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:

- **Crown Estate Scotland**
- *Defence Infrastructure Organisation*
- Eday Community Council
- *EMEC*
- Fisheries Management Scotland
- **Historic Environment Scotland (“HES”)**
- Inshore Fisheries Group – Orkney
- Kirkwall Fishery Office
- Marine Planning Partnership Orkney
- Marine Safety Forum
- **Maritime and Coastguard Agency (“MCA”)**
- National Trust for Scotland
- **NatureScot**
- **Northern Lighthouse Board (“NLB”)**
- *Orkney Harbours*
- **Orkney Islands Council (“OIC”)**
- **Marine Directorate Planning**
- Rousay, Egilsay, Wyre and Gairsay Community Council
- Royal Society for the Protection of Birds
- **Royal Yachting Association Scotland (“RYA Scotland”)**
- Salmon Fishery Board
- *Sanday Community Council*
- Scottish and Southern Electricity Networks
- Scottish Canoe Association
- Scottish Creel Fishermen
- *Scottish Environment Protection Agency*
- **Scottish Fishermen’s Federation (“SFF”)**
- Scottish Fishermen’s Organisation
- Scottish Hydro Electric Power Distribution
- Scottish Surfing Federation
- **Scottish Water**
- Scottish White Fish Producers Organisation
- Scottish Wildlife Trust
- Shapinsay Community Council
- Sport Scotland
- *Stronsay Community Council*
- Surfers Against Sewage
- **UK Chamber of Shipping (“UK CoS”)**
- Visit Scotland

- Whale and Dolphin Conservation
- Westray Community Council

4.1.2 Specific advice was sought from Marine Directorate – Science, Evidence, Data and Digital (“MD-SEDD”), the Marine Directorate – Marine Analytical Unit (“MAU”) and Transport Scotland (“TS”).

4.2 Responses received

4.2.1 From the list above a total of 17 responses were received. Advice was also provided by MD-SEDD, 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 regard 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 MD-SEDD, MAU 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 Marine Physical and Coastal Processes

5.2.1 The Developer considers the potential impacts of the Proposed Development on marine physical and coastal processes in section 7.1 of the Scoping Report. The Scottish Ministers are content with the study area proposed in section 7.1.1 and shown in Figure 7-1.

5.2.2 The Scottish Ministers are content with the data sources listed in Table 7-1 of the Scoping Report along with the site-specific data detailed in section 7.1.2. This is a view supported by the NatureScot representation.

5.2.3 The Scottish Ministers are broadly content with the potential impacts to be scoped in and out of the EIA Report as detailed in Table 7-2 of the Scoping Report. The Scottish Ministers advise that changes in suspended sediment concentrations due to installation activities and changes to coastal morphology during the operational phase of the Proposed Development must be scoped into the EIA Report due to the limited evidence presented within the Scoping Report. The Scottish Ministers refer the Developer further to the MD-SEDD advice in this regard which must be taken forward into the EIA Report.

5.2.4 The Scottish Ministers advise that the assessment of the impact of the Proposed Development on marine physical and coastal processes does not consider all potential physical process receptors. The Scottish Ministers advise that bedform field(s) outwith the Wyre and Rousay Sounds Nature Conservation Marine Protected Area but within the Fair Isle Strait Marine Process Bedforms Area, notably sands waves in the Westray Firth, must be considered as a physical process receptor. Furthermore, the Scottish Ministers advise that the two-fold strategy detailed in section 7.1.5 of the Scoping Report should effectively be three-fold and direct the Developer further to the NatureScot representation in this regard.

5.2.5 With regard to the potential impact of changes to hydrodynamic, waves and sediment transport regimes, the Scottish Ministers advise that use of a high resolution hydrodynamic model of the site and scenarios with and without tidal stream energy extraction must be conducted and refer the Developer further to the MD-SEDD advice in this regard.

- 5.2.6 The Scottish Ministers advise that with regard to Table 7-3 of the Scoping Report and the proposed assessment strategy of the potential impact of changes to hydrodynamics and sediment transport regimes is unclear. The Scottish Ministers advise the Developer to engage with NatureScot to provide a more detailed statement of the proposed assessment methods for agreement and refer the Developer further to the NatureScot representation in this regard. The Scottish Ministers advise that the detailed statement must take into account the MD-SEDD advice with regard to numerical hydrodynamic modelling which must assess the change in flow and wave fields, wave current interactions resulting from the installation of the Proposed Development and the cumulative impacts and interactions from the EMEC Fall of Warness tidal test site. Furthermore, the Scottish Ministers advise that the numerical hydrodynamic modelling should must also be used to assess the dispersal of drilled sediments.
- 5.2.7 The Scottish Ministers are content with the proposed approach to assessment of cumulative and transboundary impacts.

5.3 Marine Water and Sediment Quality

- 5.3.1 The Developer considers the potential impacts of the Proposed Development on marine water and sediment quality in section 7.2 of the Scoping Report.
- 5.3.2 The Scottish Ministers are broadly content with the impacts proposed to be scoped out of the EIA Report however, draw the Developer's attention to the SEPA standing advice with particular regard to the Water Framework Directive, Invasive Non-Native Species ("INNS") and pollution prevention, and advise that these be given consideration in the EIA Report.

5.4 Air Quality

- 5.4.1 Section 7.3 of the Scoping Report considers the impact of the Proposed Development on air quality. The Scottish Ministers have not received representation in relation to air quality and therefore have no comment on this proposal.

5.5 Airborne Noise

- 5.5.1 Section 7.4 of the Scoping Report considers the impact of the Proposed Development on airborne noise. The Scottish Ministers have not received representation in relation to airborne noise and therefore have no comment on this proposal.

5.6 Benthic Ecology

- 5.6.1 The Scottish Ministers are content with the study area as outlined in section 8.1.1 and Figure 8-1 of the Scoping Report that includes the Proposed Development area plus a buffer of up to 25km.

- 5.6.2 The Scottish Ministers are broadly content with the data sources listed within Table 8-1 of the Scoping Report. The Scottish Ministers highlight the NatureScot and OIC representation and advise that a benthic survey must be undertaken to inform the baseline to support the EIA Report. The Scottish Ministers advise that this must be undertaken prior to submission of the EIA Report in order that the survey results can inform the assessment for both benthic ecology and fish and shellfish receptors. The Scottish Ministers recommend that the Developer consult with NatureScot on the proposed survey methodology in advance. Furthermore, the Scottish Ministers highlight the representations from NatureScot and OIC and advise the inclusion of the additional key data sources listed to be used to inform the EIA Report.
- 5.6.3 The Scottish Ministers advise that due to the possibility that the Proposed Development area may support Priority Marine Feature (“PMF”) habitats, further consideration and assessment of potential PMFs must be included in the EIA Report and refer the Developer further to the NatureScot representation in this regard. Similarly, based on representation from OIC, if PMFs are determined to be present in the Proposed Development area, the Scottish Ministers recommend that the Developer contact the International Centre for Island Technology, Stromness for additional data which may be useful to inform the EIA Report.
- 5.6.4 With regard to the potential impacts to be scoped in and out of the EIA Report outlined in Table 8-2 of the Scoping Report, the Scottish Ministers are broadly content with these however, advise that colonisation of infrastructure must be scoped into the EIA Report due to the uncertainty surrounding the infrastructure protection. Similarly, the Scottish Ministers advise that the introduction of INNS must be scoped into the EIA Report. This is a view supported by the NatureScot representation. In addition, the Scottish Ministers highlight the representation made by the SFF regarding ‘Electro Magnetic Field impacts to benthic invertebrates due to thermal emissions from subsea electrical cables’ and advise that this must be scoped into the EIA Report for further consideration.
- 5.6.5 The Scottish Ministers are content with the proposed approach to cumulative impact assessment and are in agreement that there is unlikely to be any transboundary effects in relation to benthic ecology.

5.7 Fish and Shellfish Ecology

- 5.7.1 The Scottish Ministers are content with the study area outlined in section 8.2.1 and Figure 8-3 of the Scoping Report.
- 5.7.2 The Scottish Ministers are broadly content with the data sources outlined in section 8.2.2 of the Scoping Report however, recommend the inclusion of additional data sources as outlined in the NatureScot representation.

- 5.7.3 The Scottish Ministers highlight the NatureScot and OIC representation and reiterate that a benthic survey must be undertaken to inform the baseline to support the EIA Report and that this should be undertaken prior to submission of the EIA Report in order that the survey results can inform the assessment for both benthic ecology and fish and shellfish receptors. The Scottish Ministers recommend that the Developer consult with NatureScot on the proposed survey methodology in advance.
- 5.7.4 With regard to spawning and nursery grounds, the Scottish Ministers, based on NatureScot representation, expect the benthic survey results to be used to contribute to the understanding of potential species and spawning areas present. Furthermore, the benthic survey results must be used to assess seabed suitability for sandeels (all life phases), herring eggs, cod spawning and common skate complex and refer the Developer further to the NatureScot representation in this regard.
- 5.7.5 The Scottish Ministers are broadly content with the impact pathways to be scoped in and out of the EIA Report as detailed in Table 8-7 of the Scoping Report. However, the Scottish Ministers advise that 'increase suspended sediment/turbidity' must be scoped into the EIA Report due to insufficient justification provided within the Scoping Report at this stage for this to be scoped out. Furthermore, diadromous fish must also be scoped into the EIA Report for further assessment with regard to collision risk. This is a view supported by the NatureScot representation.
- 5.7.6 The Scottish Ministers agree with NatureScot's view that migratory fish should currently be assessed through the EIA process and not the HRA process. However, the Developer should continue to engage with the Scottish Ministers and NatureScot regarding any change in how diadromous fish should be assessed through the EIA and HRA as a result of ongoing research in this area.
- 5.7.7 With regard to the approach to assessment outlined at section 8.2.5 of the Scoping Report, the Scottish Ministers advise, in line with representation from NatureScot, that the life history stages and potential impact routes including collision risk to European eel, sea trout and Atlantic salmon are considered further in the EIA Report. Similarly, with reference to Table 8-8 of the Scoping Report, the Scottish Ministers advise that the 'effects on herring and sand eel populations from disturbance to spawning grounds' must also include the common skate complex.
- 5.7.8 Additionally, for the potential impact of 'Underwater noise and vibrations from installation methods and operation of devices' reference must be made to Popper *et al.* 2014 research and the clinking and clunking of mooring chains must also be included for further assessment within the EIA Report and not just the thrum of the TTDs themselves.
- 5.7.9 Furthermore, with regard to collision risk, the Scottish Ministers advise that this impact is also scoped in for Atlantic salmon and that this is to be assessed quantitatively and for other species of diadromous fish to be assessed qualitatively. The Scottish Ministers refer the Developer further to the NatureScot

representation and the guidance note 'Assessing collision risk between underwater turbines and marine wildlife' on this matter.

- 5.7.10 With regard to assessing the potential impacts to fish in relation to 'habitat creation and fish aggregation effect', the Scottish Ministers advise that the EIA Report must include information on the potential effects on the ecosystems of marine mammals and birds that may be attracted to higher densities of prey.
- 5.7.11 In relation to the potential impact of 'effects of electromagnetic fields on elasmobranchs and potential barrier effects to fish and shellfish populations due to presence of tidal devices', the Scottish Ministers advise that in addition to the cables on the seabed potentially affecting benthic species, there will be a number of dynamic inter-array cables in the water column and therefore this will present additional risk to pelagic fish, including migratory fish in particular that use EMF for navigation and therefore, this must be considered for further assessment within the EIA Report. This is a view supported by the NatureScot and SFF representations.
- 5.7.12 The Scottish Ministers are content with the cumulative impacts approach outlined by the Developer in section 6.3.4 of the Scoping Report.
- 5.7.13 The Scottish Ministers are satisfied that there are no transboundary or cross border effects for Fish and Shellfish Ecology.

5.8 Marine Mammals and Megafauna

- 5.8.1 The Scottish Ministers are content with the study area as defined in section 8.3.1 and Figure 8-4 of the Scoping Report. With regard to the data sources outlined in Table 8-9 of the Scoping Report, the Scottish Ministers highlight the additional relevant data sources listed within the NatureScot representation to be used to inform the EIA Report.
- 5.8.2 With reference to the baseline characteristics outlined in section 8.3.3.2 of the Scoping Report, the Scottish Ministers are generally content with the list of marine mammal species to be considered further in the EIA Report. The Scottish Ministers advise however, that the Developer must include any other species that are identified in the ongoing marine wildlife survey across the Proposed Development area and the adjacent EMEC Fall of Warness tidal test site as well as common dolphin which are now regularly recorded around Orkney. In addition, the Scottish Ministers advise that the Developer must utilise the data sources outlined in the NatureScot representation to inform an accurate presence of cetaceans.
- 5.8.3 With regard to the potential impacts to be scoped in and out of the EIA Report outlined in Table 8-10 of the Scoping Report, the Scottish Ministers advise that the Developer must scope 'marine mammal collision risk with vessels' into the EIA Report due to insufficient detail provided on the number and type of vessel movements at this stage. In addition, in reference to Table 8-11 of the Scoping Report, the Scottish Ministers advise that the Developer must scope 'disturbance due to underwater sound' and 'barrier effects from physical presence of devices'

in to the EIA Report due to the number of uncertainties at this stage of the location of the TTDs. Furthermore, the Scottish Ministers advise that the Developer must scope in 'potential impacts from Electromagnetic Fields ("EMF")' for further assessment for both direct effects to basking shark as well as the potential effects on prey for marine mammals. These views are supported by the NatureScot representation and the Scottish Ministers direct the Developer further to the NatureScot representation in this regard.

- 5.8.4 The Scottish Ministers are generally content with the impact assessment strategy outlined in section 8.3.5 of the Scoping Report however, advise that due to connectivity to two seal Special Areas of Conservation ("SAC"), potential impacts must be considered in the context of the SAC population. In addition, reference must be made to the regional population species of killer whale and Risso's dolphin. The Scottish Ministers direct the Developer further to the NatureScot representation in this regard.
- 5.8.5 The Scottish Ministers are content with the cumulative impacts approach outlined by the Developer in section 6.3.4 of the Scoping Report.
- 5.8.6 The Scottish Ministers are satisfied that there are no transboundary effects in relation to Marine Mammals and Megafauna.

5.9 Ornithology

- 5.9.1 The Scottish Ministers are broadly content with the study area as outlined in section 8.4.1 of the Scoping Report however, advise the use of foraging ranges to inform an appropriate theoretical range of connectivity with this being further refined through the digital aerial survey results as well as the HRA Screening Report to be undertaken. This is a view supported by the NatureScot representation.
- 5.9.2 With regard to key data sources outlined at section 8.4.2 of the Scoping Report, the Scottish Ministers advise with regard to existing site-specific data at section 8.4.2.1 of the Scoping Report, the use of the European Seabirds At Sea ("ESAS") data collected at the site between 2012 and 2014 is not sufficient to be used to inform the baseline characterisation within the EIA Report due to the age of this data. With regard to the new baseline survey of Westray Firth outlined at section 8.4.2.2 of the Scoping Report, the Scottish Ministers understand that the data collected will not be the full 12 months as proposed and note that there have been a number of issues in relation to the data collection as highlighted in the NatureScot representation. The Scottish Ministers therefore advise that additional data collection will be required to enable a robust EIA Report and HRA Report. In determining additional data collection requirements, the Scottish Ministers advise that it is critical that statistical advice is sought to ensure that sufficient temporal coverage is obtained prior to application submission. This is a view supported by the NatureScot representation.
- 5.9.3 With regard to the additional data sources listed in Table 8-13 of the Scoping Report, the Scottish Ministers advise that these are appropriate to inform the proposal however, highlight to the Developer that the 'Birds of Conservation

Concern 5' data source is likely to be updated for seabirds prior to application submission.

- 5.9.4 With regard to baseline characterisation, section 8.4.3.1.2 of the Scoping Report outlines the protected sites and species to be considered for further assessment. The Scottish Ministers support the use of Woodward *et al* 2019 to inform connectivity in relation to HRA screening however, in relation to the EIA it appears that only protected sites within 30km of the Proposed Development are being considered. The Scottish Ministers disagree with this approach to determine connectivity and advise that the Woodward *et al*. 2019 mean Max +1 standard deviation foraging ranges are used to determine connectivity for both the EIA and HRA. The Scottish Ministers advise that due to the location of the Proposed Development, there will be exceptions to the Woodward *et al*. 2019 foraging ranges and direct the Developer further to the NatureScot representation which must be fully considered by the Developer.
- 5.9.5 In addition, the Scottish Ministers highlight the NatureScot representation regarding connectivity with marine Special Protected Areas ("SPA") and the changing advice surrounding this since previous advice in relation to the EMEC Fall of Warness tidal test site was provided. The Scottish Ministers advise that this updated advice is used to inform connectivity of Marine SPAs and that to determine likely significant effects, impact pathways must be considered within 15km of any marine SPA. In addition, the Scottish Ministers advise that consideration must be given for connectivity between North Orkney SPA and Scapa Flow SPA for red-throated diver, great northern diver and Slavonian grebe qualifying interests and direct the Developer further to the NatureScot representation with regard to assessment of potential impacts arising from the Proposed Development on these qualifying species. Furthermore, the Scottish Ministers highlight the OIC representation which must be fully considered by the Developer.
- 5.9.6 With regard to seabird densities presented in Table 8-15 of the Scoping Report, the Scottish Ministers advise that the results of the new baseline survey of Westray Firth must be used to inform the the baseline characterisation for seabird densities and that the ESAS data from 2012-2014 must be used for context only. This is a view supported by the NatureScot representation. In addition, the Scottish Ministers note at section 8.4.3.2.1 that in estimating the densities of species, different parameters have been used depending on the species and that this is in keeping with the information of greatest relevance for the impact assessment. The Scottish Ministers advise that due to the lack of evidence provided in the Scoping Report to justify this, the EIA Report must present this information including total bird numbers, birds flying and birds on the water for all species. Furthermore, the Scottish Ministers advise that clear justification is provided within the EIA Report on any decisions which exclude data in calculating seabird densities. The Scottish Ministers advise that details of how distance correction has been calculated and how availability bias has been accounted for must be included within the EIA Report. The Scottish Ministers direct the Developer further to the NatureScot representation with regard to the above which must be fully considered.

- 5.9.7 The Scottish Ministers are broadly content with the impacts to be scoped in and out for further assessment in the EIA Report as outlined in Table 8-16 of the Scoping Report. However, the Scottish Ministers advise that impacts from artificial lighting must be scoped in for further assessment due to effects of lighting on storm petrels and shearwaters. This is a view supported by the NatureScot representation.
- 5.9.8 With regard to the impact assessment strategy presented at section 8.4.5 of the Scoping Report, the Scottish Ministers note that the Developer intends to use three years worth of ESAS data from 2012-2014. As advised above, the ESAS data from 2012-2014 must be used for context information only. In addition, the Scottish Ministers note that the impact assessment strategy summarised at Table 8-17 of the Scoping Report focuses on whether the assessment will be qualitative or quantitative rather than the methods or tools for assessment and advise that the assessment to be undertaken must follow the relevant NatureScot guidance available. In addition, with regard to collision risk modelling, the Scottish Ministers note that this will be carried out for the four breeding auk species (puffin, guillemot, razorbill and black guillemot), great northern diver and European shag. The Scottish Ministers advise that in addition to these species, the Developer must include great cormorant and red-throated diver if they are detected in significant numbers in the ongoing new baseline survey of Westray Firth. The Scottish Ministers advise that the Developer engage further with NatureScot in relation to the method and model of collision risk modelling to be undertaken.
- 5.9.9 The Scottish Ministers are content with the approach to undertake a cumulative impact assessment as outlined in Table 8-17 of the Scoping Report however note that no methods for assessment have been proposed. In addition, the Scottish Ministers are content that transboundary impacts can be scoped out for further assessment within the EIA Report.

5.10 Commercial Fisheries

- 5.10.1 The Scottish Ministers are content with the study area outlined in section 9.1.1 and Figure 9-1 of the Scoping Report.
- 5.10.2 Similarly, the Scottish Ministers are content with the baseline characterisation of the commercial fisheries receptor as outlined in section 9.1.3 of the Scoping Report.
- 5.10.3 The Developer proposes to scope out all potential impacts to commercial fisheries for further assessment within EIA Report and provides justification for this in Table 9-2. The Scottish Ministers are content with the Developer's proposal to scope out commercial fisheries from the EIA Report on the basis that any potential impacts from this receptor will be considered under specific receptor topics. This is a view supported by the MD-SEDD advice.

5.11 Shipping and Navigation

- 5.11.1 With regard to the study area as identified in section 9.2.1 of the Scoping Report, the Scottish Ministers advise that a buffer area of up to 3nm where possible must be included around the Proposed Development study area and refer the Developer further to the CoS representation in this regard.
- 5.11.2 The Scottish Ministers are broadly content with the impact assessment strategy outlined at Table 9-6 of the Scoping Report and advise that a full Navigational Risk Assessment (“NRA”) must be carried out in accordance with the current MCA guidance, Marine Guidance Note (“MGN”) 654 and its annexes, along with a detailed MGN 654 checklist. In particular, the Scottish Ministers highlight the MCA representation with regard to MGN 654 Annex 4 and the requirements of the International Hydrographic Organisation Order 1a standard and that failure to report the survey or conduct it to Order 1a might invalidate the NRA if it was deemed not fit for purpose. In addition, the Scottish Ministers advise that the Developer undertake a Hazard Identification workshop with all relevant navigational stakeholders and regular users in the area of the Proposed Development to inform the NRA and refer the Developer further to the MCA, CoS, OIC representations in this regard. In addition, the Scottish Ministers advise that consideration must be given to an Emergency Response Cooperation Plan for the Proposed Development to identify the risks to a disabled vessel being swept towards the TTDs. This is a view supported by the RYA Scotland representation.
- 5.11.3 With regard to baseline characterisation, the Scottish Ministers note that the Developer intends to carry out a full MGN 654 complaint traffic survey by visual, RADAR and Automatic Identification System (“AIS”) from shore-based centre and two 14 day seasonal surveys. The Scottish Ministers also note that the Developer intends to use long term (at least 12 months) AIS data to capture seasonal variations in the vessel traffic patterns. In line with MCA representation, the Scottish Ministers advise that attention must be given to strategically important lifeline ferry routes and special consideration must be given to the adverse weather routing in the area when carrying out the survey. In addition, the Scottish Ministers advise that the Developer must include at least 10 years of both Marine and Accident Investigation Branch and Royal National Lifeboat Institution accident data to inform the assessment. This is a view supported by the CoS representation. Furthermore, the Scottish Ministers direct the Developer further to the RYA Scotland representation with regard to additional data sources to be considered for recreational craft.
- 5.11.4 The Scottish Ministers advise that a clear assessment of baseline traffic in the area of the Proposed Development must be included within the EIA Report based on the 2019 AIS data referred to in Table 9-3 of the Scoping Report to provide a detailed assessment of the traffic pattern in the area. The Scottish Ministers highlight the MCA representation in this regard.
- 5.11.5 Table 9-4 of the Scoping Report summarises the potential impacts to shipping and navigation which the Developer proposes to scope in and out of the EIA Report. The Scottish Ministers are broadly content with the impacts detailed and scoped in however, advise that the representations from the MCA, NLB, OIC,

CoS and RYA Scotland must be fully considered and addressed by the Developer.

- 5.11.6 The Scottish Ministers note that Proposed Development site boundary amendments have been undertaken following consultation with Orkney Ferries and Orkney Harbours as demonstrated in Table 1-1. In line with the MCA representation, the Scottish Ministers advise that detail of this consultation must be included within the shipping and navigation chapter of the EIA Report to understand the refinements made and to assess the overall navigation safety. The Scottish Ministers highlight the MCA representation with regard to the current site boundary in that this does not ensure adequate sea room for safe navigation in the Westray Firth and potential boundary amendments may be required prior to the application stage. The Scottish Ministers recommend that the Developer engage further with the MCA in this regard.
- 5.11.7 With regard to cabling routes and cable burial, the Scottish Ministers confirm that a Burial Protection Index must be completed and included within the EIA Report. The Scottish Ministers highlight the MCA representation on a maximum 5% reduction in surrounding depths referenced to Chart Datum would be acceptable and will be particularly relevant where depths are decreasing towards shore.
- 5.11.8 With regard to the layout of the Proposed Development, the Scottish Ministers advise that this must be planned in such a way that ensures maximum clearance to any vessel navigating through the Proposed Development area at all states of weather/ tide. The Proposed Development layout must also be compliant with any additional navigation safety and/or Search and Rescue requirements, as per MGN 654 Annex 5. The Scottish Ministers highlight the NLB representation with regard to the Proposed Development layout and advise the particular importance to the lighting and marking of the array. The Scottish Ministers advise that the Developer continues to engage with the NLB with regard to the Proposed Development layout and lighting and marking solutions.
- 5.11.9 With regard to mooring arrangements, the Scottish Ministers advise that suitable arrangements must be made to ensure the TTDs remain secure to the seabed for the met-ocean conditions expected in the area, with a programme of regular inspection and maintenance of the works in place considered within the EIA Report. The Scottish Ministers direct the Developer further to the MCA representation in this regard and the guidance referred to therein.
- 5.11.10 In relation to the proposed mitigation measures outlined in section 4.5.1 of the Scoping Report, the Scottish Ministers highlight the representations from the MCA, RYA Scotland and the SFF which must be fully addressed by the Developer within the EIA Report.
- 5.11.11 With regard to cumulative effects, the Scottish Ministers note that the Developer intends to carry out a cumulative impact assessment as per Table 9-4 of the Scoping Report. The Scottish Ministers advise that this assessment must include other renewable developments in the vicinity particularly, the EMEC Fall of Warness Tidal test site.

5.12 Archaeology and Cultural Heritage

- 5.12.1 With regard to the proposed study area, the Scottish Ministers highlight the representation of HES and advise that the concerns raised are fully addressed with further explanation and supporting evidence provided within the EIA Report.
- 5.12.2 With regard to the data sources outlined at section 9.3.2 of the Scoping Report, the Scottish Ministers highlight the OIC representation noting that it is unclear on the consultation undertaken with Aberdeenshire HER and the Highland HER as the data sources provided do not cover the Proposed Development area.
- 5.12.3 In relation to baseline information presented in section 9.3.3 of the Scoping Report, the Developer proposes to rely on previous geophysical data to inform the baseline for the EIA Report. The Scottish Ministers advise that insufficient evidence has been provided in the Scoping Report to support the statements made on the potential impacts to be scoped out for further assessment within the EIA Report. The Scottish Ministers also note that the Scoping Report states that geophysical survey data taken in April 2014 and June 2023 still requires review. The Scottish Ministers advise that review of this survey data is necessary to inform the assessment of potential impacts to be scoped in and out of the EIA Report for further assessment. The Scottish Ministers advise that such reviews are conducted by appropriately experienced marine archaeologists. The Scottish Ministers direct the Developer further to the OIC representation in this regard which must be fully considered and taken forward as appropriate within the EIA Report.
- 5.12.4 The Scottish Ministers highlight from the HES representation, that the archaeological study completed for the nearby EMEC Fall of Warness tidal demonstration site, mentioned in section 9.3.4 and Table 9-9 has not been referenced and therefore HES is unable to confirm what was assessed in this study and whether the conclusions are relevant to the Proposed Development. Furthermore, the Scottish Ministers highlight the OIC representation in that these surveys were specific to the area they covered and since the nature of the seabed can change over short distances, are not transferrable to the Proposed Development area.
- 5.12.5 In addition, the Scottish Ministers note the onshore heritage assets outlined in section 9.3.3.3 and Table 9-8 of the Scoping Report. The Scottish Ministers advise that the relationship between these sites and the Proposed Development study area is not explained. In addition, section 9.3.3.3 states that it is anticipated that only heritage assets within the coastal regions of these islands may be affected. The Scottish Ministers advise that the Scoping Report provides no assessment of the settings of any heritage assets, nor does it provide a general indication of the potential setting impacts that may arise from the Proposed Development and therefore, advise that this must be considered further within the EIA Report. The Scottish Ministers direct the Developer to the HES representation in this regard. In addition, the Scottish Ministers highlight the errors identified by OIC in its representation which must be fully considered by the Developer.

- 5.12.6 Within Table 9-9 of the Scoping Report the Developer details the potential impacts to archaeology and cultural heritage which are proposed to be scoped out for assessment within the EIA Report. The Scottish Ministers disagree with the conclusion that all impacts on archaeology and cultural heritage should be scoped out. The Scottish Ministers advise that setting impacts on cultural heritage interests (including cumulative setting impacts) and direct impacts to heritage assets are scoped in for further assessment within the EIA Report. The Scottish Ministers direct the Developer further to the concerns raised within the HES and OIC representations which must be fully considered by the Developer within the EIA Report.
- 5.12.7 The Scottish Ministers advise that heritage assets must be selected for detailed consideration using a Zone of Theoretical Visibility (ZTV) analysis. All nationally designated assets within the ZTV should undergo an initial assessment to determine the potential for effects to their setting. This assessment should demonstrate a full appreciation of the setting of each heritage asset where potentially significant impacts are identified. This consideration should recognise that impacts may occur on views from, towards or across individual heritage assets as well as from potential changes to their experience. Once setting impacts have been identified, the significance of those impacts should be assessed as part of the EIA Report. The Scottish Ministers highlight the HES representation in this regard and the further guidance contained therein.
- 5.12.8 The Scottish Ministers are broadly content with the proposed mitigation measures outlined at section 4.5.2 of the Scoping Report. The Scottish Ministers advise that the scope of any proposed mitigation in the EIA Report must relate to an accurate historic baseline with supporting evidence such as marine geophysical survey review and refer the Developer further to the OIC representation in this regard. In addition, the Scottish Ministers advise that the proposed Written Scheme of Investigation and Protocol for Archaeological Discoveries must be prepared and submitted in support of the EIA Report and must consider the procedures highlighted by OIC in its representation.
- 5.12.9 With regard to potential cumulative effects, the Scottish Ministers advise that the Proposed Development in combination with other developments in the vicinity must be assessed, including Faray Wind Farm and the proposed Neven Point Wind Farm on Eday. In particular, setting impacts and impacts on the seabed from export cables must be considered. This is a view supported by the OIC and HES representation.

5.13 Seascape, Landscape and Visual

- 5.13.1 With regard to the potential impacts to be scoped in and out of the EIA Report outlined in Table 9-11 of the Scoping Report, the Scottish Ministers advise that although there are no nationally protected landscapes (National Scenic Areas or Wild Land Areas) in proximity to the Proposed Development, very little information has been provided in the Scoping Report on night-time lighting requirements. The Scottish Ministers advise therefore that potential impacts from night-time lighting must be scoped in for further assessment (including number, intensity, nature (flashing / stationary), colour etc) within the EIA Report with the

inclusion of an outline Lighting and Marking Plan. This is a view supported by the NatureScot representation.

- 5.13.2 The Scottish Ministers also wish to highlight the OIC representation in that there are core paths close to the Proposed Development, including the St Magnus Way pilgrimage route, as well as the Proposed Development being highly visible from a regular ferry route which must also be scoped in for further assessment within the EIA Report.

5.14 Local Communities and Socio-economics

- 5.14.1 The Scottish Ministers are broadly content with the data sources outlined by the Developer in Table 9-13 of the Scoping Report however highlight the additional data sources provided within the MAU advice for consideration by the Developer.
- 5.14.2 The Developer sets out the potential impacts to be scoped out of the EIA Report in Table 9-14 of the Scoping Report. The Scottish Ministers, based on the OIC representation and MAU advice, advise that the Developer must undertake a full socio-economic impact assessment and in completing this, draw the Developer's attention to Annex 1 of the MAU advice which may be of assistance when developing the socio-economic impact assessment.
- 5.14.3 The Scottish Ministers advise the Developer to consider further engagement with local communities and recommend conducting a stakeholder mapping exercise to identify all potential stakeholders who may be affected by the Proposed Development. Furthermore, the Scottish Ministers advise the Developer to engage trained social scientists with experience in qualitative methods to conduct research and primary data collection with communities to ensure that the social science research methods are designed and executed correctly and refer the Developer further to the MAU advice in this regard.
- 5.14.4 In addition, the Scottish Ministers advise that, should any knock-on socio-economic effects be identified when assessing the Proposed Development's effect on commercial fisheries, these should also be assessed in line with the MAU advice and OIC representation.
- 5.14.5 Furthermore, the Scottish Ministers advise that based on the OIC representation, the socio-economic impact assessment must include further details of the likely significant effects on job creation and change in employment levels, changes in GVA levels, the utilisation of local pier and harbour infrastructure and the housing market in Orkney for existing residents and the provision of tourist accommodation during all phases of the Proposed Development.

5.15 Tourism and Recreation

- 5.15.1 Section 9.6 of the Scoping Report considers the potential impact of the Proposed Development on tourism and recreation. The Scottish Ministers note that the Developer proposes to scope out tourism and recreation from the EIA Report. The Scottish Ministers disagree with this proposal and advise that the potential

impacts of the Proposed Development on tourism must be scoped in to the EIA Report for further assessment. Furthermore, the Scottish Ministers advise that the potential impacts on tourism and recreation be scoped into the socio-economic chapter of the EIA Report. This is a view supported by the MAU advice. The Scottish Ministers advise that the Developer should consider consulting with sailing clubs around Orkney and use the upcoming Marine and Coastal Recreation Survey to inform the baseline characterisation and refer the Developer further to the OIC representation in this regard.

5.16 Other Sea Users

- 5.16.1 The Scottish Ministers are content with the study area outlined in section 9.7.1 and Figure 9-5 of the Scoping Report. Similarly, the Scottish Ministers are content with the baseline characterisation of the as outlined in section 9.7.3 of the Scoping Report.
- 5.16.2 The Developer proposes to scope out all potential impacts from the Proposed Development on other sea users from the EIA Report and provides justification for this in Table 9-18. The Scottish Ministers are content with the Developer's proposal to scope this out from the EIA Report on the basis that the potential impacts from this receptor will be considered and assessed under relevant specific receptor topics.

5.17 Military

- 5.17.1 Section 9.8.2 of the Scoping Report considers the potential impact of the Proposed Development on military. The Scottish Ministers are content with the military impacts that have been scoped out of the assessment and have no further comments.

5.18 Aviation and Radar

- 5.18.1 Section 9.9.2 of the Scoping Report considers the potential impact of the proposed Development on aviation and radar. The Scottish Ministers are content with the aviation and radar impacts that have been scoped out of the assessment and have no further comments.

5.19 Human Health

- 5.19.1 Section 10.1.2 of the Scoping Report considers the potential impact of the Proposed Development on human health. The Scottish Ministers note that the Developer proposes to scope out human health from the EIA Report. The Scottish Ministers disagree with this proposal and advise that the potential impacts of the Proposed Development on human health must be scoped in to the EIA Report for further assessment. Furthermore, the Scottish Ministers advise that the potential impacts on human health be scoped into the socio-economic chapter of the EIA Report. This is a view supported by the MAU advice.

5.20 Accidents and Disasters

- 5.20.1 The Scoping Report considers the risks of accidents and disasters arising from the Proposed Development at section 10.2. The Scottish Ministers advise that 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 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.
- 5.20.2 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.
- 5.20.3 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.

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, 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 The Conservation (Natural Habitats, &c.) Regulations 1994. 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 principal 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

2 October 2024

Authorised by the Scottish Ministers to sign in that behalf.

Appendix I: Consultation Responses & Advice

Please refer to separate document provided alongside Scoping Opinion

Appendix II: Gap Analysis

Please refer to separate document issued alongside Scoping Opinion.