

DECISION LETTER AND CONDITIONS

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Mr Blair Marnie
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21 June 2017

Dear Mr Marnie,

CONSENT ISSUED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF AN OFFSHORE GENERATING STATION, THE WEST ISLAY TIDAL ENERGY PARK, 6 km OFF THE SOUTH WEST COAST OF ISLAY

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

The following applications have been made by DP Marine Energy Limited (Company number SC456838) and having its registered office at Mill House, Buttevant, Co. Cork, Ireland (“the Company”) for:

- i. a consent under section 36 (“s.36”) of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of the West Islay Tidal Energy Park, 6 km off the south west coast of Islay (“the Development”);
- ii. a marine licence under the Marine (Scotland) Act 2010 (“the 2010 Act”) for the deposit of any substance or object, and for the construction, alteration or improvement of any works, in relation to the West Islay Tidal Energy Park, 6km off the south west of Islay.

THE APPLICATION

Referring to the application at i above made by the Company, on behalf of West Islay Tidal Energy Park Ltd, received on 16th September 2013, for consent under s.36 of the Electricity Act for the construction and operation of the West Islay Tidal Energy Park, 6 km south west of Islay (“the Application”) with a maximum generation capacity of 30 Megawatts (“MW”).

In this letter, “the Development” means the West Islay Tidal Energy Park electricity generating station as described in Annex 1 and shown in the Figure within that Annex of this letter.

The Application received consisted of an application letter, Environmental Statement (“ES”) and a supporting marine licence application form. The Application is to construct and operate an offshore tidal generating station with a maximum generating capacity of up to 30 MW, consisting of up to 30 tidal energy converters (“TECs”), and associated cabling located on the seabed south west of Islay, within the array boundary. Inter-array cables will run between each TEC and will be linked to shore via export cable(s) making landfall at Kintra, Islay. The generating capacity of each TEC is between 1 and 2 MW. Foundation design for the TECs will consist of pinned piles (in) to the seabed.

In tandem with the consultation on the Application, Marine Scotland Licensing Operations Team (“MS-LOT”) has consulted on an application for a marine licence application for the Development, application ii, also submitted on 16th September 2013.

STATUTORY AND REGULATORY FRAMEWORK

LEGISLATION

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

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved section 36 consent (“s.36”) functions under the Electricity Act 1989 (as amended) (“the Electricity Act”) (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of s.36 consent functions as provided under the 1999 Order and then, one day later, re-transferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in internal waters or the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 megawatt (“MW”) requires consent under s.36 of

the Electricity Act¹. A consent under s.36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in, or determined by or under, the consent.

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

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

Under section 36B of the Electricity Act the Scottish Ministers may not grant a consent in relation to any particular offshore generating station activities if they consider that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of, or danger to, navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this issue the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already subject to s.36 consent or are activities for which it appears likely that such consents will be granted.

Under Schedule 8 to the Electricity Act and the Electricity (Applications for Consent) Regulations 1990 (as amended) (“the 1990 Regulations”), notice of applications for s.36 consent must be published by the applicant in one or more local newspapers, in one or more national newspapers, and in the Edinburgh Gazette to allow representations to be made to the Application. The Scottish Ministers must also serve notice of any application for consent upon any relevant planning authority.

Paragraph 2(2) of Schedule 8 to the Electricity Act provides that where a relevant planning authority notifies the Scottish Ministers that they object to an application for

¹ S.36(2) modified by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations)(Scotland) Order 2002

s.36 consent and where they do not withdraw their objection, then the Scottish Ministers must cause a Public Local Inquiry (“PLI”) to be held in respect of the application. In such circumstances before determining whether to give their consent the Scottish Ministers must consider the objections and the report of the person who held the PLI.

The location and extent of the Development to which the Application for s.36 relates (being wholly offshore) means that the Development is not within the area of any local Planning Authority. The Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, did however consult with the local Planning Authority most local to the Development, Argyll and Bute Council (“ABC”) ABC objected to the Application in the first instance but later withdrew their objection. As ABC withdrew their objection, Scottish Ministers are not obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a PLI to be held.

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

The Scottish Ministers are satisfied that all the necessary tests set out within the Electricity Act have been met through the assessment of the Application and all procedural requirements have been complied with. The Company does not currently hold a generation licence, however they intend to apply for one should they receive consent. Scottish Government officials have approached matters on the basis that the Schedule 9, paragraph 3(1) obligations as apply to licence holders and the specified exemption holders should also be applied to the Company if the generation licence is granted.

Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) and The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

The Environmental Impact Assessment Directive (85/337/EEC) is targeted at projects which are likely to have significant effects on the environment and identifies projects which require an Environmental Impact Assessment (“EIA”) to be undertaken. The Company identified the proposed Development as one requiring an Environmental Statement (“ES”) in terms of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) (“the 2000 Regulations”) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (“the 2007 Regulations”).

An ES has been produced and the applicable procedures regarding publicity and consultation, all as laid down in the 2000 Regulations and the 2007 Regulations, have been followed.

In compliance with the 2000 Regulations and 2007 Regulations, consultation has taken place with Scottish Natural Heritage (“SNH”), the Scottish Environment

Protection Agency (“SEPA”), the relevant planning authority, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the terms of the ES, and additional information in the form of statutory consultation responses.

MS-LOT has also consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application and the ES in accordance with the regulatory requirements.

Scottish Ministers are assured that the regulatory requirements have been met. MS-LOT has taken into consideration the environmental information, including the ES, and the representations received from the statutory consultative bodies and from all other persons.

The Habitats Directive and the Birds Directive

Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and wild fauna and flora (as amended) (“the Habitats Directive”), provides for the conservation of natural habitats and of wild flora and fauna in the Member States’ European territory, including offshore areas such as the proposed site of the Development. It promotes the maintenance of biodiversity by requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation (“SAC”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

Articles 6 & 7 of the Habitats Directive provide *inter alia* as follows:

“6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to an Appropriate Assessment (“AA”) of its implications for the site in view of the site’s conservation objectives. In light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public

interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

7. Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognized under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

Council Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds (as amended and codified) (“the Birds Directive”), applies to the conservation of all species of naturally occurring wild birds in the member states’ European territory, including offshore areas such as the proposed site of the Development and it applies to birds, their eggs, nests and habitats. Under Article 2, Member States are obliged to “take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level”. Article 3 further provides that “[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1”. Such measures are to include the creation of protected areas: Article 3.2.

Article 4 of the Birds Directive provides *inter alia* as follows:

“1. The species mentioned in Annex I [of that Directive] shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. [...]

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I [of that Directive], bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance. [...]

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

The Habitats Directive and the Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the 1994 Regulations”) for devolved matters,

the Conservation of Habitats and Species Regulations 2010 (“the 2010 Regulations”) for reserved matters and for various matters which have been executively devolved to include consents under the Electricity Act, and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the Offshore Habitats Regulations 2007”) for developments out with 12 nm. As the Development is to be sited in internal waters adjacent to Scotland, the 2010 Regulations are applicable in respect of the Application.

The 1994, the 2007 and the 2010 Regulations (“the Habitats Regulations”) clearly implement the obligation in art. 6(3) & (4) of the Habitats Directive, which by art. 7 applies in place of the obligation found in the first sentence of art. 4(4) of the Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an Appropriate Assessment (“AA”) of the implications for the site in view of the site’s conservation objectives”. Such authority is also obliged to consult SNH and, for the purpose of regulation 61 of the 2010 Regulations, to have regard to any representations made by SNH. Regulation 61(5) and (6) of the 2010 Regulations is as follows:

“(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of a site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.”

Developments in, or adjacent to, European protected sites, or in locations which have the potential to affect such sites, must undergo what is commonly referred to as an Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages:

Stage 1 - Where a project is not connected with or necessary to the site’s management and it is likely to have a significant effect thereon (either individually or in combination with other projects), then an AA is required;

Stage 2 - In light of the AA of the project’s implications for the site in view of the site’s conservation objectives, the competent authority must ascertain to the requisite standard, that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

In relation to the Habitats Directive and the Birds Directive, as the Development may have the potential to have an impact on a number of Special Protection Areas (“SPAs”), a number of issues were raised. In the view of SNH, the Development is likely to have a significant effect on the qualifying interests of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA; therefore, an AA would be required.

In line with advice from SNH, and to ensure compliance with European Union obligations under the Habitats Directive and the Birds Directive, MS-LOT, on behalf of the Scottish Ministers, undertook an AA. MS-LOT concludes that, with the imposition of conditions on any grant of consent, the Development will not adversely affect the site integrity of Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA.

SNH were consulted on the AA and agreed with all of the conclusions that have been reached. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government's website.

Marine (Scotland) Act 2010

The Marine (Scotland) Act 2010 ("the 2010 Act") regulates activities in the territorial sea adjacent to Scotland in terms of marine environment issues. Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act, licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

Under Part 2 of the 2010 Act, the Scottish Ministers have general duties to carry out their functions in a way best calculated to achieve sustainable development, including the protection and, where appropriate, the enhancement of the health of the area. The Scottish Ministers, when exercising any function that affects the Scottish marine area under the 2010 Act, or any other enactment, must act in a way best calculated to mitigate and adapt to climate change.

The Scottish Ministers are satisfied that, in assessing the Application, they have acted in accordance with their general duties.

Climate Change (Scotland) Act 2009

Under Part 2 of the 2010 Act, the Scottish Ministers must, when exercising any function that affects the Scottish marine area under the Climate Change (Scotland) Act 2009 (as amended), act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned. Under the Climate Change (Scotland) Act 2009 (as amended) annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions.

As the design of the turbines has not yet been finalised, and yield variability caused by the local bathymetric features of the tidal area, it is not possible to accurately predict the energy that will be generated by the Development over its lifespan. A calculation of the displacement of CO² cannot therefore be made. It can, however, be stated that any energy generated from the site will result in the displacement of CO² generated from non-renewable sources, and that the aim of the project, to further the development of the UK tidal industry will contribute to the reduction of CO² emissions from UK power generation in the long term, and hence help meet targets forming part of Scotland's commitments on climate change action to reduce greenhouse gases.

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

MARINE AND TERRESTRIAL POLICY

Marine Policy

The UK Marine Policy Statement 2011

The UK Marine Policy Statement 2011 (“the Statement”) prepared and adopted in accordance with Chapter 1 of Part 3 of the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”) requires that when Scottish Ministers take authorisation decisions that affect, or might affect, the marine area they must do so in accordance with the Statement.

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

Chapter 3, paragraphs 3.3.1 to 3.3.5, 3.3.16 to 3.3.18, 3.3.21 to 3.3.23, 3.3.25 to 3.3.26 and 3.3.29 to 3.3.30 of the Statement are relevant and have been considered by MS-LOT as part of the assessment of the Application.

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

MS-LOT has had full regard to the Statement when assessing the Application and considers that the Development accords with the Statement.

The Scottish Ministers have, accordingly, had regard to the Statement and consider the Development accords with the Statement. The Scottish Ministers have also had

regard to relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

Scotland's National Marine Plan

The National Marine Plan ("NMP"), developed in accordance with the 2010 Act and the 2009 Act, provides a comprehensive statutory planning framework for all activities out to 200 nm. The NMP was formally adopted on 25th March 2015. Scottish Ministers must take authorisation and enforcement decisions, which affect the marine environment, in accordance with the Plan.

The NMP sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. In doing so it sets out a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of the Plan. It also contains specific policies relating to the mitigation of impacts on habitats and species, and in relation to treatment of cables.

Of particular relevance to this Development are:

- Chapter 4 policies 'GEN 1-21', which guide all development proposals;
- Chapter 6 Sea Fisheries, policies 'FISHERIES 1-3 and 5';
- Chapter 8 Wild Salmon and Diadromous fish, policy 'WILD FISH 1';
- Chapter 11 Offshore Wind and Marine Renewable Energy, Policies, 'RENEWABLES 1 and 3-10';
- Chapter 12 Recreation and Tourism, policies 'REC & TOURISM 2 and 6';
- Chapter 14 Submarine Cables, policies 'CABLES 1-4'; and
- Chapter 15 Defence, policy 'DEFENCE 1'.

The Scottish Ministers have had full regard to the National Marine Plan when assessing the Application. It is considered that the Development accords with the Plan.

Other Marine Policy

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

The large scale investment in offshore renewables, particularly through the Renewable Energy Investment Fund ("REIF"), is helping to reindustrialise Scotland's more remote communities. The development of marine energy also represents a significant opportunity for sustainable economic growth in Scotland. Scotland's ports and harbours present viable locations to service the associated construction and maintenance activities for offshore renewable energy. In addition, Scottish research institutions provide a base of academic excellence for delivering technological

advancements and technology transfer and are also well placed to benefit from the creation of this new industry around Scotland.

Published in June 2012, the Marine Energy Action Plan sets out the opportunities, challenges and priority recommendations for action for the wave and tidal sector to realise Scotland's full potential for wave and tidal energy.

Terrestrial Policy

Scottish Ministers have had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing this Application for the purpose of ensuring consistency in approach. However, it should be noted that deemed planning permission has not been requested in this instance and therefore separate planning permission will be required for the onshore elements of the development.

Scottish Planning Policy

Scottish Planning Policy ("SPP") published in 2014 sets out the Scottish Government's planning policy on renewable energy development. Terrestrial and marine planning facilitates development of renewable energy technologies, link generation with consumers and guide new infrastructure to appropriate locations. Efficient supply of low carbon and low cost heat and generation of heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions and can create significant opportunities for communities. Renewable energy also presents a significant opportunity for associated development, investment and growth of the supply chain, and communities can gain new opportunities from increased local ownership and associated benefits.

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

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

National Planning Framework 3

Scotland's National Planning Framework 3 ("NPF3") adopted in June 2014 is the national spatial plan for delivering the Scottish Government's Economic Strategy. It provides a framework for the spatial development of Scotland as a whole, setting out the Scottish Government's development priorities over the next 20-30 years.

NPF3 sets out the ambition for Scotland to move towards a low carbon country, placing emphasis on the development of onshore and offshore renewable energy.

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

Chapter 3 paragraphs 3.4, 3.6, 3.8, 3.9, 3.12, 3.14, 3.25 and 3.32 of NPF3 are of particular relevance to the Application.

Argyll and Bute Local Development Plan 2015

The Council formally adopted the Argyll and Bute Local Development Plan on 26th March 2015. The Argyll and Bute Local Development Plan focusses on both land use and on aquaculture, and sets out a settlement strategy and spatial framework for how the council wants to see Argyll and Bute develop to 2024 and beyond. It is a key document in the delivery of the Renewable Energy Action Plan.

Argyll and Bute Council – Renewable Energy Action Plan 2010 - 2013

Argyll and Bute Council have formed a strategic public/private sector alliance led by Argyll and Bute Council (Argyll and Bute Renewable Alliance) with a vision and action plan for working together and aligning partner resources to power Scotland's future. The Renewable Energy Action Plan (REAP) has been developed to assist Argyll and Bute realise its vision for the development of renewable energy, this vision being: "Argyll and the Islands will be at the heart of renewable energy development in Scotland by taking full advantage of its unique and significant mix of indigenous renewable resources and maximising the opportunities for sustainable economic growth for the benefit of its communities and Scotland."

REAP sets out the key actions required to further develop the renewable energy sectors currently present in Argyll and Bute to secure the sustainable harnessing of the resources available and to take advantage of the significant opportunities being offered by the rapidly evolving marine renewable sector.

Argyll and Bute Council – Economic Action Development Plan 2013 – 2018

Argyll and Bute Council has developed five year Economic Development Action Plans ("EDAPs") to focus resources on the economic development activities that will have the greatest impact on the sustainable economic growth of its communities and Scotland as a whole. The strategic EDAP identifies as a key outcome, that the islands in Argyll and Bute are thriving through taking advantage of opportunities to diversify their economic base.

SUMMARY

Scottish Ministers consider that the policy documents as outlined above are broadly supportive of the Development.

CONSULTATION EXERCISE

Under Schedule 8 to the Electricity Act, and Regulations made under that Act, the Scottish Ministers are required to consult any relevant Planning Authority (although as the Development to which this application for s.36 relates is wholly offshore, the closest planning authority is not a 'relevant Planning Authority' under the Electricity Act). In addition, to comply with the 2000 Regulations, there is a requirement to consult SNH, SEPA and any other person likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.

In complying with the 2000 Regulations, the Company identified the proposed Development as an EIA development and hence one which would require an ES. This ES should describe the environmental impacts and the proposed mitigation measures associated with the Development.

The formal consultation process undertaken by the Scottish Ministers, which related to the Application for s.36 consent (application i), the marine licence application (application ii) and the ES, commenced on 19th September 2013.

MS-LOT consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application and the ES. In accordance with the statutory requirements, as part of the overall consultation, MS-LOT sought the advice of SNH, SEPA and the planning authority most local to the Development, Argyll and Bute Council.

Public Representations

A total of nineteen (19) valid public representations were received by Marine Scotland from members of the public during the course of the public consultation exercise. Of these, three (3) representations were supportive of the Development and sixteen (16) representations objected to the Development.

Representations in support of the Development were of the belief that it offered advantages over alternative forms of renewable energy, such as wind turbines, as a result of reduced visual impacts and better reliability. Representatives were also keen to explore new ways of creating power and thought that tidal energy should be pursued to allow this new technology to be tested.

Representations objecting to the Development expressed concerns regarding visual impacts from the tidal turbines, lack of long term jobs, lack of proper consultation, the potential for impacts on tourism, the local community and the fishing industry, the efficiency of tidal energy, pollution arising from navigational lights and impacts on marine life including birds, marine mammals and basking sharks.

Scottish Ministers have recorded, reviewed, and taken into consideration these representations when determining this Application.

Objections

During the consultation, objections were also received from ABC, the Association of Salmon Fishery Boards (“ASFB”), the Clyde Fishermen’s Association (“CFA”), the Ministry of Defence (“MoD”) and the Scottish Fishermen’s Federation (“SFF”).

Following discussions between the Company and ABC regarding onshore aspects of the Development, ABC were content to remove their objection, but recommended conditions to be included on the consent.

The Company also had further discussions with the CFA and SFF regarding their objections and it was agreed to establish a Fisheries Working Group. Appropriate conditions have therefore been attached to this consent including the appointment of a Fisheries Liaison Officer and submission, for agreement, of a Fisheries Mitigation Plan. Draft conditions were provided to the CFA and SFF, and whilst they have not explicitly withdrawn their objections, are content that the conditions address their concerns.

With regard to the MOD objection, further discussions between the Company and the MOD resulted in the MOD removing their objection subject to the imposition of a condition to the consent.

Objections from members of the public, the ASFB, the CFA, and the SFF are being maintained.

The Scottish Ministers have considered and had regard to all representations and objections received.

Material Considerations

In light of all the representations, including all the withdrawn and the three remaining objections received by the Scottish Ministers in connection with the Application, the Scottish Ministers have carefully considered the material considerations. This has been done for the purposes of deciding whether it is appropriate to cause a public inquiry to be held and for making a decision on the Application for consent under s.36 of the Electricity Act.

The Scottish Ministers are content that the material concerns have been addressed in the Application and within the responses received to the consultations by the planning authority most local to the Development, SEPA, SNH, and other relevant bodies.

The Scottish Ministers have concluded that no further information is required before the Application may be determined.

Public Local Inquiry (“PLI”)

In terms of paragraph 2(2) of Schedule 8 to the Electricity Act, if the relevant planning authority made a valid objection and did not withdraw it, the Scottish Ministers must convene a PLI, which must be confined to so much of the application as it relates to land within the area of the authority whom the objection was made (except in so far as Scottish Ministers direct otherwise) before Scottish Ministers may determine the application, the objection and the report of the inquiry.

Where a s.36 application contains an onshore element of an offshore generating station, then a planning authority objection will trigger a PLI which will be confined to the onshore element. Paragraph 7A(7) of Schedule 8 to the Electricity Act 1989 gives the Scottish Ministers powers of direction in relation to the scope of any PLI.

The location and extent of the Development to which the Application relates being wholly offshore means that the Development is not within the area of any local planning authority. The nearest local planning authority initially objected, but later withdrew their objection following discussions with the Company. Even if they had maintained their objection to the Application, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

In addition, paragraph 3(2) of Schedule 8 to the Electricity Act provides that where objections, or copies of objections, have been sent to the Scottish Ministers in pursuance of the Electricity (Applications for Consent) Regulations 1990 in those cases where a PLI must not be convened by them in terms of paragraph 2(2) of Schedule 8 (i.e. those cases where the planning authority either has not objected, or objected and withdrawn their objection or where the “relevant planning authority” is the Scottish Ministers on account of the fact that all of the Development being located at sea), then the Scottish Ministers “shall consider those objections together with all other material considerations” with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

The Scottish Ministers have received objections to the Development as outlined above, raising a number of issues. In summary, and in no particular order, the objections were related to the following issues:

- visual impacts of the Development;
- the formulation of jobs in the area;
- appropriateness and analysis of Consultation;
- the efficiency of tidal energy;
- impact upon tourism and recreation industry;
- impact on local community;
- impact upon fishing industry; and

- impact on marine wildlife, including birds, marine mammals, basking sharks and diadromous fish.

Visual impacts of the Development

Nine (9) representations raised concerns over the visual impacts of the tidal turbines if the devices are surface piercing since they would be highly visible when viewed from the nearby village, and would detract from the natural beauty of the area. One (1) representation also mentioned that navigational lights associated with the turbines that are flashing 24 hours a day will be a further industrialisation of the view.

SNH, the Scottish Ministers' statutory nature conservation advisers who advise on, amongst other matters, visual impacts on designated landscape features, commented that the Development will spread human influence to the sea and diminish the existing, prevailing sense of remoteness along the south-west coast of the Rinns. However, SNH did not object to the Development on landscape and visual grounds.

A seascape, landscape and visual impact assessment ("SLVIA") was undertaken by independent environmental consultants and landscape architects. The assessment reported that the effects of the project on its own would not be significant. SNH commented that the SLVIA is thorough and gives an objective assessment of the likely impacts of the proposal.

However, SNH considered that the proposal will have minor effect on the designated Area of Panoramic Quality, because the 21m height on the MCT turbine towers, and their distance offshore have a relatively restricted effect. However, landscape and visual effects will be adverse at specific viewpoints and locations, especially elevated cliff tops and landmarks. This will be the case at key viewpoints such as Rubha na Faing to Rinns Point and the south shores and higher points of Orsay and Eilean Mhic Coinnich. Elsewhere the tidal scheme will appear more 'incidental' in the seascape.

With regard to the light pollution created by the Development, the Northern Lighthouse Board ("NLB") require the structures to be lit as a matter of maritime safety and therefore it is essential to the Development and cannot be altered.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the visual impact of this Development to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

The formulation of jobs in the area

Some members of the public have questioned whether or not the Development will create any local employment or financial benefit to the area. They were concerned that members of the Islay community do not have the skill sets required to benefit from the jobs produced as a result of the Development, and they have also queried whether or not the materials and labour will be sourced locally. It was also mentioned

that locals were concerned that the employment benefits will be short term in nature but the turbines will be permanent.

Whilst the Company believes that there are opportunities for capital expenditure to benefit the Argyll region, it is acknowledged within the ES that construction and assembly of the tidal turbines and foundations will take place outside of Argyll & Bute. Furthermore, the Company states that installation of the devices, foundations and cabling will likely be undertaken by vessels and crews sourced from outside of the UK.

The Company considers there may be some local employment opportunities, however these would be limited to supply vessel charters to deliver parts and consumables from local shops on Islay. A 'handful' of jobs are estimated to be created by the Company for such roles.

The construction of the onshore substation is estimated by the Company to require approximately 10 temporary staff over a twelve month construction period. The installation of the onshore cable is estimated by the Company to require approximately 5 temporary jobs from the local labour force over a summer period, with specialist cable staff sourced from outside the local or wider areas.

During operation and maintenance of the Development, the Company estimates, under a High Impact Scenario, assuming that the operations and maintenance base would be located on Islay with devices either towed to or from the base to site or servicing / maintenance, there would be 10 – 15 Full Time Equivalent ('FTE') jobs based on Islay, generating a local Gross Value Added ('GVA') of approximately £0.9 million per annum.

Under a Low Impact Scenario, assuming that almost all operations and maintenance activities would be based on the mainland and operational activity is undertaken by specialist vessels, there would be 2 FTE jobs based on Islay, generating a local GVA of approximately £0.1 million per annum.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the formulation of jobs created as a result of this Development to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Appropriateness and analysis of Consultation

Six (6) representations raised issues surrounding the consultation process between the Company and the local community. Members of the public questioned the appropriateness and analysis of the consultation. They considered the Company had failed to consult with the community, particularly those most affected by the Development. They also queried the interpretation of the consultation outputs as the Company state that it was 'generally positive', however representatives disagreed and felt that this was grossly misleading.

The ES states that Company have consulted locally with Argyll and Bute Council, the Islay Community Council, the Islay Energy Trust, local residents, local fishermen and

councillors from Islay and Kintyre. During the consultation process they carried out activities such as open days for the local public, and presentations to the local community councils.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the consultation process to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

The efficiency of tidal energy

Concerns have been raised by members of the public regarding the efficiency of tidal energy. Respondents commented that the tidal turbines were inefficient energy generators, that tidal technology was, at best, experimental, and that the scale of the project is so small on a global scale that the effect would be negligible on limiting the rise of global warming.

One respondent also commented that there has been a track record of Renewables projects, in particular, wave and tidal, that are only operational for a short period of time and then decommissioned after only a few years of use.

Tides are regular and predictable because they are created by the gravitational pull of the moon and sun. Thus tidal energy generation has the ability to provide added stability to the energy mix. The south west of Islay also has sufficient tidal flow velocity, and a sea bed profile which matches the requirements of leading tidal flow devices, as stated in the Company's ES.

Tidal stream energy technology has the potential to play an important role in decarbonising our energy supply, increasing energy security and reducing our dependence on fossil fuels. The Carbon Trust has estimated that wave and tidal resources could provide 20 per cent of the UK's electricity if fully developed.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the efficiency of technology to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact upon tourism and recreation industry

Members of the public were worried that the visual impact of the Development would spoil the scenery and discourage tourists visiting Islay. Since the local community are highly dependent upon tourism for income, they were concerned that the Development will have detrimental impacts to local residents and businesses. Wildlife-based tourism is also important for the local community and there was concern that environmental impacts to marine wildlife would have a negative effect on wildlife tour operators.

MS-LOT, on behalf of Scottish Ministers, consulted with ABC, Islay Community Council ("ICC"), Royal Yachting Association Scotland ("RYAS") and Visit Scotland ("VS") and no objections were raised in terms of impacts upon the tourism and

recreation industry. Surfers Against Sewage (“SAS”) raised concerns over the Development’s potential impacts on the physical environment in terms of surfing spots. However the Company determined that no significant impacts were identified.

The Company carried out a Tourism Impact Assessment which involved a survey to gather respondents’ opinion on the likely impacts of the Project on their business performance, and on tourism in wider Argyll and Bute area. The assessment showed that the majority of respondents stated that the Project will have no impact on their business. The assessment also concluded that of the 227 different tourism and recreation facilities within the local area, none will experience a significant negative impact. Some of these respondents expect the Project to have a beneficial impact on business trading as workers will come to the area during the construction period. However one business in Portnahaven considered that the Development will have a high adverse impact on their business due to potential visual impact.

With regard to the visual impact of the Development having an effect on the tourism industry, the Company have said that there will be a temporary visual impact from the shore and from passing leisure traffic as there will be a range of construction and installation vessels in the location of the tidal site off the Rinns of Islay. However, the Company have concluded that the visual impacts during the construction period are unlikely to have any adverse impacts upon tourism and recreation onshore.

In addition, the Company identified that the increased traffic on the ferry routes with workers coming and going from the island may affect the ability of the tourists to get to the island. The Company have suggested that possible mitigation will be for people involved in the Development to avoid travelling at peak visitor or tourist periods.

In terms of impacts on wildlife-based tourism, the Company stated that liaison will be required with any sea tour operators on the island during the construction phase. They suggested that there may be a low minor positive impact for tour operators as some tourists may be interested in viewing the construction of the Project.

The Company concluded that the impact of the Project on the recreation facilities in the local area will be limited, and only of minor and no significant scale. Appropriate mitigation measures will be put in place to ensure that works are programmed to avoid peak tourist routes at peak visitor times, and that any disruption to recreation routes will be temporary.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the impacts on the tourism and recreation industry to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact on local community

The impact of the Development on the local community was a concern for some respondents. They described the Islay community as being a fragile and unique community which is largely dependent on tourism for income. They were concerned

that the community will be the most affected but the least likely to gain benefits from the Development.

One respondent was worried that the Development's impact on the local community and tourism industry will be detrimental for a local whisky distillery. The reputation of the whisky distillery is important for the marketing, promotion and success of the whisky.

As mentioned above, the Company aims to create jobs for local members of the public, and business will be brought to the local community in the form of workers associated with the Development. The Company also carried out a Tourist Impact Assessment which concluded that the Project will have no impact on local businesses.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the impacts on the local community to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact upon fishing industry

Several respondents raised concerns over the impact of the Development on the fishing industry within Islay and visiting fishing vessels to Islay. These included navigational concerns, displacement of fishing vessels, fishing restrictions and exclusion zones and concerns over the destruction of marine life, in particular fish and shellfish populations.

The SFF and CFA raised similar concerns to the public respondents and initially objected to the proposal. However, these concerns have now been addressed through the imposition of conditions attached to this consent. The SFF and CFA have not formally removed their objections; however they are content with the conditions.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the impacts on the fishing industry to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact on marine wildlife, including birds, marine mammals, basking sharks and diadromous fish

Representations questioned the environmental impact of the tidal turbines on marine wildlife. Concerns were raised over the seal and basking shark survey data that the Company collected from the local area. The Company stated that there were insignificant numbers of seals and basking sharks in the area. However, representations disagreed with this statement and said that in their opinion, the data was incorrect and misleading. Representations also expressed concern over how the tidal turbines will affect migratory marine mammals, birds, salmon and basking sharks.

The Company, in the ES, assessed the potential impact of the Development on fauna and MS-LOT consulted various stakeholders including SNH, Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) and Whale and Dolphin Conservation (“WDC”) on the application. Stakeholders raised similar marine wildlife concerns as the public respondents, however they did not object subject to the imposition of suitable conditions. Such conditions have been attached to this consent.

The AA concludes that the Development will have no adverse effect on site integrity and will not adversely affect the integrity of the SPAs. A full explanation of the marine wildlife issues and justifications for decisions regarding site integrity is provided in set out in the AA for this Application. SNH advised that the proposal will have no likely significant effect on the harbour seal qualifying feature interest for South-east Islay Skerries SAC. SNH advised that both EPS and basking shark licences will be required, since some disturbance may occur over an extended period of time.

Scottish Ministers have therefore found that sufficient information has been supplied regarding the impacts on marine wildlife to reach a decision on the matter, and have concluded it is appropriate not to cause a public inquiry to be held to further investigate this.

Summary

In addition to the issues raised by the representations, as discussed above, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers’ consideration of the Application.

The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES, and in the consultation responses received from the closest onshore planning authority, SEPA, SNH and other relevant bodies, together with all other representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that:

- they possess sufficient information upon which to determine the Application;
- an inquiry into the issues raised by the objectors would not be likely to provide any further factual information to assist Ministers in determining the Application;
- they have had regard to the various material considerations relevant to the Application, including issues raised by objectors; and
- the objectors have been afforded the opportunity to provide information and to make representations.

Accordingly, the Scottish Ministers have had regard to all material considerations and having drawn upon the information contained within:

- the Environmental Statement;
- the representations from the Company;
- the representations from consultees;
- the representations made from members of the public; and
- the Appropriate Assessment.

For this Application, the Scottish Ministers have decided that it is not appropriate to cause a public inquiry to be held.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

The Scottish Ministers are satisfied that an ES has been produced in accordance with the 2000 Regulations and the 2007 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 and 2007 Regulations have been followed.

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

The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Scottish Ministers have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company. The Scottish Ministers have also, as per regulation 4(2) of the 2000 Regulations, taken

into account all of the environmental information and are satisfied the Company has complied with their obligations under regulation 4(1) of those Regulations.

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

When considering an application for s.36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether the development is directly connected with, or necessary for, the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

SNH advised that the Development is likely to have a significant effect upon the qualifying interest of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA.

Having carried out the AA (considering all the representations received from SNH, MSS and other relevant Consultees) it can be stated with confidence that the Development will not adversely affect the integrity of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA provided the mitigation measures outlined are implemented by means of enforceable conditions attached to this consent. In accordance with the Habitats Regulations, the relevant statutory nature conservation bodies have been consulted. SNH have confirmed that they are in agreement with all the conclusions reached in the AA.

In the case of this Development the key decision for the Scottish Ministers has been the test laid down under article 6(3) of the Habitats Directive (and transposed by the Habitats Regulations) which applies to the effects of projects on SPAs. The Scottish Ministers and their statutory nature conservation advisers are certain that the test in article 6(3) is met, and that the relevant provisions in the Habitats Directive and the Habitats Regulations are being complied with. The precautionary principle, which is inherent in article 6 of the Habitats Directive and is evident from the approach taken in the AA, has been applied and complied with.

The Scottish Ministers are convinced that, by the attachment of conditions to this consent, the Development will not adversely affect the integrity of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA. The Scottish Ministers are certain that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

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

For the reasons set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also certain that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA.

Marine Mammal Impacts

The Scottish Ministers note that techniques used in the construction and the operation of most offshore tidal renewable energy installations have the potential to impact on marine mammals.

SNH, Marine Scotland Science ("MSS") and WDC advised that a key concern of theirs was the collision risk associated with the operational turbines for cetaceans, seals and basking sharks, and potential corkscrew injuries to seals from certain types of vessel propulsion systems.

At the time of responding to the consultation on the Application it was understood that interaction with ship's propellers, and more specifically ducted propellers, was considered the most likely cause of these injuries, based, to some extent, on the conclusion that such a wound could not be inflicted by any natural predator and the results of scale model trials.

Advice received from SNH in 2016 now states that there is now incontrovertible evidence that such injuries can be caused by grey seal predation on weaned grey seal pups on the Isle of May. Furthermore, there have been recent observations of an adult male grey seal killing and eating young harbour seals in Germany. As yet there is no direct evidence of grey seals preying on adult harbour seals, although it is reasonable to consider that this is possible. At the same time, however, it would be premature to completely discount the possibility that some of the corkscrew injuries are caused by interactions with propellers. The model trials carried out by the Seal Mammal Research Unit ("SMRU") showed that similar injury patterns could be caused by ducted propellers. Further research is underway to try to resolve these issues.

Based on the latest information, it is considered very likely that the use of vessels with ducted propellers may not pose any increased risk to seals over and above normal shipping activities and therefore mitigation measures and monitoring may not be necessary in this regard, although all possible care should be taken in the vicinity of major seal breeding and haul-out sites to avoid collisions.

A condition requiring the Company to submit, to Scottish Ministers, a Project Environmental Monitoring Programme ("PEMP") to monitor interactions of marine mammals with the operational turbines for approval is included in the conditions attached to this consent.

Impacts on cetacean species were also considered by the Company. A European Protected Species (“EPS”) licence will be required prior to construction because construction works may cause disturbance to cetaceans. Details on marine mammal impacts are discussed in detail in the Appropriate Assessment of this Application.

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

Ornithological Impacts

The potential impacts of the Development on bird species were considered in detail by MS-LOT and nature conservation advisors during the assessment of the Application. SNH and RSPB Scotland expressed concerns about the potential impact of the Development on several bird species using the Sound of Islay.

Likely significant effect has been identified by SNH for breeding common guillemot and Atlantic puffin for a number of relevant SPAs. However SNH, following appraisal, concluded that there does not appear to be a mechanism for impact on site integrity for any of the identified qualifying interests at European sites in Scotland.

The numbers of diving bird species which forage at, and beyond, the proposed turbine rotor depth are relatively low. SNH however had concerns in relation to collision risk with the TECs during operation for Wintering auks (common guillemot and razorbills). A post-construction monitoring programme is to be established to assess any impacts on a local scale for these species.

A condition requiring the Company to submit, to Scottish Ministers, a PEMP to monitor interactions of diving birds with the operational turbines for approval is included in the conditions attached to this consent.

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

Fisheries Impacts

Concerns raised by the fishing industry were communicated through the SFF and the CFA.

The main issue was the maintenance of dialogue with, and information to, the local fishing industry. The Company have expressed in their Application that they wish to close the site to fishing activity and create a ‘No Fishing Area’. This will cause displacement effects on fishing vessels in the area and result in a loss of fishing grounds. The SFF and CFA are concerned that this will cause a loss of earnings for

local fishermen. There is also concern regarding the position of the Development, and discord regarding the amount of fishing undertaken there, as the SFF state that the site is currently part of productive creel fishing grounds.

The SFF and CFA raised concerns over the Company's apparent assumption within the Application that any cable would not require much protection. Both the SFF and CFA expressed a strong preference for any cabling to be buried, in line with established industry practice, for safety reasons.

They also expressed concern regarding the potential for marine renewable devices being abandoned on the sea bed once they cease production. The SFF and CFA want a guarantee that the Company will set aside funds for the removal of all equipment at decommissioning. They would anticipate a full decommissioning plan, including specifics on finance to be put in place before any construction work commences.

Issues regarding the future decommissioning of the Development will be addressed through the consideration of the relevant Marine Licence application.

Conditions requiring the Company to appoint a Fisheries Liaison Officer ("FLO"); to participate in a Fisheries Group with the aim of producing a Fisheries Management and Mitigation Strategy ("FMMS"), and to submit, to Scottish Ministers, a Cable Plan ("CaP") and PEMP for approval are included in the conditions attached to this consent.

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

Landscape and Visual Impacts

Scottish Natural Heritage ("SNH"), the Scottish Ministers' statutory advisors on visual impacts on designated landscape features, were consulted on the Application for the Development and whilst, as part of the Rochdale Envelope approach taken by the Company, surface piercing TECs may be installed, this did not result in an objection from SNH on landscape and visual grounds.

Any onshore works, not considered as part of this application, will require a separate planning application to be made to ABC who will handle landscape and visual impacts associated with the terrestrial element of the Development.

Issues regarding the lighting and marking of the Development will be addressed through the consideration of the relevant Marine Licence application.

A condition requiring the Company to submit a Development Specification and Layout Plan ("DSLPL") to Scottish Ministers for approval is included in the conditions attached to this consent.

The Scottish Ministers consider that, having taken into account the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions attached to this consent, that there are no outstanding concerns in relation to the Development's impact on landscape and visuals that would require consent to be withheld.

Location of the Development

The Scottish Ministers conclude that the Company has carefully considered the location of the Development and selected the West Coast of Islay due to its high tidal flow velocity, and the bathymetry and seabed profile which match the requirements of leading tidal flow devices. The Company have also identified that there is no major shipping activity across the site, no areas designated for their nature conservation importance and no significant fishing or recreational activities on the site.

The most significant development risk, after the technology is that of electrical grid availability although this is something that the Islay site has in common with most of the site alternatives.

The Scottish Ministers consider that, having taken account of the information provided by the Company and the responses of the consultative bodies, there are no outstanding concerns with regards to the proposed location of the Development that would require consent to be withheld.

Economic Benefits

SPP advises that economic benefits are material issues which must be taken into account as part of the determination process.

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

The Development is the first phase in, what the Company hope will be, a larger tidal array which, subject to future applications and actually being built out, would total almost 400 MW, therefore setting up economic benefits for Scotland in the future.

The Company considers that there may be opportunities for local businesses to become involved in the Development, but notes, in their assessment, that construction and assembly of the tidal turbines and foundations is likely to take place outside Argyll & Bute. Furthermore, the Company states that installation of the devices, foundations and associated cabling is likely to be undertaken by specialist lifting vessels with specialist crews which are unlikely to be sourced from the local area, or indeed the UK. The Company estimates that only a 'handful' of jobs will be sourced from the local labour force over the construction period. These would be

limited to supply vessel charters to deliver parts and consumables from local shops on Islay.

The construction of the onshore substation is estimated by the Company to require approximately 10 temporary staff over a twelve month construction period. The installation of the onshore cable is estimated, by the Company, to require approximately 5 temporary jobs from the local labour force over a summer period with specialist cable staff sourced from outside the local or wider areas. A similar number of jobs would be required to construct or refurbish the operations and maintenance offices over a similar timeframe. The Company have estimated that this would result in the total requirements of around 20 -25 part time jobs for the local labour force or around 2-3 FTE jobs.

During operation and maintenance of the Development, the Company estimates, under a High Impact Scenario assuming that the operation and maintenance base would be located on Islay with devices either towed to or from the base to site for servicing/maintenance, there would be 10 – 15 FTE jobs based on Islay generating a local GVA of approximately £0.9 million per annum. Under a Low Impact Scenario, assuming that almost all operation and maintenance activities would be based on the mainland and operational activity is undertaken by specialist vessels, there would be 2 FTE jobs based on Islay generating a local GVA of approximately £0.1 million per annum.

During decommissioning of the Development, the Company estimates that 15 direct decommissioning FTE jobs, 13 local direct and indirect decommissioning FTE jobs in Argyll and Bute and 21 FTE jobs at a Scotland wide level will be created. This would generate between £0.854 million and £1.380 million in temporary annual GVA, which would accrue to the economy. However, the Company have stated that it is not possible, at this point, to estimate the proportion of this labour requirement or GVA benefit, which would be based on Islay.

The Company notes that other opportunities may exist which could offer employment opportunities to the local area. These include, but are not limited to, support for on-going monitoring of the Development, such as an Environmental Monitoring Programme, as well as the Development acting as a source of alternative fuel for local distilleries on Islay. However, these have not been quantified as the Company notes that it is still early on in the process to assess the potential likely benefits.

Scottish Ministers recognise that, as details regarding the design of the turbines are as yet unknown, the information available regarding the practicalities of construction and supply chain is limited. Despite the limits of information regarding specific economic benefits, the development will have economic benefits associated with any large scale capital expenditure. Scottish Ministers do not consider the lack of any specific details, at this stage, concerning any local, or Scotland wide economic benefit, sufficient to prevent consent being granted.

The Scottish Ministers consider that, having taken into account the information provided by the Company and the responses of the consultative bodies, there are no outstanding concerns with regards to the economic benefits created by the Development that would require consent to be withheld.

Impacts on Navigational Interests

The Scottish Ministers note that the Development could have potential impacts on navigation in the area. Statutory consultees, The Maritime and Coastguard Agency (“MCA”) and NLB found it difficult to provide a response to the proposal as the tidal turbine technology has not yet been finalised and the Development’s Rochdale Envelope contains a wide range of options for different tidal technologies which may be used. Due to this, both the MCA and NLB have stated that they will provide shipping and navigation and marking and lighting recommendations as and when specific and appropriate information can be provided by the Company. The NLB also stated that the consent should contain a condition that no equipment deployment is permitted unless a suitable marking scheme and contingency arrangements have been agreed by NLB.

It was raised in the response from MCA that the traffic survey carried out by the Company provides limited feedback on impacts of the Development on other vessels operating in the area. There is also the assumption in the ES that traffic will be excluded from the area, however it does not address the extent to which navigation would be feasible.

Concerns have also been raised on the cumulative impact on shipping of this site in conjunction with other renewable energy developments planned in the local area. The MCA stated that there is a significant lack of cumulative impact information within the Navigational Risk Assessment (“NRA”) and that more detail and work is required.

Due to the strong tidal conditions in the area, there is concern that equipment once deployed, will not stay in place. The NLB are keen for the Company to demonstrate that suitable buoyage, capable of remaining on station, has been procured prior to any device deployment.

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

Impacts on Recreation and Tourism

The potential impacts of the Development on recreation and tourism were considered in detail by the Scottish Ministers and the following consultees, ABC, ICC, RYAS and VS. No objections were raised by Consultees in terms of impacts upon the tourism and recreation industry, although members of the public did object. SAS raised concerns over the Developments potential impacts on the physical environment in terms of surfing spots, however the Company determined that no significant impacts were identified.

The Company carried out a Tourism Impact Assessment which involved a survey to gather respondents’ opinion on the likely impacts of the Project on their business

performance, and on tourism in wider Argyll and Bute area. The assessment showed that the majority of respondents stated that the Project will have no impact on their business. The assessment also concluded that of the 227 different tourism and recreation facilities within the local area, none will experience a significant negative impact. Some of these respondents expect the Project to have a beneficial impact on business trading as workers will come to the area during the construction period. However one business in Portnahaven considered that the Development will have a high adverse impact on their business due to potential visual impact.

With regard to the visual impact of the Development having an effect on the tourism industry, the Company have said that there will be a temporary visual impact from the shore and from passing leisure traffic as there will be a range of construction and installation vessels in the location of the tidal site off the Rinns of Islay. However, the Company have concluded that the visual impacts during the construction period are unlikely to have any adverse impacts upon tourism and recreation onshore.

In addition, the Company identified that the increased traffic on the ferry routes with workers coming and going from the island may affect the ability of the tourists to get to the island. The Company have suggested that possible mitigation will be for people involved in the Development to avoid travelling at peak visitor or tourist periods.

In terms of impacts on wildlife-based tourism, the Company stated that liaison will be required with any sea tour operators on the island during the construction phase. They suggested that there may be a low minor positive impact for tour operators as some tourists may be interested in viewing the construction of the Project.

The Company concluded that the impact of the Project on the recreation facilities in the local area will be limited, and only of minor and no significant scale. Appropriate mitigation measures will be put in place to ensure that works are programmed to avoid peak tourist routes at peak visitor times, and that any disruption to recreation routes will be temporary.

The Scottish Ministers consider that, having taken into account the information provided by the Company and the responses of the consultative bodies, there are no outstanding concerns with regards to the impact on recreation and tourism that would require consent to be withheld.

Summary

The Scottish Ministers consider the following as principal issues material to the merits of the s.36 consent Application made under the Electricity Act:

- The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- The Company's ES and the consultation process have identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004, such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Scottish Ministers before the Commencement of the Development ;
- The Scottish Ministers have considered material details as to how the Development can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;
- The Scottish Ministers have considered fully and carefully the Application, the ES and accompanying documents and all relevant responses from Consultees and the public representations; and
- On the basis of the AA, the Scottish Ministers have ascertained, to the appropriate level of scientific certainty, that the Development, in light of mitigating measures and conditions attached, will not adversely affect site integrity of the Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA, in view of such sites' conservation objectives.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under s.36 of the Electricity Act 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to **30 MW**, as described in **ANNEX 1**.

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

In reaching their decision the Scottish Ministers have had regard to all representations and relevant material considerations and, subject to the conditions included in this consent (**Annex 2**), are satisfied that it is appropriate for the Company to construct and operate the generating station in the manner as described in **Annex 1**.

Copies of this letter and the consent have been sent to Argyll and Bute Council. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website.

<http://www.scotland.gov.uk/Topics/marine/Licensing/marine/scoping>

The Scottish Ministers' decision is final and is subject to the right of any aggrieved person to apply by statutory appeal to the Court of Session. The statutory appeal mechanism is provided by sections 36D and 36E of the Electricity Act 1989 in relation to the section 36 consent, and by sections 63A and 63B of the Marine (Scotland) Act 2010 in relation to the marine licence.

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

Yours sincerely,

James McKie
Leader, Marine Scotland Licensing Operations Team
A member of the staff of the Scottish Ministers
21 June 2017

ANNEX 1

The Development shall have a permitted generating capacity not exceeding 30 MW and shall be comprised of up to 30 TECs 6 km off the south west coast of Islay, including:

1. 30 tidal turbines based on an un-ducted open rotor, horizontal axis design, either floating or subsea-mounted, each with:
 - a) a generating capacity of between 1 MW and 2 MW;
 - b) a maximum of 2 rotors;
 - c) a maximum rotor diameter of 22 metres;
 - d) a maximum rotor width of 50 metres;
 - e) a maximum swept area of 628 square metres;
 - f) a minimum seabed clearance of 3 metres;
 - g) a minimum surface clearance of 3.5 metres (measured from LAT); and
 - h) a maximum protrusion height of 21 metres (measured from LAT);
2. Pre-installed foundations most likely pin piled to the seabed;
3. Approximately 20 km of inter-array cables between the turbines;
4. Grid connection; and
5. Up to 3 main export cable(s) to Islay.

The Development must be constructed in accordance with that specified in the Application and by the conditions imposed by the Scottish Ministers.

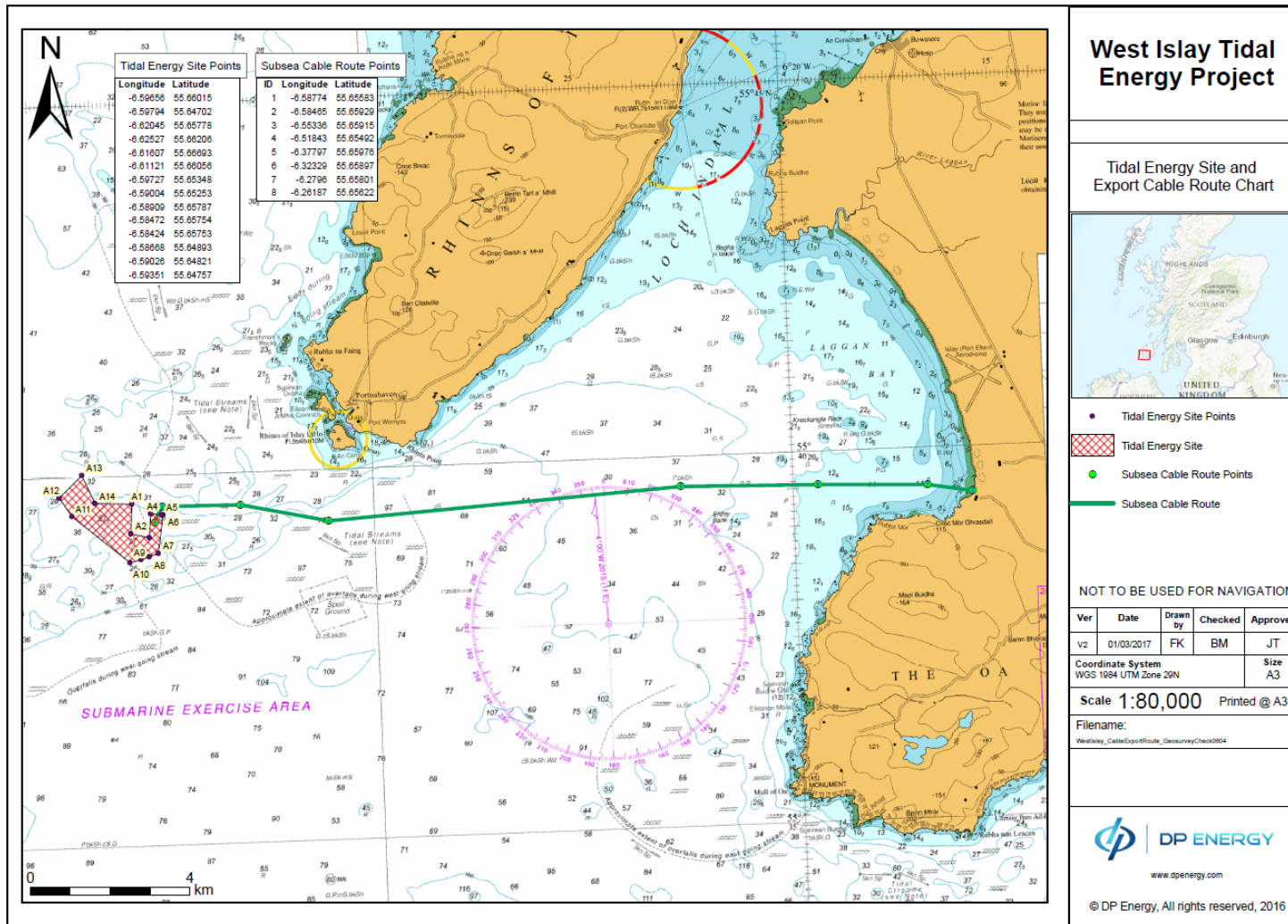


Figure – Development Location - West Islay Tidal Energy Park and Export Cable Corridor to Kintra, Islay Not to scale.

ANNEX 2

CONDITIONS

The consent granted under Section 36 of the Electricity Act 1989 is subject to the following conditions:

The Company must submit the requested plans as detailed in the conditions prior to the Commencement of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the conditions, or as may be required at the discretion of the Scottish Ministers.

The Development must, at all times, be constructed and operated in accordance with the approved plans, as updated or amended.

Any updates or amendments made to the approved plans must be submitted, in writing, to the Scottish Ministers for their prior written approval.

The Company must satisfy themselves that all contractors or sub-contractors are aware of the extent of the Development for which this consent has been granted, the activity which is consented and the terms of the conditions attached to this consent. All contractors and sub-contractors permitted to engage in the Development must abide by the conditions set out in this consent.

The Company must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code, where appropriate, during all installation, operation and maintenance activities.

1. Duration of the Consent

The consent is for a period of 25 years from the Date of Final Commissioning of the first Tidal Energy Converter ("TEC").

Written confirmation of the Date of the Final Commissioning of the first Tidal Energy Converter ("TEC") must be provided by the Company to the Scottish Ministers, Argyll and Bute Council ("ABC") and Scottish Natural Heritage ("SNH") no later than one calendar month after the Date of Final Commissioning of the first TEC.

Reason: To define the duration of the consent.

2. Commencement of Development

The Commencement of the Development must be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter agree and confirm in writing with the Company. Written confirmation of the intended date of Commencement of Development must be provided to ABC and Scottish Ministers no later than one calendar month before that date or at such a time as agreed with Scottish Ministers.

Reason: *To ensure that the Commencement of the Development is undertaken within a reasonable timescale after consent is granted.*

3. Redundant turbines

In the event that, for a continuous period of 6 months or more, any TEC installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with the Company and any advisors as required at the discretion of the Scottish Ministers, any such TEC may be deemed by the Scottish Ministers to cease to be required. If so deemed, the TEC (together with any related infrastructure) must, within a period of 12 months from the date of the deeming decision by the Scottish Ministers, be decommissioned and the area of the Site upon which the TEC is located must be reinstated by the Company in accordance with the procedures laid out within the Company's Decommissioning Programme.

Reason: *To ensure that any redundant TECs are removed from the Site in the interests of safety, amenity and environmental protection.*

4. Assignment

This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent or refuse assignment as they may see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company must notify ABC in writing, of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

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

5. Incident Reporting

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

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

6. Implementation in accordance with approved plans and requirements of this consent

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application, the Environmental

Statement (“ES”) and any other documentation lodged in support of the Application.

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

7. Construction Programme

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Construction Programme (“CoP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the ABC, the Maritime and Coastal Agency (“MCA”), Ministry of Defence (“MoD”), the Northern Lighthouse Board (“NLB”), the Scottish Environment Protection Agency (“SEPA”), SNH, Whale and Dolphin Conservation (“WDC”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CoP must set out, but not be limited to:

- a. the proposed date for Commencement of Development;
- b. the proposed timings for mobilisation of plant and delivery of materials, including details of onshore lay-down areas;
- c. the proposed timings and sequencing of construction work for all elements of the Development infrastructure;
- d. contingency planning for poor weather or other unforeseen delays; and
- e. the scheduled date for Final Commissioning of the Development.

The Company must, prior to the Commencement of the Development, provide a copy of the final CoP, and any subsequent revisions as agreed by the Scottish Ministers, to the Defence Geographic Centre (“DGC”).

Reason: To confirm the timing and programming of construction.

8. Construction Method Statement

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Construction Method Statement (“CMS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with ABC, MCA, MoD, NLB, SEPA, SNH, WDC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CMS must include, but not be limited to:

- a. the construction procedures and good working practices for installing the Development;
- b. commencement dates, duration and phasing for key elements of construction;
- c. details of the roles and responsibilities, chain of command and contact

- details of company personnel, any contractors or sub-contractors involved during the construction of the Development;
- d. details of how the construction related mitigation steps proposed in the ES are to be delivered;
- e. a waste management plan for the construction phase of Development; and
- f. hydrodynamic monitoring which will be used to inform the final locations of the tidal turbines.

The CMS must adhere to the construction methods assessed in the Application and the ES. The CMS also must, so far as is reasonably practicable, be consistent with the Cable Plan (“CaP”), Environmental Management Plan (“EMP”), the Navigational Safety Plan (“NSP”), the Piling Strategy (“PS”) and the Vessel Management Plan (“VMP”).

Reason: *To ensure the appropriate construction management of the Development, taking into account mitigation measures to protect the environment and other users of the marine area.*

9. Underwater Noise

The Company must cease operation of the installed turbines where the noise emissions from the operation of the Development exceed a Broadband noise maximum level of 115 dB in Sea state 1, at a line of arc extending between 220 to 270 nautical degrees, located 5 nautical miles west of the centre point of the Development, and where such noise emissions are deemed, by the MoD, to interfere with or otherwise adversely affect defence submarine navigational interests.

Where, under this condition, the operation of the Development ceases, then mitigation to reduce noise emissions to the prescribed maximum threshold, or to an alternative level above the maximum, as agreed by Scottish Ministers following consultation with the MoD and any other such consultee, as identified by Scottish Ministers, must be put in place before the installed turbines may resume functioning.

After any such mitigation has been put in place, the Company must ensure that the level of noise emissions from the Development has been reduced to agreed limits, and to Scottish Ministers’ satisfaction, through the collection and presentation of noise emission measurements by the Company to the Scottish Ministers on a monthly basis, to be agreed by Scottish Ministers in consultation with the MoD.

Reason: *To ensure that defence submarine navigational interests are not impeded in any way.*

10. Marine Mammal Observer

Prior to the Commencement of the Development, the Company must confirm the appointment of a Marine Mammal Observer (“MMO”). When appointed, the MMO must, as a minimum, maintain a record of any sightings of marine mammals and basking sharks, and maintain a record of the action taken to avoid any disturbance being caused to marine mammals and basking sharks during pre-construction,

geophysical surveys and construction activities. The MMO must check for marine mammals and basking sharks prior to the commencement of any drilling activity and cable laying, including for seals in relation to the export cable. The Company must provide the Scottish Ministers with the MMO's records no later than one calendar month following Commencement of the Works, and at monthly intervals thereafter.

Reason: *To ensure effective monitoring of and compliance with environmental mitigation measures associated with the Development.*

11. Piling Strategy

In the event that pile foundations are to be used, the Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Works, submit a Piling Strategy ("PS"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, WDC and any such other advisors as may be required at the discretion of the Scottish Ministers.

The PS must include, but not be limited to:

- a. details of expected noise levels from piling in order to inform point c below;
- b. full details of the proposed method and anticipated duration of piling to be carried out at all locations;
- c. details of soft-start piling procedures and anticipated maximum piling energy required at each pile location;
- d. details of any mitigation and monitoring to be employed during piling, as agreed by the Scottish Ministers; and
- e. details of the role and the responsibilities of the MMO during construction activities.

The PS must be in accordance with the Application and must also reflect any monitoring or data collection carried out after submission of the Application. The PS must demonstrate how the exposure to and/or the effects of underwater noise have been mitigated in respect to cetaceans and seals.

The PS must, so far as is reasonably practicable, be consistent with the EMP, the Project Environmental Monitoring Programme ("PEMP") and the Construction Environmental Management Plan ("CMS").

Reason: *To mitigate the underwater noise impacts arising from piling activity.*

12. Development Specification and Layout Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Design Specification and Layout Plan ("DSLPL"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation with ABC, Islay Community Council ("ICC"), MCA, MoD, NLB, RSPB Scotland, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The DSLP must include, but not be limited to:

- a. a plan showing the location of each individual TEC (subject to any required micro-siting), including information on TEC spacing, TEC identification / numbering, seabed conditions, bathymetry, confirmed foundation type for each TEC and any key constraints recorded on the Site;
- b. a list of latitude and longitude co-ordinates accurate to three decimal places of minutes of arc for each TEC. This should also be provided as a Geographic Information System ("GIS") shape file using the World Geodetic System 1984 ("WGS84") format;
- c. a table or diagram of each TEC dimensions including: height to blade tip (measured above Lowest Astronomical Tide ("LAT")) to the highest point; height to hub (measured above LAT to the centreline of the generator shaft or measured from the seabed); blade tip to surface (measured at LAT); rotor diameter and maximum rotation speed;
- d. the generating capacity of each TEC used on the Site (Annex 1, Figure) and a confirmed generating capacity for the Site overall;
- e. the finishes for each TEC, colour and lighting and marking (see condition 20);
- f. the length and proposed laying arrangements on the seabed of all inter-array cables; and
- g. hydrodynamic monitoring which will be used to inform the final locations of the tidal turbines.

Reason: *To confirm the final Development specification and layout.*

13. Design Statement

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Design Statement ("DS"), in writing, to the Scottish Ministers. The DS, which must be signed off by at least one qualified landscape architect as instructed by the Company prior to submission to the Scottish Ministers, must include representative visualisations, if surface piercing or laying TEC are to be utilised, from key viewpoints agreed with the Scottish Ministers, based upon the final DSLP as approved by the Scottish Ministers, as updated or amended. The Company must provide the DS, for information only, to ABC, ICC, MCA, MoD, NLB, RSPB Scotland, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

Reason: *To ensure that the Development is carried out in accordance with the approved details, and to inform interested parties of the final tidal turbine array proposed to be built.*

14. Environmental Management Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit an Environmental Management Plan ("EMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by

the Scottish Ministers with ABC, RSPB Scotland, SEPA, SNH, WDC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The EMP must provide the over-arching framework for on-site environmental management during the phases of development as follows:

- i. all construction as required to be undertaken before the Final Commissioning of the Development; and
- ii. the operational lifespan of the Development from the Final Commissioning of the Development until the cessation of electricity generation.
(Environmental management during decommissioning is addressed by the Decommissioning Programme).

The EMP must be in accordance with the ES insofar as it relates to environmental management measures. The EMP must set out the roles, responsibilities and chain of command for the Company personnel, any contractors or sub-contractors in respect of environmental management for the protection of environmental interests during the construction and operation of the Development. It must address, but not be limited to, the following over-arching requirements for environmental management:

- a. mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the ES, pre-consent and pre-construction monitoring or data collection, and include the relevant parts of the CMS and VMP;
- b. a pollution prevention and control method statement, including contingency plans;
- c. management measures to prevent the introduction of invasive non-native marine species;
- d. the reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to ABC, RSPB Scotland, SEPA, SNH and WDC) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed;
- e. the process for how each and all contractors and sub-contractors will be made aware of environmental sensitivities, what requirements they are expected to adhere to and how chains of command will work; and
- f. an underwater noise mitigation plan to understand and minimise the potential impacts of noise created during construction.

The Company must, no later than 6 months prior to the Final Commissioning of the Development or at such a time as agreed with the Scottish Ministers, submit an updated EMP to cover the operation and maintenance activities for the Development, in writing to the Scottish Ministers for their written approval. Such approval may be given only following consultation by the Scottish Ministers with ABC, RSPB Scotland, SEPA, SNH, WDC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The EMP must be regularly reviewed by the Company and the Scottish Ministers, at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited

to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

The EMP must be informed, so far as is reasonably practicable, by the baseline monitoring or data collection undertaken as part of the Application and the PEMP.

Reason: To ensure that all construction and operation activities are carried out in a manner that minimises their impact on the environment, and that mitigation measures contained in the ES, or as otherwise agreed are fully implemented.

15. Vessel Management Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Vessel Management Plan (“VMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with MCA, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The VMP must include, but not be limited to, the following details:

- a. the number, types and specification of vessels which are required;
- b. how vessel management will be co-ordinated, particularly during construction but also during operation;
- c. location of working port(s), how often vessels will be required to transit between port(s) and the Site and indicative vessel transit corridors proposed to be used during construction and operation of the Development; and
- d. name and role of each vessel used for laying the export cable, along with details on timing, duration and methods for cable laying.

The confirmed individual vessel details must be notified to the Scottish Ministers in writing no later than 14 days prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, and, thereafter, any changes to the details supplied must be notified to the Scottish Ministers, as soon as practicable, prior to any such change being implemented in the construction or operation of the Development.

The VMP must, so far as is reasonably practicable, be consistent with the CMS, EMP, NSP and PEMP.

Reason: To mitigate disturbance or impact to marine mammals and birds.

16. Operation and Maintenance Programme

The Company must, no later than 6 months prior to the Commissioning of the first TEC, or at such a time as agreed with the Scottish Ministers, submit an Operation and Maintenance Programme (“OMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with ABC, MCA, NLB, SEPA, SNH and any such other advisors or

organisations as may be required at the discretion of the Scottish Ministers.

The OMP must set out the procedures and good working practices for operations and the maintenance of the TECs, substructures, and inter-array cable network of the Development. Environmental sensitivities which may affect the timing of the operation and maintenance activities must be considered in the OMP.

The OMP will detail how each and all contractors and sub-contractors will be made aware of the environmental sensitivities, what requirements they are expected to adhere to and how chains of command will work during operation and maintenance activities.

The OMP must be regularly reviewed by the Company and the Scottish Ministers, at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on operation and maintenance activities.

The OMP must, so far as is reasonably practicable, be consistent with the CaP, EMP, NSP, PEMP and VMP.

Reason: To safeguard environmental interests during operation and maintenance of the offshore generating station.

17. Cable Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Cable Plan ("CaP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with ABC, Clyde Fishermen's Association ("CFA"), MCA, The Scottish Fisherman's Federation ("SFF"), SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CaP must be in accordance with the ES.

The CaP must include, but not be limited to, the following:

- a. the location and cable laying techniques for the inter array cables;
- b. the results of monitoring or data collection work (including local fishers knowledge of the seabed and fishing activity, geophysical, geotechnical and benthic surveys with particular focus on maerl beds and burrowed soft muds with seapens) which will help inform cable routing;
- c. cable route mitigation measures to avoid maerl beds and burrowed soft muds with seapens;
- d. technical specification of inter array cables including a desk based assessment of attenuation of electro-magnetic field strengths and shielding;
- e. a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures;
- f. methodologies for surveys (e.g. over trawl) of the inter array cables through the operational life of the Development where mechanical

- protection of cables laid on the sea bed is deployed;
- g. methodologies for inter array cable inspection with measures to address and report to the Scottish Ministers any exposure of cables.

Any consented cable protection works must ensure existing and future safe navigation is not compromised. The Scottish Ministers will accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum.

Reason: To ensure all environmental and navigational issues are considered for the location and construction of the inter array cables.

18. Navigational Safety Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Navigational Safety Plan (“NSP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with MCA, NLB, SFF and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers.

The NSP must include, but not be limited to, the following issues:

- a. navigational safety measures;
- b. device specific Navigational Risk Assessment (“NRA”);
- c. construction exclusion zones;
- d. notice(s) to Mariners and Radio Navigation Warnings;
- e. anchoring areas;
- f. temporary construction lighting and marking;
- g. emergency response and coordination arrangements in the form of an Emergency Response Cooperation Plan (“ERCoP”) for the construction, operation and decommissioning phases of the Development and to be in accordance with condition 3.2.1.4 of the marine licence; and
- h. buoyage.

The Company must confirm within the NSP that they have taken into account and adequately addressed all of the recommendations of the MCA in the current Marine Guidance Note 543 (“MGN 543”), and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance prior to the approval of the NSP.

Reason: To mitigate the navigational risk to other legitimate users of the sea.

19. Project Environmental Monitoring Programme

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Project Environmental Monitoring Programme (“PEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the Association of Salmon Fishery Boards

("ASFB"), RSPB Scotland, SNH, WDC and any other ecological advisors or organisations as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the Application insofar as it relates to environmental monitoring.

The PEMP must set out measures by which the Company must monitor the environmental impacts of the Development. Monitoring is required throughout the lifespan of the Development where this is deemed necessary by the Scottish Ministers. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing.

Monitoring must be done in such a way as to ensure that the data which is collected allows useful and valid comparisons between different phases of the Development. Monitoring may also serve the purpose of verifying key predictions in the Application. In the event that further potential adverse environmental effects are identified, for which no predictions were made in the Application, the Scottish Ministers may require the Company to undertake additional monitoring.

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

- a. pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring or data collection as relevant in terms of the ES and any subsequent monitoring or data collection for:
 - i. birds;
 - ii. mobile marine species (e.g marine mammals and basking sharks); and
 - iii. diadromous fish;
- b. the methodology to record and report noise levels from pile drilling and construction to be carried out in relation to marine mammals; and
- c. the participation and contribution to be made by the Company to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers, and to include but not be necessarily limited to:
 - i. the interaction of diving birds (in particular Wintering auks) around operational turbines;
 - ii. the avoidance behaviour of diadromous fish;
 - iii. the avoidance behaviour of mobile marine species including marine mammals and basking sharks;
 - iv. the survival and productivity of the nearest auk breeding cliffs onIslay;
 - v. changes in site use at grey and harbour seal SACs; and
 - vi. ground-truthing of modelled noise assessment data.

Any pre-consent monitoring or data collection carried out by the Company to address

any of the above issues may be used, in part, to discharge this condition subject to the written approval by the Scottish Ministers.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the Regional Advisory Group, or any other ecological advisors or organisations as required at the discretion of the Scottish Ministers, require the Company to amend the PEMP and submit such an amended PEMP, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with ASFB, RSPB Scotland, SNH, WDC and any other ecological, or such other advisors as may be required at the discretion of the Scottish Ministers.

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

The Scottish Ministers may agree, in writing, that monitoring may be reduced or ceased before the end of the lifespan of the Development.

Reason: To ensure that appropriate and effective monitoring of the impacts of the Development is undertaken.

20. Regional Advisory Group

The Company must participate in any Regional Advisory Group (“RAG”), or any successor group, established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, marine mammals, and diadromous fish. The extent and nature of the Company’s participation in the RAG is to be agreed by the Scottish Ministers.

Reason: To ensure effective environmental monitoring and mitigation is undertaken at a regional scale.

21. Environmental Clerk of Works

Prior to the Commencement of the Development, the Company must at its own expense, and with the approval of the Scottish Ministers in consultation with SNH, appoint an independent Environmental Clerk of Works (“ECoW”). The ECoW must be appointed in time to review and approve the draft version of the first plan or programme submitted under this consent to the Scottish Ministers, and remain in post until agreed by Scottish Ministers. The terms of appointment must be approved by Scottish Ministers in consultation with SNH.

The terms of the appointment must include, but not be limited to:

- a. quality assurance of final draft versions of all plans and programmes required under this consent;
- b. responsibility for the monitoring and compliance of the consent conditions and the environmental mitigation measures;
- c. provision of on-going advice and guidance to the Company in relation to achieving compliance with consent conditions, including but not limited to the conditions relating to the CaP, CMS, EMP, PEMP, PS, and VMP;
- d. provision of reports on point c above to the Scottish Ministers at timescales to be determined by them;
- e. inducting and toolbox talks to onsite construction teams on environmental policy and procedures and keeping a record of these;
- f. monitoring that the Development is being constructed according to the plans and this consent and the Application, and complies with the regulations and legislation;
- g. reviewing and reporting incidents/near misses and reporting any changes in procedures as a result; and
- h. agreement of a communication strategy with the Scottish Ministers.

Reason: *To ensure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.*

22. SpORRAn (Scottish Offshore Renewables Research Framework)

The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the Scottish Offshore Renewables Research Framework (“SpORRAn”). The extent and nature of the Company’s participation is to be agreed by the Scottish Ministers.

Reason: *To ensure effective environmental monitoring and mitigation is undertaken at a National scale.*

23. Scottish Strategic Marine Environment Group

The Company must participate in any Scottish Strategic Marine Environment Group (“SSMEG”) established by the Scottish Ministers for the purposes of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish.

Reason: *To ensure effective environmental monitoring and mitigation is undertaken at a National scale.*

24. Fisheries Working Group

The Company must participate in an Islay Fisheries Working Group (“IFWG”), or any successor group, formed to facilitate commercial fisheries dialogue, for the purposes of defining and finalising a Fishing Management and Mitigation Strategy (“FMMS”). The IFWG must adhere to the working group protocol.

Reason: To mitigate the impacts on commercial fishermen

25. Fisheries Management and Mitigation Strategy

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Fisheries Management and Mitigation Strategy (“FMMS”), in writing, to the Scottish Ministers for their written approval.

In order to inform the production of the FMMS the Company must monitor or collect data as relevant and as agreed with Scottish Ministers in terms of the ES and any subsequent monitoring or data collection for:

- i. the impacts on the adjacent coastline;
- ii. the effects on local fishermen; and
- iii. the effects on other users of the sea.

As part of any finalised FMMS, the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development. The Company must implement all mitigation measures committed to be carried out by the Company within the FMMS. Any contractors, or sub-contractors instructed by the Company in connection with the Development, must co-operate with the fishing industry to ensure the effective implementation of the FMMS.

Reason: To mitigate the impact on commercial fishermen.

26. Fisheries Liaison Officer

Prior to the Commencement of the Development, a Fisheries Liaison Officer (“FLO”) must be appointed by the Company and approved, in writing, by the Scottish Ministers following consultation with SFF, IFWG and any other advisors or organisations as may be required at the discretion of the Scottish Ministers. The FLO must be appointed by the Company for a period from the Commencement of the Development until the Final Commissioning of the Development. The identity and credentials of the FLO must be included in the EMP. The FLO must establish and maintain effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

The responsibilities of the FLO must include, but not be limited to:

- a. establishing and maintaining effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea concerning the Development and any amendments to the CMS and site environmental procedures;
- b. the provision of information relating to the safe operation of fishing activity on the site of the Development; and
- c. ensuring that information is made available and circulated in a timely manner to minimise interference with fishing operations and other users of the sea.

Reason: To mitigate the impact on commercial fishermen.

27. Marine Archaeology Reporting Protocol

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Marine Archaeology Reporting Protocol (“MARP”) which sets out what the Company must do on discovering any marine archaeology during the construction, operation, maintenance and monitoring of the Development, in writing, to the Scottish Ministers for their written approval.

The Company must also submit a Written Scheme of Investigation (“WSI”) which includes details of proposed micro-siting, buffer and exclusion zones during construction, operation, maintenance and monitoring of the Development, in writing to the Scottish Ministers for their written approval.

Such approvals may be given only following consultation by the Scottish Ministers with Historic Environment Scotland (“HES”) and any such advisors as may be required at the discretion of the Scottish Ministers. The MARP must be implemented in full, at all times, by the Company.

Reason: To ensure any discovery of archaeological interest is properly and correctly reported.

Advisory Note

The Company is advised by ABC to utilise underground cable for new cable routes associated with the project in the following sensitive areas:

- Areas of biodiversity;
- Areas of Archaeology and Built Environment;
- Areas of Landscape Designation;
- Areas in close proximity to housing and tourist accommodation; and
- Areas in close proximity to community and public facilities.

Annex 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annexes 1 and 2:

“AA” means Appropriate Assessment

“Commencement of the Development” means the date on which Construction begins on the site of the Development in accordance with this consent as conditioned in the marine licence

“Commissioning of the First TEC” means the date on which the tidal energy convertor forming the Development has supplied electricity on a commercial basis to the National Grid

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

“Date of Final Commissioning” means the date on which all tidal energy convertors forming the Development have supplied electricity on a commercial basis to the National Grid, or such earlier date as the Scottish Ministers deem the Development to be complete

“ECoW” means Ecological Clerk of Works

“EIA” means Environmental Impact Assessment

“EMF” means Electromagnetic Fields

“EPS” means European Protected Species

“ES” means the Environmental Statement submitted to the Scottish Ministers by DP Marine Energy Limited on 16th September 2013 as part of the Application

“FTE” means Full Time Equivalent

“GIS” means Geographic Information System

“GVA” means Gross Value Added

“HRA” means Habitats Regulations Appraisal

“IALA Recommendation o-139” means the International Association of Marine Aids to Navigation and Lighthouse Authorities Recommendation o-139 on the Marking of Man Made Offshore Structures

“LAT” means Lowest Astronomical Tide

“LSE” means Likely Significant Effect

Decision Letter and Conditions

“MCT” means Marine Current Turbines

“MHWS” means Mean High Water Spring Tides

“MLWS” means Mean Low Water Spring Tides

“MMOs” means Marine Mammal Observers

“MW” means megawatt

“nm” means Nautical Mile

“PBR” means Permitted Biological Removal

“PLI” means Public Local Inquiry

“REIF” means the Renewable Energy Investment Fund

“SAC” means Special Area of Conservation

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

“SLVIA” means Seascape, landscape and visual impact assessment

“SPA” means Special Protection Area

“SpORRAn” means Scottish Offshore Renewables Research Framework

“TEC” means tidal energy convertor

“the Application” means the Application letter and Environmental Statement and submitted to the Scottish Ministers by ScottishPower Renewables (UK) Limited, on 16th September 2013

“the Company” means DP Marine Energy Limited, Mill House, Buttevant, Co Cork, Ireland. Registered in Ireland No. 456838

“the Development” means the West Islay Tidal Energy Park, to the south west of Islay

“the Site” means the area identified in the Figure attached at Annex 1

“the Works” means all works relating to the Development below MLWS

“WGS84” means the World Geodetic System 1984

Organisations

“ABC” means Argyll and Bute Council

Decision Letter and Conditions

“ASFB” means Association of Salmon Fishery Boards

“BEIS” means Department of Business, Energy and Industrial Strategy

“CFA” means Clyde Fishermen’s Association

“CFWG” means Commercial Fisheries Working Group

“DGC” means Defence Geographic Centre

“DIO” means Defence Infrastructure Organisation

“FLO” means Fisheries Liaison Officer

“HES” means Historic Environment Scotland

“ICC” means Islay Community Council

“IFWG” means Islay Fisheries Working Group

“JNCC” means Joint Nature Conservation Committee

“MCA” means The Maritime and Coastguard Agency

“MoD” means Ministry of Defence

“MS” means Marine Scotland

“MS-LOT” means Marine Scotland Licensing Operations Team

“MSS” means Marine Scotland Science

“NLB” means The Northern Lighthouse Board

“RAG” means Regional Advisory Group responsible for overseeing monitoring and mitigation on a regional scale, set up by the Scottish Ministers

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

“RYAS” means Royal Yachting Association Scotland

“SAS” means Surfers Against Sewage

“SEPA” means The Scottish Environment Protection Agency

“SFF” means The Scottish Fisherman’s Federation

“SMRU” means the Seal Mammal Research Unit

“SNCB” means Statutory Nature Conservation Body

“SNH” means Scottish Natural Heritage

“SRSL” means SAMS Research Services Ltd

“SSMEG” means Scottish Strategic Marine Environment Group, a group responsible for overseeing monitoring and mitigation on a National scale, set up by the Scottish Ministers

“the Planning Authority” means Argyll and Bute Council

“TS” means Transport Scotland

“VS” means Visit Scotland

“WDC” means Whale and Dolphin Conservation

Plans, Programmes and Statements

“CaP” means Cable Plan

“CEMP” means Construction Environmental Management Plan

“CMS” means Construction Method Statement

“CoP” means Construction Programme

“DP” means Decommissioning Programme, a programme for decommissioning the relevant object as conditioned in the marine licence

“DS” means Design Statement

“DSL P” means Development Specification and Layout Plan

“EDAP” means Argyll and Bute Council’s Economic Development Plan

“EMMP” means Environmental Mitigation and Monitoring Plan

“EMP” means Environmental Management Plan

“ERCoP” means Emergency Response Cooperation Plan as conditioned in the marine licence

“FMMS” means Fisheries Management and Mitigation Strategy

“LMP” means Lighting and Marking Plan as conditioned in the marine licence

“MAR P” means Marine Archaeology Reporting Protocol

“NMP” means the National Marine Plan adopted in 2015

“NPF3” means Scotland’s National Planning Framework 3

“NRA” means Navigational Risk Assessment

“NSP” means Navigational Safety Plan

“NTS” means Non-technical summary

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy

“REAP” means Argyll and Bute Council Renewable Energy Action Plan

“SPP” means Scottish Planning Policy

“the Statement” means The UK Marine Policy Statement 2011

“TTP” means Traffic and Transportation Plan

“VMP” means Vessel Management Plan

“WSI” means Written Scheme of Investigation

Legislation

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

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

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

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

“the 2007 Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

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

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

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010

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

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

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

“the Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended) and the Conservation of Habitats and Species Regulations 2010

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