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Mr Donald Leaver
The European Marine Energy Centre Ltd
The Charles Clouston Building
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Stromness
Orkney
KW16 3AW

Date: 20 July 2022

Dear Mr Leaver,

SCREENING OPINION UNDER THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017

Thank you for your screening opinion request dated 14 April 2022 in regards to the proposed time extension to the section 36 consent, granted in favour of the European Marine Energy Centre (“EMEC”), under section 36 of the Electricity Act 1989 on December 2014 (“the s.36 consent”) to operate the Fall of Warness tidal test site located in Orkney (“the Proposed Development”).

The Scottish Ministers consider the Proposed Development to fall under paragraph 3 of schedule 2 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”). Consequently, the Scottish Ministers are obliged to adopt a screening opinion as to whether the Proposed Development is, or is not, an Environmental Impact Assessment (“EIA”) project under the 2017 EW Regulations.

Under regulation 5(1) of the 2017 EW Regulations, the Scottish Ministers have consulted with NatureScot (operating name of Scottish Natural Heritage), Orkney Islands Council and Historic Environment Scotland (“HES”) as to their view on whether the Proposed Development is an EIA project. Copies of the consultation responses received are attached for your review (Appendix 1).

When making a determination as to whether schedule 2 works under the 2017 EW Regs are an EIA project, the Scottish Ministers must take into account such of the selection criteria set out in schedule 3 of the 2017 EW Regulations as are relevant to the Proposed Development. In this regard, the Scottish Ministers have considered the following:

Characteristics of the development

EMEC currently hold the s.36 consent for the operation of a tidal energy test centre at the Fall of Warness tidal test site, Orkney, with a total generating capacity of up to 10 megawatts

("MW"). The purpose of the s.36 consent is to allow developers wishing to test tidal devices with a capacity of over 1MW to submit a marine licence application only subject to the maximum parameters assessed in the relevant associated s.36 consent project envelope.

EMEC are currently progressing work on developing a new EIA to expand the project envelope parameters of the s.36 consent. The Proposed Development will seek to extend the validity of the s.36 consent for a further three years from March 2023 to March 2026 to allow the continued use of the site in the interim. The Proposed Development will not represent any proposed change to site location or boundary, extent of activities or overall project envelope.

Location of the development

The Proposed Development is located at the Fall of Warness tidal test site, adjacent to the Island of Eday, Orkney. The Proposed Development is located in close proximity to a number of designated sites.

NatureScot advised that with respect to ornithology and the North Orkney Special Protection Area ("SPA") and Scapa Flow SPA, that at the time of determination of the s.36 consent, the North Orkney SPA and Scapa Flow SPA were not included for assessment as both were not subject to policy protection and considered draft SPAs at that time.

NatureScot highlighted that neither the North Orkney SPA or Scapa Flow SPA overlap the boundary of the Proposed Development however noted that unlike the breeding seabird features of seabird colony SPAs, wintering waterfowl features of marine SPAs are presumed to be resident within the site boundary of the SPA. Hence these features of marine SPAs do not generally have connectivity to activities operating outwith the SPA boundary, unless there is an impact pathway arising from a development that could affect the conservation objectives within the SPA. NatureScot advised that the transit of associated vessels through a marine SPA could have potential to cause disturbance to or displacement of sensitive bird features. NatureScot further advised that in this instance there is connectivity between the Proposed Development and the North Orkney SPA associated with vessel movement to and from the Proposed Development.

In addition, NatureScot advised that there could be indirect connectivity for breeding red-throated divers which are a feature of both the Scapa Flow SPA and North Orkney SPA. NatureScot highlighted that these birds nest at freshwater lochs or lochans however, feed at sea generally within a 10 kilometer radius of their nest site. NatureScot noted that the majority of red-throated divers foraging within the Scapa Flow SPA and North Orkney SPA are features of the Hoy SPA and Orkney Mainland Moors terrestrial SPA and therefore any potential impacts on red-throated divers foraging in the North Orkney SPA would have been covered by the s.36 consent assessment. NatureScot advised that the Proposed Development was already consented when the North Orkney SPA was consulted on prior to being granted policy protection and therefore, the consented activities associated with the Proposed Development are considered to form part of the baseline conditions of the SPA such that no additional mitigation is deemed to be required.

NatureScot confirmed that no other SPAs have been classified since the original consent that would require consideration and concluded that there would be no likely significant effect with respect to either the Scapa Flow SPA or North Orkney SPA arising from the Proposed Development. NatureScot concluded that a further EIA is not required based on the Proposed Development having no change to the site activities or project envelope and thus no further changes to the environmental impacts assessed for the s.36 consent.

HES advised that as there is no change in environmental impacts assessed, an EIA is not required.

Orkney Islands Council confirmed that as the Proposed Development is for an extension in time only, it had no comment to make.

Characteristics of the potential impact

The Scottish Ministers agree with NatureScot's advice that the Proposed Development would not result in a likely significant effect with respect to either the Scapa Flow SPA or North Orkney SPA based on the Proposed Development not representing any proposed change to site location or boundary, extent of activities or overall project envelope of the s.36 consent.

Conclusion

In view of the findings above, the Scottish Ministers are of the opinion that the Proposed Development are not an EIA project under the 2017 EW Regulations and, therefore, an EIA is not required to be carried out in respect of the Proposed Development.

If you increase, alter or extend the Proposed Development, you are advised to contact Marine Scotland - Licensing Operations Team again to confirm if the screening opinion is still valid.

A copy of the screening opinion has been forwarded to Orkney Islands Council. The screening opinion has also been made publicly available through the [Marine Scotland Information](#) website.

If you require any further assistance or advice on this matter, please do not hesitate to contact me.

Yours sincerely,

Emma Lees
Marine Scotland - Licensing Operations Team