

Minister for Business, Innovation and Energy

APPLICATION FOR CONSENT 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

Purpose

To seek your determination on the Application submitted by DP Marine Energy Ltd. (Company Number SC456838) ("the Company") for consent under section 36 ("s.36") of the Electricity Act 1989 (as amended) ("the Electricity Act") to construct and operate an offshore tidal array with a maximum generating capacity of up to 30 megawatts ("MW") ("the Application").

Priority

Routine.

Background

On 16th September 2013 the Company, submitted an application for consent to construct and operate the West Islay Tidal Energy Park ("the Development"), 6 km off the south west coast of Islay (**ANNEX G – PROJECT LOCATION**).

The Application is for the construction and operation of the offshore generating station with a maximum generating capacity of up to 30 MW, consisting of:

- up to 30 tidal energy converters ("TECs") each with an installed generating capacity of between 1 and 2 MW. The foundation design for the TECs will consist of pinned piles (in)to the seabed; 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.

In conjunction with the consultation on the Application for s.36 consent under the Electricity Act, Marine Scotland Licensing Operations Team ("MS-LOT") has consulted on the Application for a marine licence, concerning the deposit of the associated infrastructure and export cable coming to shore at Kintra, Islay. The marine licence application is being considered under the Marine (Scotland) 2010 Act alongside the Application and will be determined in due course.

Planning permission for the terrestrial elements of the proposal will be sought from Argyll & Bute Council ("ABC").

In accordance with standard procedure and statutory requirements, this Application has been advertised in line with the legislative requirements and has been subject to wide ranging consultation which afforded interested parties appropriate time to submit representations to the Scottish Ministers. MS-LOT is satisfied that there are no outstanding issues that should prevent consent being granted should you determine that is appropriate.

CONSIDERATION OF THE APPLICATION

MS-LOT is satisfied that, whilst the Development would have an impact on the environment, by taking into account the extent to which any environmental effects will be reduced by measures the Company has agreed to take, or will be required to take, under the conditions attached to the s.36 Consent and Marine Licence, the environmental issues can be appropriately addressed by way of mitigation, and that any impacts which remain are outweighed by the benefits the Development will bring.

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.

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 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 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 has 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.

MS-LOT 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. MS-LOT do not consider the lack of any specific details, at this stage, concerning any local, or Scotland wide economic benefit, should prevent consent being granted should you determine that is appropriate.

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.

Background and consultation information for the proposal is set out at **ANNEX B – BACKGROUND INFORMATION AND SCOTTISH MINISTERS' CONSIDERATIONS**.

Consultation Summary

Scottish Natural Heritage ("SNH") raised no objection and are content that, with the implementation of mitigation and monitoring measures, the environmental impacts of this Development can be minimised. This is reflected in **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**. SNH agreed with the conclusions reached in the Appropriate Assessment ("AA") (**ANNEX E – APPROPRIATE ASSESSMENT**) that the Development will not adversely affect site integrity of the Ailsa Craig Special Protection Area ("SPA"), Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA.

ABC initially objected to the Development. However, after further discussions between ABC and the Company, ABC were content to remove their objection, subject to the inclusion of appropriate conditions on any consent.

The Scottish Environment Protection Agency ("SEPA") did not object to the Development. However, they recommended that monitoring and mitigation measures are undertaken to minimise any impacts on the environment.

During the consultation process, an objection was received from the Scottish Fisherman's Federation ("SFF") along with one from one of their members, the Clyde Fisherman's Association ("CFA"). The CFA and SFF were consulted on the inclusion of appropriate conditions. Through discussion with MS-LOT, agreement was met on

the wording of the conditions and both the CFA and SFF accepted the conditions on the basis that a fishing protocol, agreed with MS LOT, will be required through the inclusion of an appropriate condition. Although a condition has been included, the CFA and SFF have not lifted their objection to the Development. MS-LOT are however satisfied that the imposition of the condition will address the issue and does not consider this to be a matter which should prevent consent being granted, should you determine that is appropriate.

Conditions are also attached to of this consent to further minimise the potential impact(s) of the Development (**ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2**).

Public Representations

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

All public representations have been taken into consideration. These are summarised in **ANNEX F – PUBLIC REPRESENTATIONS**.

Publicity

Officials will liaise with Communications once a determination has been made on this Application to agree the appropriate means of announcing the decision.

As a potential way of meeting any Freedom of Information requests which may be received, and in order for the determination process to be fully open and transparent, MS-LOT recommend that this submission is published on the Marine Scotland Licensing page of the Scottish Government website, alongside the key documentation relating to the Application including consultee responses and public representations with personal information, e.g. names, email addresses and phone numbers, redacted.

Recommendation

The Development offers a small but valuable contribution to Scotland's renewables obligation and climate change targets. It creates an opportunity to drive the harnessing of Scotland's vast offshore tidal energy resources forward and any adverse effects which the Development may have can be mitigated against or are, on balance, acceptable when weighted against the benefits of the Development. Having taken all material considerations into account, including the statutory and non-statutory consultation responses, the public representations and objections received, and being satisfied that all legislative requirements have been met, MS-LOT is of the view that you should:

Determine that it is appropriate not to cause a Public Local Inquiry to be held, and to grant consent under section 36 of the Electricity Act 1989 for the 30 MW West Islay Tidal Energy Park.

Please note that an application for a marine licence under the Marine (Scotland) Act 2010 for Sound of Islay Demonstration Tidal Array and export cables is being considered alongside this Application. It will be determined and a decision issued in due course.

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Marine Scotland Licensing Operations Team,
Marine Planning and Policy
23rd March 2017

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Economy, Jobs and Fair Work			X		
Cabinet Secretary for Rural Economy and Connectivity			X		
Cabinet Secretary for Environment, Climate Change and Land Reform			X		

DG Economy
 Graham Black – Marine Scotland
 David Palmer - Marine Scotland
 Jim McKie - Marine Scotland
 Karen Major - Marine Scotland
 Nicola Bain - Marine Scotland
 Gayle Holland – Marine Scotland
 David Pratt - Marine Scotland
 Mark Christie - Marine Scotland
 David Mallon - Marine Scotland
 Michael Mcleod – Marine Scotland
 Ian Davies - Marine Scotland
 Chris Stark - Energy & Climate Change
 Frances Pacitti - Energy & Climate Change
 Simon Coote - Energy & Climate Change
 David Stevenson - Energy & Climate Change
 Julie Steel – Energy & Climate Change
 Alan Williams - SGLD
 Fiona McClean - SGLD
 Ian Vickerstaff - SGLD
 Simon Bonsall - Planning
 Keith Connal - E&RA
 Iain Malcolm - Freshwater Fisheries
 Chris Wilcock - Ports and Harbours
 David Miller – Special Advisor
 Communications - Economy, Rural Economy, and Environment

ANNEX A – REGULATORY REQUIREMENTS: LEGISLATION AND POLICY

APPLICATION FOR CONSENT 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

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

1. 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

2. 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.
3. 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.

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

Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

4. 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.
5. 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.
6. 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.
7. 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 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.
8. The location and extent of the proposed 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 set out in Annex B. Since 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.

9. 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.
10. You can be 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. Your 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)

11. 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”).
12. 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.
13. 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 ES, and additional information in the form of statutory consultation responses.

14. 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.
15. MS-LOT considers that you can be 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

16. 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.
17. 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.”
18. 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.
19. 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.”
20. 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.

21. 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.”

22. 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.

23. 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.

24. In line with advice from SNH, and to ensure compliance with European Union (“EU”) 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.
25. SNH were consulted on the AA and agreed with all of the conclusions that have been reached (**ANNEX E – APPROPRIATE ASSESSMENT**). The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

Marine (Scotland) Act 2010

26. 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.
27. 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.

Climate Change (Scotland) Act 2009

28. 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.
29. 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.

MARINE AND TERRESTRIAL POLICY

Marine Policy

The UK Marine Policy Statement 2011

30. 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.
31. 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.
32. 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.
33. 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.
34. MS-LOT has had full regard to the Statement when assessing the Application and considers that the Development accords with the Statement.

Scotland’s National Marine Plan

35. 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.

36. 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.
37. Of particular relevance to this proposal 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’.

Other Marine Policy

38. The proposed 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].
39. 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.
40. 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

41. MS-LOT has 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

42. 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.
43. 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.
44. You can be 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

45. 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.
46. 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.

47. 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.
48. 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

49. 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 want 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 2017

50. Argyll and Bute Council has 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."
51. 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 Development Action Plan 2016 – 2021

52. 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

53. MS-LOT considers that the policy documents as outlined above are broadly supportive of the Development.

MATERIAL CONSIDERATIONS

54. MS-LOT has carefully considered the issues in connection with the Application and has identified the material considerations, for the purposes of deciding whether it is appropriate to cause a PLI to be held or for making a decision on the Application for consent under s.36 of the Electricity Act.
55. MS-LOT is content that the material considerations have been addressed in the Application, the ES and within the responses received to the consultations by the relevant onshore Planning Authority, in this case ABC, SEPA, SNH and other relevant bodies. The material considerations have been addressed in **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS.**

PUBLIC LOCAL INQUIRY (“PLI”)

56. 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, you 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 you direct otherwise) before you may determine the application, the objection and the report of the inquiry.
57. ABC initially objected to the Development. However they withdrew their objection after discussions with the Company.
58. Even if the ABC had maintained their objection a PLI is not a statutory requirement in this case due to the fact that the Development to which the Application for s.36 consent relates falls out with ABCs’ jurisdiction. Paragraph 7A of Schedule 8 to the Act provides that paragraph 2(2) of the Schedule does not apply in cases like this where no part of the place to which the application for s.36 consent relates is within the area of the local planning authority.
59. 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 to which the s.36 application relates is to be 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.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC LOCAL INQUIRY TO BE HELD UNDER THE ELECTRICITY ACT

60. Before you can make a decision on the Application for s.36 consent you must determine whether it is appropriate to cause a PLI to be held. Advice regarding the matters you must consider before you may make a decision regarding the holding of a PLI is included in **ANNEX B – BACKGROUND INFORMATION AND SCOTTISH MINISTERS’ CONSIDERATIONS**. If, following your consideration of that advice, you are content that causing a PLI to be held is not appropriate in terms of the statutory provisions then, and only then, can you proceed to make a decision on the Application for s.36 consent.

DECISION ON THE APPLICATION FOR SECTION 36 CONSENT UNDER THE ELECTRICITY ACT

61. If having considered the Application, the ES, representations and the objections received, as outlined in **ANNEX B - BACKGROUND INFORMATION AND SCOTTISH MINISTERS CONSIDERATIONS**, together with other material considerations as outlined in **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**, you determine that it would not be appropriate for a PLI to be held, then it remains for you to grant or refuse consent under s.36 for the Development, having regard to the considerations in **ANNEX B - BACKGROUND INFORMATION AND SCOTTISH MINISTERS CONSIDERATIONS**.

ANNEX B – BACKGROUND INFORMATION AND SCOTTISH MINISTERS’ CONSIDERATIONS

APPLICATION FOR CONSENT 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

BACKGROUND INFORMATION

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”), (Figure at **ANNEX G – DEVELOPMENT LOCATION**).

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.

Project Description

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 meters;
 - d) a maximum rotor width of 50 meters;
 - e) a maximum swept area of 628 square meters;
 - f) a minimum seabed clearance of 3 meters;
 - g) a minimum surface clearance of 3.5 meters (measured from Lowest Astronomical Tide (“LAT”)); and
 - h) a maximum protrusion height of 21 meters (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 shall be constructed in accordance with that specified in the Application and by the conditions imposed by the Scottish Ministers.

Location of Development

The Development, shown at **ANNEX G – DEVELOPMENT LOCATION**, will be located south west of Islay approximately 4.5 km from Orsay. Inter-array and export cabling will come ashore on Islay to a landfall location at Kintra. The Company has identified a preferred onward route for the cable, not considered as part of this application, from Islay across the Sound of Jura to Carradale on the Kintyre peninsula.

The Islay site was selected as the preferred option for the Development as the tidal flow velocity (around 3.0 m/s (msp)), the bathymetry (between 25 m and 50 m) and seabed profile match the requirements of leading tidal flow devices. There is also no major shipping activity across the site, no significant fishing or recreational activities on the site, nor any areas designated for their conservation importance

(e.g. important fish spawning areas or important habitat sites for cetaceans within or in the immediate vicinity of the site).

The cable corridor route was selected as being the most direct and thus the most cost effective, passing through areas of limited ecological sensitivity and providing the minimum onshore route length, therefore reducing potential visibility issues.

IMPACTS OF THE DEVELOPMENT

Marine Mammal Impacts

MS-LOT notes that techniques used in the construction and the operation of most offshore tidal renewable energy installations have the potential to impact on marine mammals.

Scottish Natural Heritage (“SNH”), Marine Scotland Science (“MSS”) and Whale and Dolphin Conservation (“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 predating 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 reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

SNH will be consulted on the Vessel Management Plan (“VMP”) the submission of which is a condition of this consent, as will such other advisors and organisations as may be required at the discretion of the Scottish Ministers. You can be assured that the mitigation and monitoring have been included in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2** will address the concerns raised about impacts of the Development. A European Protected Species (“EPS”) licence will also be required prior to construction, since construction works may cause disturbance to cetaceans. Details on marine mammal impacts are discussed further in **ANNEX E – APPROPRIATE ASSESSMENT**.

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 the Royal Society for the Protection of Birds Scotland (“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 Special Protection Areas (“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 reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2**.

Fisheries Impacts

Concerns raised by the fishing industry were communicated through the Clyde Fishermen’s Association (“CFA”) and the Scottish Fishermen’s Federation (“SFF”).

The main issue was the maintenance of dialogue with, and information to, the local fishing industry. The Company has 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 CFA and SFF 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 CFA and SFF raised concerns over the Company's apparent assumption within the Application that any cable would not require much protection. Both the CFA and SFF 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 CFA and SFF 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 lighting and marking of the Development will be addressed through the consideration of the relevant Marine Licence application.

Issues regarding the lighting and marking of the Development, and 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 is reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Landscape and Visual Impacts

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 Argyll and Bute Council ("ABC") who will handle landscape and visual impacts associated with the terrestrial element of the proposal.

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

Conditions requiring the Company to submit a Development Specification and Layout Plan ("DSLPL") to Scottish Ministers for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Proposed Location of the Development

MS-LOT 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 has 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.

MS-LOT consider that, taking into account 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.

Impacts on Navigational Interests

It is noteworthy that the Development could have potential impacts on navigation in the area. Statutory consultees, Maritime and Coastguard Agency (“MCA”) and Northern Lighthouse Board (“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.

MS-LOT consider that, taking 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, Islay Community Council (“ICC”), Royal Yachting Association Scotland (“RYAS”) and Visit Scotland (“VS”). No objections were raised by Consultees in terms of impacts upon the tourism and recreation industry, although members of the public did object, as set out below. Surfers Against Sewage (“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.

MS-LOT consider that, taking into account the information provided by the Company, the responses of the consultative bodies, and the public representations set out below, 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.

Habitats Regulations Appraisal

Owing to the view of SNH that 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, MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, was required to carry out an AA. Having had regard to the representations made by SNH, it can be ascertained that the Development will not adversely affect the integrity of the sites, and having had regard to the reasons for which they were designated and the associated conservation objectives, MS-LOT concludes that the project 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.

A full explanation of the issues and justification for decisions regarding site integrity is provided in **ANNEX E – APPROPRIATE ASSESSMENT**. SNH agreed with all conclusions reached in the AA. They recommended that certain conditions be included on any consent, which would allow this Development to be implemented. These conditions have been included in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2**.

Summary

MS-LOT has undertaken a full and thorough consultation with relevant stakeholders and members of the public and are of the opinion that there are no considerations which would prevent consent being granted to the Development in its current location subject to the imposition of conditions (subject to the Minister’s approval). The Application has been considered fully and carefully, as have its accompanying documents and all relevant responses from consultees. Third party representations received have also been considered.

MS-LOT is satisfied that whilst the Development would have an impact on the environment, by taking into account the extent to which any environmental effects

will be reduced by measures the Company has agreed to take, or will be required to take, under the conditions attached to the s.36 consent and marine licence, the environmental issues can be appropriately addressed by way of mitigation and monitoring and that any impacts which remain are outweighed by the benefits the Development will bring.

CONSULTATION EXERCISE

Consultation on the Application and 2013 Environmental Statement (“ES”)

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 Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the EIA Regulations”), there is a requirement to consult SNH, The Scottish Environment Protection Agency (“SEPA”) and any other person likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.

In complying with the EIA 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.

Statutory Consultees

Argyll and Bute Council (“ABC”) initially objected to the Development due to the omission of essential elements of associated development from the EIA, and therefore the absence of a comprehensive review of the environmental effects of the project as a whole. However, on the 22nd of September 2015, the Council withdrew their objection subject to Marine Scotland considering the Development against the relevant Local Development Plan, Economic Development Plan and Renewable Energy Action Plan. They also recommended the imposition of a number of conditions on any s.36 consent as follows:

1. The Council is included within any further relevant consultation(s) in relation to the approval of a finalised project design for implementation (in respect of turbine type, colour finish, arrangement, number of turbines, and the effect of any operational/navigational lighting requirements upon landscape/seascape), and in respect of the Development and approval of an Environmental Management Programme tailored to the final project design;
2. Marine Scotland should provide sufficient clarity within the Report of Handling accompanying the determination on the interpretation of the EIA Directive;

3. Any s.36 consent be accompanied by an advisory note setting out the Council's expectation that underground cabling will be utilised 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.

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

Conditions requiring the Company to submit a CaP, Construction Method Statement ("CMS"), Construction Programme ("CoP"), Design Statement ("DS"), Environmental Management Plan ("EMP"), and Operation and Maintenance Programme ("OMP") for approval, and a further Advisory Note regarding undergrounding cables are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Scottish Natural Heritage ("SNH") did not object to the Development, however they noted that the Development could potentially impact on the harbour seal interests of the South East Skerries Special Area of Conservation ("SAC"). SNH were able to conclude that the proposal could be progressed with appropriate mitigation, and as a result of this, and other recommended mitigation measures required through conditions, SNH were content not to raise any objection.

Coastal processes

SNH noted that, due to the broad project envelope and lack of hydrodynamic modelling for the site, there is a degree of uncertainty over the anticipated changes to the hydrodynamics at, and adjacent to the site. However, due to the relative remoteness of the location from protected sites, combined with the relatively low importance for the Development site for key receptors at a population level, SNH concluded that there would not be any significant impacts to relevant species and habitats.

Furthermore, the scoured nature of the surrounding seabed reflects the considerable magnitude of tidal flows. Any unconsolidated material that is present is coarse and likely to be less susceptible to hydrodynamic changes. SNH note from the ES that modelling work on waves was undertaken to inform the final locations of the tidal turbines. SNH requested that the modelling work undertaken is referred to within the final design envelope decision and CMS.

SNH requested that details of the location and construction and installation methods for the inter-array cabling and any landfall pipelines be provided in an Environmental

Mitigation and Monitoring Plan (“EMMP”), and cross references with the CMS as appropriate.

Marine Mammals

SNH were broadly in agreement with the assessments of the impacts on marine mammals and basking sharks presented in the ES, agreeing with the predicted effects within the Development area being assessed as ‘low’, but noted that there a degree of uncertainty with these predictions remains. SNH advised that, because of the potential for disturbance, displacement and collision risk for cetaceans and basking sharks during the installation and maintenance of the tidal array, caused by increased vessel activity and associated noise, such as the drilling of sockets for pin piles, there is a requirement for the Company to apply for a licence to disturb both EPS and basking sharks.

SNH noted that, during the course of the survey work undertaken as part of the EIA, data for the month of September was missing in both years that the survey work was conducted. Despite this missing data, the information from the surveys carried out, along with additional, publicly available data from organisations such as the Hebridean Whale and Dolphin Trust, support the findings of the ES, that the site for the Development is not an important area for basking sharks.

When reviewing the potential impacts from collisions with construction and maintenance vessels, SNH did not agree with the medium sensitivity assigned to the potential lethal consequences of collisions with vessel propellers. However, SNH were content to accept that the low numbers of animals thought to occur at this site reduces the risk due to their low numbers. The commitment by the Company to reassess this issue as part of the CMS and EMMP was welcomed by SNH.

On reviewing the collision risk, SNH commented that they were satisfied with the modelling methodology performed by the Company’s consultants, SAMS Research Services Ltd (“SRSL”), which looked at potential for collision risk for harbour seals, grey seals and harbour porpoise. SNH were content that basking sharks could not reasonably be included in any assessment due to the low numbers recorded at the site during baseline monitoring. Despite the lack of information on basking sharks to allow adequate collision risk modelling to be undertaken, SNH welcomed the commitment by the Company to develop a monitoring programme that would investigate the actual impacts on basking sharks and develop appropriate mitigation as required.

SNH observed that whilst encounter rates were calculated for harbour porpoise, harbour seal and grey seal for all density estimates, only information for U-dives (seals) and acoustic survey (porpoise) are taken through to the collision risk estimate in the ES. Encounter rates for both U-dives and acoustic densities were substantially lower than those calculated at other vertical distributions and density sources. Therefore, the worst case scenario has not been carried through to the collision risk estimates.

SNH noted an error in the ES in which SRSL state that “*consultation responses received thus far from SNH and Marine Scotland confirm that no LSE is indicated by*

the HRA and therefore appropriate assessment is not required for marine mammals.” SNH confirmed that this is not accurate and that they had previously advised that there was potential for likely significant effect for harbour seals for the South East Islay Skerries SAC.

Since designation in September 2014, it is now an offence to intentionally or recklessly harass seals at significant haul out sites around Scotland under Part 6 of the Marine (Scotland) Act 2010. SNH considered that there was a low risk of disturbance to seals in relation to the proposed Development due to the distance of the Development and cable route to any nearby haul out sites.

SNH welcomed the commitment to develop an EMMP and recommended that, given the uncertainty relating to collision risk and the novelty of marine renewable energy developments, a monitoring programme forming part of the EMP be designed to assess any potential collisions.

Fish and Shellfish

SNH were in broad agreement with the assessment undertaken of the impacts on fish and shellfish contained within the ES. As the Development is situated in an area of open sea, SNH considered that the area where the proposal is sited to be of relatively lesser functional importance as a nursery ground. SNH were also of the belief that the proposed tidal array would not represent a barrier to movement.

Impacts including, but not limited to, noise and vibration from construction and decommissioning activities, drilling and rock placement have been considered for potential effects on fish and shellfish species. The site for the Development has a moderately noisy background and as the proposed construction methods do not include pile driving, but instead use of pin piles, any impacts on fish and shellfish are unlikely to be important at a population level.

The ES states that fish and shellfish will be able to move away from the site during construction and would be able to re-colonise once construction or decommissioning work finishes. SNH commented that whilst this was accurate for fish and most crustaceans, some other shellfish species will not be able to move quickly enough to evade noise and vibration impacts. However, these impacts are likely to be of a temporary nature and of a spatial scale unlikely to be important at the population level.

SNH commented that detail on the noise impacts on diadromous fish such as Atlantic salmon and sea trout, was lacking within the ES. SNH noted that no attempt had been made to consider the hearing sensitivity of fish species, where this information is known, in relation to anticipated noise levels or to evaluate this in relation to possible migratory routes. Fish returning to the area of the Development after construction will depend on the noise sensitivity of the species and their ability to habituate to operational noise. However, SNH were of the belief that, based on the information available within the ES, together with the location of the Development and Scottish SACs for diadromous fish species, it could be expected that there would not be a significant impact during construction or operation of the tidal array.

SNH were of the opinion that operational noise would not be expected to substantially exceed background levels such that fish and shellfish are unlikely to exhibit important behavioural responses to operational noise.

Whilst the physical presence of the devices and associated infrastructure will lead to a loss of habitat, the area is not considered to be an important spawning area or nursery ground for species with strong benthic associations. Therefore SNH were content to agree with the ES conclusion of negligible for this specific impact. Along the route of the export cable there exists potential for suitable habitat for sandeels, however the laying of the export cable would only impact upon a relatively small area and is unlikely to have important implications for sandeels at a population level.

SNH advised that fish species most at risk from anthropogenic sources of electromagnetic fields (“EMF”) are elasmobranchs such as sharks, skates and rays; and migratory fish species such as eels, trout and salmon. The impacts of EMF on fish species is considered within the ES, however this does not include an assessment of both the B (magnetic) field and iE (induced electric) fields, which was requested by SNH in previous advice to the Company. SNH commented that this makes it difficult to assess the risk of EMF on fish species.

The ES proposes mitigation measures to reduce the impacts from EMF. These include the use of heavy armoured cable and device insulation. However, SNH noted that this will only shield against the E field and not the B or iE fields. The proposal by the Company to bury or cover inter-array and export cables was welcomed by SNH. However, SNH note that the depth of burial or height of rock bags, two potential approaches to mitigating EMF, have not been assessed within the ES. If the cables were to be buried, SNH recommend that a minimum target depth of one meter is achieved but welcomed deeper burial where possible, of up to 3 meters in water depths of less than 20 meters. SNH require to be consulted on the Cable Plan.

Fish may be at risk of collision with TECs although there is little information at present to quantify this risk. For fully marine fish, SNH did not consider that any likely collision impacts would be of importance at the population level. For diadromous fish the ES presents minimal assessment of the collision risk, and SNH were disappointed that more in depth analysis was not presented. The ES considers that diadromous fish are not present in significant numbers at the site and therefore the risk of collision is considered to be negligible.

Benthic Ecology

Survey work was conducted for the site of the Development including the area for TECs, inter-array cabling and export cabling to shore at Islay. Surveys were also undertaken for the cable route from Islay to the mainland, however this is not the focus of this application. SNH note that this work will prove useful when an application is submitted for that part of the cable route.

SNH were of the belief that the local impacts were played down in the ES. The Development is likely to remove a large portion of the permanently attached sessile species associated with tidal swept regions. However, SNH considered that these fauna are likely to recolonize the introduced ‘hard’ substrate and accepted that the

scale of any impacts would be small compared to the national level. SNH recommended that the CMS seeks to minimise the area covered by the inter-array cabling as far as practicable and that post construction monitoring should detail the degree of the habitat lost and the magnitude of re-colonisation to validate assumptions made.

SNH were content that the use of United Kingdom vessels may lessen the potential for invasive non-native species, however they advised that the Company should be aware of the previous locations of these vessels to minimise the potential for the introduction of marine non-native species. This should form part of the EMMP.

SNH commented that they were in broad agreement with the conclusions reached in the ES and welcomed the commitment to undertake monitoring at the site.

Underwater Noise

SNH were in general agreement with the assessment of impacts from underwater noise, concurring that the levels of drilling are likely to be much lower than from other installation methodologies such as piling.

Of the various receptors considered, it is thought that basking sharks are likely to be most sensitive to sudden onsets of high levels of sound within their hearing range. SNH advised that any basking sharks using the area will be likely to detect vessel, turbine and drilling noises.

SNH recommended that post construction monitoring is undertaken to validate predictions made in the ES.

Ornithology

SNH commented that they were broadly in agreement with the assessments made within the ES with respect to ornithology. The ES indicated that there were low numbers of birds present in the area of the proposed Development. SNH considered that the risk to any populations of seabirds of national or international importance is low.

As the footprint of the site is relatively small compared to the sea area, SNH were content that there would be no significant loss of habitat. SNH also considered that, although surface piercing elements of the TECs and lighting design have not been confirmed, it is unlikely that there would be any significant impacts from barrier or displacement effects and collision impacts even with the most obtrusive designs.

Likely Significant Effect (“LSE”) was identified for breeding Common Guillemot and Atlantic Puffin which requires Marine Scotland to undertake an Appropriate Assessment (“AA”). SNH noted that their own appraisal allowed them to conclude that there would not be an Adverse Effect On Site Integrity for the qualifying interests at European sites in Scotland.

SNH were content with the in-combination assessment undertaken by the Company, and agreed with the proposals that were included as part of this exercise. SNH agreed with the conclusion of no in-combination effects.

SNH recommended that a pollution response plan should be included as part of an EMMP and that robust post installation monitoring should take place. Some aspects of proposed monitoring are discussed within the ES. However, SNH did not agree with the justification for the level of the monitoring proposed to be undertaken by the Company. Within the Non-technical Summary (“NTS”), SNH note that *“the initial array will provide information on the interactions between the array and the environment, increasing the knowledge for the remaining phases of the Project and the tidal stream industry as a whole”* and therefore SNH advised that areas of primary interest for monitoring should be taken forward.

Seascape, Landscape and Visual Impact Assessment (“SLVIA”)

SNH commented that the SLVIA was thorough and offered an objective assessment of the likely impacts, including cumulative, from the Development. The visual assessment covers a series of seven viewpoints agreed with SNH and ABC, and correctly identifies the main effects on the baseline coastal, seascape and landscape character, settlements, major routes and visual amenity of the Rinns of Islay.

The Development will change the existing seascape off the south west Rinns of Islay with the option of constructing surface piercing structures up to a height of 21 meters which will lead to a diminishment of the prevailing sense of remoteness, and result in a spread of human influence from onshore to sea. Any lighting on the structures will give rise to marked night time effects, as the current unlit night time scene will be punctuated by the tower lights.

Impacts from the Development will be most marked from Rubha na Faing to Rinns Point and the south shores, and higher points of Orsay to Eilean Mhic Coinnich. Impacts will be less marked from the south west facing moorland slopes and west coast of the Rinns as the Development will lie at a greater distance and at an oblique angle.

When assessing impacts on settlements, the SLVIA concludes, fairly in the opinion of SNH, that the Development will be clearly visible from settlements from their outer edges. Overall, the visualisations underplay the likely impacts from the Development owing to the modelling effect of 21 meter high towers at a distance of 5 km and greater. This is at the limits of a satisfactory photographic range that can easily be printed and discerned by the eye. In general, SNH agree with the assessment of visual effects which present an objective assessment of changes to seascape / landscape character and visual amenity, and also when summarising the predicted cumulative effects with the Islay offshore wind farm. SNH agree with the conclusion that the Development will contribute no significant cumulative effects. SNH commented that any significant cumulative visual effects would lie with the Islay Offshore Windfarm which would cause greater seascape, landscape and visual change, however this project is now not going ahead.

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

Conditions requiring the Company to submit a CaP, CMS, CoP, DS, DSLP, EMP, OMP, PEMP, Piling Strategy (“PS”) and VMP for approval; and appoint an Environmental Clerk of Works (“ECOW”) are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Scottish Environment Protection Agency (“SEPA”) raised no objection to the Development, but requested the inclusion of a condition to minimise the risks of introducing marine non-native species into adjacent water bodies, with measures detailed within a Construction Environmental Management Plan (“CEMP”), or similar, which should be agreed with other relevant parties prior to the commencement of Development and implemented in full.

A condition requiring the Company to submit an EMP for approval is reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Non Statutory Consultees

The **Association of Salmon Fishery Boards (“ASFB”)** objected to the Development until adequate monitoring and mitigation strategies are in place. The ASFB noted that their concerns were similar to other offshore energy projects in Scotland and that they had significant concerns relating to the proposal particularly with regard to the uncertainty surrounding the potential negative effects on Atlantic salmon.

The ASFB advised that as the environmental effects of offshore technologies are uncertain, they would expect that developers should be required to remedy any negative consequences of such developments on the heritable assets and the value of those assets, including employment within the fishery, of all fishery properties.

The ASFB also raised concerns that the Development had the potential to have an adverse effect on salmon and sea trout fisheries, and the River Bladnoch SAC. The ASFB are of the opinion that the proposal does not comply with the requirements of the Habitats Directive or Scotland’s Marine Nature Conservation Strategy, resulting in their objection.

ASFB stated the importance of developing a finalised and agreed research plan, with a clear timescale for delivery, as soon as possible and also for appropriate resource to be made available to achieve this work.

Finally ASFB wished to see that any conditions included as part of any consent are flexible enough to allow additional mitigation measures to be adopted should any negative interactions arise which were not set out in the ES.

Conditions requiring the Company to appoint a FLO; establish a Fisheries Working Group (“IFWG”); participate in the Scottish Offshore Renewables Research Framework (“SpORRAn”), Scottish Strategic Marine Environmental Group (“SSMEG”) and any relevant Regional Advisory Group (“RAG”); and to submit a CaP, FMMS and PEMP all for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

BT Network Radio Protection, was consulted and submitted a “nil return” response.

The Clyde Fishermen’s Association (“CFA”) initially objected to the Development citing failures to adhere to relevant policies, errors within the ES, uncertainty about the location of the Development site, displacement effects on fishing vessels in the area, loss of highly productive fishing grounds and resultant loss of earnings.

The CFA felt that assessment of displacement impacts had not been adequately assessed, and as these would impact the local community should have been considered as ‘major’ within the ES. Cumulative and in combination effects of displacement also required consideration.

The CFA did not feel that the assessment of socio economic impacts on the local community arising from displacement had been properly assessed nor had the possible cumulative socio economic effect.

The CFA expressed a strong preference for any cabling to be buried in line with established industry practice for safety reasons, and pointed to previous incidents where fishing vessels had been lost due to previously fouling cables. Any proposal not to properly bury the cables was considered by the CFA to be completely unacceptable.

The CFA queried the necessity to designate the Development area a ‘No Fishing Area’ as this would also likely exacerbate displacement effects.

The CFA also expressed concern regarding the potential for marine renewable devices being abandoned on the sea bed once they cease production. On reviewing the “Decommissioning Statement” the CFA were concerned at an apparent lack of guarantees that any equipment will definitely be removed and called for the Company to set aside funds for the removal of all equipment at decommissioning. The CFA were keen to avoid a scenario whereby a developer, declaring bankruptcy, could avoid the implications of decommissioning their development.

Discussions during the decision making process between the Company, CFA, and Marine Scotland colleagues attempted to resolve outstanding concerns. The establishment of a Commercial Fisheries Working Group (“CFWG”) was proposed to serve as a method of ongoing engagement with the fishing industry in order to work collaboratively to identify and develop options for mitigation. This was accepted as a useful form by which to identify issues and develop mitigation measures and was agreed to be progressed. However the CFA, in later discussions, requested that the CFWG conclude its work prior to any determination of the Application. Further

discussions took place with the CFA and it was agreed that the CFWG would be an ongoing commitment throughout the lifetime of the Development, as this would safeguard against any unforeseen events that may arise during the various stages of the proposal.

Additional conditions were discussed, and included as set out below, and the CFA were content with the proposed conditions as long as a protocol for the CFWG is adhered to. However, they have not removed their objection to the Development.

Conditions requiring the Company to appoint a FLO; establish an IFWG; participate in SpORRAn, SSMEG and any relevant RAG; and to submit a CP, FMMS and PEMP for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The **Defence Infrastructure Organisation (“DIO”)** raised no objection to the Development in their response dated 25 September 2014. However, it was noted that the proposal had the potential to impact upon Ministry of Defence (“MoD”) naval interests in the area. The MoD requested that appropriate conditions be attached to any consent, covering noise monitoring of the turbines to ensure that they did not exceed the maximum thresholds identified in the ES and which are deemed by the Ministry of Defence (“MoD”) to interfere with MoD operations in the area.

However, the Company was concerned that such a condition would make the project unviable. Discussions between the MoD, the Company and MS-LOT attempted to resolve the issue. The Developer agreed to rerun models at worst case conditions to generate predicted overall noise emissions from the turbines. MoD agreed to define specific noise parameters for the condition. These actions were completed but resulted in detailed and lengthy discussions and revisions to the draft condition.

The DIO submitted a final condition on 2nd February 2017 and a condition setting out the requirements on the Company in relation to underwater noise is reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.** Further conditions requiring the Company to submit a CoP, CMS, DS and DSLP and for approval are also reflected in Annex D.

Historic Environment Scotland (“HES”) previously Historic Scotland, did not object to the Development and were content with the principle of the development. They concluded that there would be no adverse impacts on marine or terrestrial assets within their statutory remit.

HES indicated that they were content with the predicted significance of impacts on marine assets identified in the ES, and agreed with the proposed mitigation measures outlined which includes the use of temporary exclusion zones, the preparation and implementation of a Written Scheme of Investigation (“WSI”) and Protocol for Archaeological Discoveries. HES advised that the WSI should include details of proposed micro siting, buffer and exclusions zones.

In terms of terrestrial assets the ES notes that surface piercing devices have the potential to impact on five scheduled monuments and one listed building which are within the remit of HES.

HES did not agree with the ES conclusion that the Development would have ‘no effect’ on the setting of four scheduled monuments owing to the fact that, should surface piercing technology be utilised, these will be visible from the scheduled monuments. However, HES were content that the potential effects on the setting of these four assets, and others, were not of a level of significance to warrant an objection.

A condition requiring the Company to submit a Marine Archaeology Reporting Protocol (“MARP”) for approval is reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The **Islay Community Council (“ICC”)** supported the Development in principle. However they stated that they could not fully commit to this position until the Company confirms whether or not surface piercing TECs will be used as part of the Development.

Conditions requiring the Company to submit a DS and DSLP for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The **Maritime and Coastguard Agency (“MCA”)** did not object to the Development, however they raised a number of concerns.

MCA stated that they had ‘*significant difficulty in providing any useful feed back to the various options that have been tabled*’. Whilst the use of the Rochdale Envelope approach was accepted, having a wide range of options and the consequent numerous assumptions made was problematic. The MCA further found that provision of any intelligent review challenging against the information provided for each solution. Therefore the MCA suggested that a generic approach to the proposal should be adopted without reference to specific system types, allowing some clear parameters for the array to be considered and agreed.

Within the ES, the MCA noted numerous and varied assumptions regarding shipping and navigation, such as charting requirements making assumptions as to what the UK Hydrographic Office will provide, and within the NTS it is suggested that chart notes could be used to inform mariners of the risk. The MCA note that United Kingdom Hydrographic Office (“UKHO”) policy is to avoid where possible the use of chart notes and therefore the statement cannot be adopted as fact.

The MCA did not feel that the establishment of a 'No Fishing Area' (NTS p23) was a supported assumption which would have a direct bearing on the mitigation and tolerability risk, and therefore suggested a potential error in the overall findings of the NRA.

The MCA noted that cumulative impacts have not been reviewed in the Application, citing a lack of detailed information on other developments to complete the assessment. The MCA advised that in such cases it would be appropriate to use assumptions on traffic used within the NRA to consider an outline cumulative impact

study. The current approach employed by the Company is felt to be lacking detail and requires further work.

The MCA cited the Application, making reference to vessels entering the array area due to 'human error', which indicates an assumption on the part of the Company that traffic will be excluded from the area. The MCA stated that it was concerned that the broad assumptions made potentially make the overall assessment inaccurate.

The MCA felt that the traffic survey undertaken as part of the NRA provided limited feedback on the impacts of the development and offered a crude assessment of traffic impacted by the proposal. The survey did not address the extent to which navigation would be feasible and, when Under Keel Clearance is considered, the MCA noted that access to the array area would be challenging. This would require to be assessed with mitigation options agreed.

Commenting on decommissioning options, the MCA advised that the decommissioning plan which proposed reducing the structure close to the sea bed should be revised in accordance with guidance from Department of Energy and Climate Change, now the Department of Business, Energy and Industrial Strategy ("BEIS") to reduce the structure to 1 meter below the seabed.

In conclusion, the MCA felt that they were unable to consider specific options within this ES without an individual case with detailed supporting evidence. The MCA advised that shipping and navigation are reviewed against a specific proposal once it is developed, and that this should follow a generic assessment which agrees and removes assumptions from the NRA. The ES needs, in the first instance, to address the concept of an array at this location. Once that consideration has been agreed, the feasibility of a specific option can then be considered against known parameters, allowing accurate risk analysis to be tabled. If that approach was to be adopted the MCA felt that they could accept the development in concept. Thereafter planning details can be addressed through a device specific NRA that is not based on assumptions.

The Company preference would be for MCA to accept the wide project envelope and if granted, for a condition to be included to the consent stating that the final design definition of the Development would require approval from the MCA prior to construction, to confirm that the final design remained within the design envelope. MCA confirmed that they would agree to this approach. However, due to the wide Rochdale envelope for the project, the MCA still maintain concerns regarding navigation and maritime safety and have requested that shipping and navigation are reviewed against a specific proposal once it is developed.

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

Conditions requiring the Company to submit a CMS, CoP, CP, DS, DSLP, Navigational Safety Plan ("NSP"), OMP and VMP for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Northern Lighthouse Board (“NLB”) did not object to the Development, however they were unable to offer any advice on marking and lighting requirements due to the “degree of uncertainty relating to installation techniques, foundation types, turbine size, exact location and specific technology design” as described within the NTS.

With the above in mind, the NLB stated that if a determination was made which resulted in a consent being given, they recommended that it should contain a condition that no equipment deployment is permitted until a suitable marking scheme and contingency arrangements have been agreed with the NLB.

NLB acknowledged that the primary means to mitigate interactions between shipping and any deployed TECs and other infrastructure would be by charting (NRA section 10). The NLB noted that the NRA identifies that the largest scale chart of the area is 1:75000. The NLB advised that this is inadequate to provide detailed information regarding tidal energy devices and that the Company is required to contact the UKHO to discuss what measures can be taken to upgrade the charting of this area to a more appropriate scale.

Depending on the device types selected for deployment at the site, the NLB commented that it may be necessary for the Company to establish navigation buoys to mark the site. Due to the inherently strong tidal conditions in this area, the NLB requested that the Company must be able to demonstrate that suitable buoyage, capable of remaining on station, has been procured prior to any device deployment.

The NLB also requested that further detail to that within the NRA be provided to them, showing the cumulative impact on shipping of this site in conjunction with other renewable energy developments planned within the local area.

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

Conditions requiring the Company to submit a CMS, CoP, DSLP, NSP, and OMP for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) raised no objection to the proposal, but recommended that a comprehensive programme of monitoring, and an associated working group be established to advise on mitigation measures if impacts from the Development are found to be greater than those assessed within the ES.

RSPB Scotland commented, regarding the wide Rochdale envelope, that a more refined proposal with fewer options would enable a more accurate environmental assessment and thus support the decision making process. RSPB Scotland recommended that the final design parameters are agreed with the relevant authorities prior to any future construction to enable specific issues to be adequately appraised and addressed.

RSPB Scotland noted that the number of foraging birds recorded at the site and reported in the ES was lower than expected. Mindful of this, RSPB Scotland stated that there would be merit in undertaking continued monitoring at the site to confirm the low bird densities and also to identify any unforeseen impacts and, where required, implement appropriate mitigation measures.

The ornithology section of the ES stated that gannets should not be considered at risk. However RSPB Scotland raised concern, since any turbine rotors lying some 3.5 – 7 m below the sea surface creates potential for collision with blades. RSPB Scotland stated that this needs to be clarified prior to any consent, however they acknowledged that the presence of gannet was relatively low.

With regard to the SPA corridor assessment, RSPB Scotland advised that during August, adults and chicks will be sensitive to disturbance and that this should be considered as important in relation to any mitigation to avoid impacts from installation, commissioning and decommissioning phases.

RSPB Scotland queried the bird distribution maps which focused on birds on the sea during the winter period, in particular guillemot, and noted two different distribution maps showed substantially different distributions.

RSPB Scotland agreed with SNH in terms of the need for MS-LOT to undertake an AA for razorbill, guillemot and puffin due to potential impacts at six different SPAs. RSPB Scotland commented that the sea between Rathlin, Islay and the mainland acts as a prime nursery area for razorbill and guillemot chicks from the surrounding area, and said there was potential for these birds to enter the array area in response to changes in prey distribution. RSPB Scotland stated that the closest breeding site for auks in relation to this site are the cliffs of Islay and they recommended that monitoring of razorbill numbers should be undertaken at this location to establish if any effects in breeding numbers are discernible.

RSPB Scotland did not feel that the assessment of potential impacts arising from night time lighting of devices, as set out within the ES, were adequate. Should the Company decide to use the surface piercing devices, RSPB Scotland were of the opinion that the lighting which would be employed to mark these devices would likely increase their attraction to birds and increase the risk of disorientation, and would not reduce the risk of collisions. RSPB Scotland recommended that the impacts of lighting are fully reappraised, and mitigation measures put in place to minimise any impact such as the inclusion of suitable lighting options to minimise the environmental effects of lights. RSPB Scotland suggested the recommendations put forward in a paper by Poot *et al.* 2008 as an example of appropriate mitigation.

RSPB Scotland advised that there is potential for the Development to have adverse impacts on mobile marine species such as Basking Sharks and other marine mammals and that appropriate monitoring is undertaken to better understand the interactions between tidal developments and mobile marine species.

Concerns were raised by RSPB Scotland over one of the route options for connection to the grid. Although not the preferred option, RSPB Scotland commented that the overland route that crosses both Islay and Jura would likely

present major environmental impacts. Although it may follow existing power lines, the potential for increased collision of geese and raptors is high, in addition to the potential loss or disturbance to habitats and wildlife.

RSPB Scotland recommended the inclusion of various monitoring programmes and mitigation measures including a survey of avoidance behaviour of mobile marine species from tidal devices, including birds, basking sharks and marine mammals and monitoring of the nearest auk breeding cliffs on Islay.

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

Conditions requiring the Company to submit a DSLP, EMP and PEMP for approval, are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The **Royal Yachting Association Scotland (“RYAS”)** broadly agreed with the conclusions in the ES relating to recreational sailing. However, whilst they recognised that few recreational craft transited the area proposed for turbines, one vessel was recorded passing through the site which is quite close to cruising routes used by vessels from Northern Ireland passing the West side of Islay.

RYAS noted that the NRA referred to an older version of the UK Coastal Atlas of Recreational Boating, citing the 2005 version rather than the 2008 version, which did not include two further recreational routes through this area. The possibility of a vessel entering the site will remain due to adverse weather or failure of navigational equipment means. RYAS stated that the Company cannot assume that no recreational vessels will enter the area, although that probability is low. With the potential for surface piercing structures to be used as part of the Development, the RYAS recommended conditions to be included on any consent which require that the scheme is reported to the Clyde Cruising Club for inclusion in their sailing directions, and also that a plan to prevent vessels from entering the site and to rescue them if they do (Emergency Response Cooperation Plan (ERCoP)) be developed.

A condition requiring the Company to submit a NSP, which includes an ERCoP, for approval is reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

The Scottish Fishermen’s Federation (“SFF”) stated that they were ‘strongly opposed’ to the Development. Whilst not explicitly stating that they objected to the proposal, is inferred to mean this.

The SFF expressed frustration at the apparent unwillingness from the Company to engage in effective dialogue over the proposed Development. The SFF highlighted an apparent shift in the location of the proposal resulting in the Development being located on productive fishing grounds, which previously had been avoided based on original maps and charts shown to the SFF.

The SFF queried statements within the ES which indicated that no fishing takes place at the site. The SFF disputed this, pointing to ‘very productive’ creel grounds in the area, and were critical of an apparent lack of communication from the Company.

Whilst the SFF was sympathetic to the desire to develop renewable energy, they felt it is clear that the proposed Development is a starting point for a significantly larger proposal for the area, and that this would give fishermen cause for concern, specifically if processes are not followed for the initial Development, which would then lead to any future development at the site becoming a forgone conclusion.

The SFF expressed concern at the alteration of the site boundaries and the selective interaction with fishermen, which may lead to the small fleet which fishes well in the area not being considered appropriately. This omission, the SFF stated, is a shortcoming which leaves the ES providing poor quality evidence which will lead to a poor understanding of whether any displacement impacts will occur. Given that there is a repeated desire throughout the Application to close the site to fishing activity, the SFF felt it was imperative that the boundaries are drawn to produce the least impact on fishing.

On reviewing the proposed cable route, the SFF commented that this will also lead to problems impacting on the creel and scallop vessels which operate along the route. The SFF did not agree with the apparent assumption, within the Application, that any cable route would not require much protection. The SFF recommended that the cable route be more carefully researched and consulted on, and suitable protection measures put in place to mitigate any effects. The SFF felt the following points required to be addressed with respect to the cable route: design of the route; cable burial; covering and protection; effects of EMF; displacement; and compensation for temporary shifting of gear.

The SFF would anticipate a full decommissioning plan, including specifics on finance, to be in place before any construction work commences.

Discussions have been conducted between the SFF, CFA, the Company and Marine Scotland colleagues. As above, (see CFA comments) the establishment of a CFWG was agreed as a useful forum to identify issues and develop mitigation measures.

However, the SFF maintain their concerns regarding the Development. The SFF wished to ensure that the site and export cable are planned, designed and installed in such a way so as to minimise their impact on fishing activity. The SFF, whilst content with the CFWG, requested that it be the forum by which mitigation measures would be agreed and implemented. The SFF stated that, if the CFWG was set up and gave due cognizance of, and resolution to, problems raised by the fishing industry to the satisfaction of the stakeholders, the SFF may, at that time, be content with the proposal. The SFF requested inclusion of appropriate conditions on any consent to achieve this, and whilst content with the conditions proposed, have not withdrawn their objection.

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 FLO; establish an IFWG; participate in SpORRAn, SSMEG and any relevant RAG; and to submit a CP, FMMS and PEMP for approval are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Surfers Against Sewage (“SAS”) did not object to the Development, however they noted that the proposal had the potential to impact on hydrodynamic regime, sediments and sedimentary processes and geological and geomorphological formations.

SAS noted that the area of Islay potentially affected by the Development has some high quality surfing and recreational beaches. SAS sought assurances that any impacts on the above processes have been adequately modelled, and will have minimal impacts on the westerly beaches in the area such as lagan and Macchir Bay. If any significant impacts have been identified then SAS requested that appropriate mitigation should be put in place to offset any impacts.

MSS was asked for advice on the Company’s response to SAS comments, and confirmed that the issues had be largely addressed.

Any remaining concerns would be addressed through the requirement on the Company to submit for approval plans detailing the environmental impact of the Development including, but not limited to the EMP.

Transport Scotland (“TS”) responded to conclude that there are no significant traffic or environmental impacts associated with the proposed development elements.

Visit Scotland (“VS”) noted the importance of Scottish tourism to the economy and also the importance of Scotland’s landscape in attracting visitors to the country. VS made reference to the Scottish Government’s 2007 research and report on the impact of renewable developments, both on and offshore, on tourism. VS highlighted that the report notes that planning consideration would be greatly assisted if the Company produced a Tourist Impact Statement as part of the Environmental Impact Analysis. VS strongly recommended that any potential detrimental impact of the proposed development on tourism - whether visually, environmentally or economically - be identified and considered in full. VS also urged the consideration of specific concerns for example the number of tourists travelling past the Development, views from accommodation in the area, views of tourist organisations.

Whale and Dolphin Conservation (“WDC”) did not object to the development. However, they expressed serious concerns about levels of uncertainty and the possible negative impacts these tidal developments, both individually and cumulatively, may have on cetaceans (whales, dolphins and porpoises) and seals in Scottish waters. Impacts such as collision risk, disturbance of EPS and injuries to seals from vessels require to be mitigated and monitored during operation and maintenance activities.

WDC noted that, to fix the TEC to the seabed, there would be a requirement for pile driving to be conducted. WDC expressed a preference for alternatives to pile driving but, should this be not be possible, WDC requested that an effective underwater noise mitigation plan be developed within an EMP to verify the predictions made within the ES with respect to noise impacts on marine mammals and minimise any potential impacts.

Whilst WDC accepted that, based on studies of a Marine Current Turbines (“MCT”) TEC at Strangford Lough showed no significant disturbance to seals and porpoises, they guarded against extrapolating this information and applying it to the Development without some caveats, since the Strangford Lough project was a single device project which employed a shutdown mechanism when marine mammals were in the vicinity. Whilst the shutdown mechanism had been lifted, the results, at the time of consultation on the Development, required monitoring, the results of which should influence the Development.

WDC did not believe that the cumulative impacts of other potential renewable sites on marine mammals have been adequately considered and recommended that it would be helpful for the Applicant to produce a timetable for the construction of other sites in relation to the Development, which would be used to inform any cumulative impact assessment.

WDC raised concerns regarding the predicted number of collisions with the TECs for harbour seals, grey seals and harbour porpoises. Whilst WDC acknowledged that the predictions made in the assessment were for a minor impact on these species, they were concerned at the potential impact on EPS. WDC recommended that guidance is produced by Marine Scotland to assist developers in meeting their environmental responsibilities including managing the disturbance of EPS.

WDC welcomed the intention to produce an EMP and recommended that marine mammal observers (“MMOs”) should be utilised and be from a Joint Nature Conservation Committee (“JNCC”) accredited source and that there should be sufficient numbers of MMOs to work continuously without tiring. WDC also recommended that Passive Acoustic Monitoring should be conducted in parallel to visual observations undertaken by the MMOs.

WDC raised concerns regarding the potential for vessels involved in the Development utilising ducted propellers due to impacts on seals. WDC requested that ducted propellers should not be permitted unless they are guarded or potential impacts can be effectively mitigated in some other way specifically in relation to impacts on harbour seals. Furthermore, if ducted propellers are to be used the WDC recommended the development of a Seal Corkscrew Injury Monitoring Scheme.

WDC recommended the inclusion of a number of conditions on any consent granted. These included, but were not limited to, visual and acoustic monitoring ongoing throughout construction, alternative methods to pile driving be investigated and noise reducing barriers implemented if pile driving is used and the development of an EMP to ensure monitoring of the grey and harbour seal populations.

With regard to WDC concerns associated with the use of vessels with ducted propellers, the latest information from SNH suggests that it is very likely that the use of vessels with ducted propellers may not pose any increased risk to seals over and above normal shipping activities. SNH have therefore suggested that 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.

Conditions requiring the Company to submit a CMS, CoP, EMP, PEMP, and PS for approval; and to employ a Marine Mammal Observer are reflected in the draft decision letter and consent attached at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS, Annex 2.**

Third Party Advice

Marine Scotland Science (“MSS”) also provided advice to MS-LOT, as detailed below:

Physical Environment

MSS commented that the general metocean description is concise and adequate for the ES. The large amount of acoustic Doppler current profiler and acoustic waves and currents data collected should be adequate to fully calibrate and validate the numerical modelling undertaken for the ES. MSS advised that the Company should collect similar data as part of future monitoring work, as it will help to improve the Company’s numerical models of the area, and give a better understanding of the resource, and how it may change with the introduction of tidal turbines.

MSS were content with the reasoning behind not modelling the effect of the tidal energy extraction on waves. However, MSS highlighted that the ES says that, similarly, no modelling study has been conducted to help define the effect of the tidal turbines on the tide. They commented that the ES appears to rely on work conducted for the Skerries Tidal Stream Array ES by HR Wallingford. MSS were unable to source this ES, but said that even if it does provide appropriate evidence for this ES, i.e. it is for a project of a similar size, situation, flow characteristics etc., more details should be given in this ES. MSS were confused as to whether the tidal turbines have been represented in the Delft3D tidal model, i.e. the ES reports that the flow modelling provides an approximation of the drag effects of the turbines and foundations and yet no results are provided. They thought that these results should be presented to help justify the claims that there will be little changes to the flow fields in the far-field.

MSS commented that using unreferenced past work to make informed decisions is not acceptable, and that more reasoning and justification will be required. MSS suggested that this will require reference to measured physical processes, and also require simplistic sediment modelling based on the modelled flow fields.

Marine Mammals

Construction

MSS agreed that there is unlikely to be an impact from construction noise on marine mammals. MSS would, however, advise that an MMO should be present on the vessel during construction and that JNCC guidelines on piling are adhered to. They recommended that the Company produces a vessel movement plan, which should take into consideration the SNCB guidance on corkscrew injuries from ducted propellers. However, 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.

Collision risk

Given the uncertainty around the density estimates from the Company's own surveys, and the fact that neither the visual, nor acoustic estimates of density are corrected for detection or availability bias, MSS has used published density estimates in their consideration. For harbour porpoises, this is the SCANS-II block N density, and for seal species this is the values from the SMRU seal maps, given in the ES. MSS has also considered the worst case in terms of vertical distribution for each species with both types of turbine.

MSS calculated the collision risk from the tidal arrays and has carried out these calculations by multiplying up by the number of devices (30 devices for Tidal Generation Limited, 15 devices with 2 rotors each for MCT) from the values given in appendix 7.3. In calculating collision risk, MSS has assumed a 98% avoidance rate for all species. They highlighted that this avoidance rate was used previously in the advice given to Meygen on their application. MSS has used the West Scotland management unit for harbour porpoises, which contains 21,462 animals (2013 data). The worst case density estimates, from SCANS-II, lead to a prediction of less than 0.1% of the management unit colliding with the devices per annum, for both types of device. MSS, therefore, do not consider this to be significant in terms of the management unit.

MSS stated that the Permitted Biological Removal ("PBR") for harbour seals in the West Scotland management area is currently 446 (2013 data). Using the worst case density estimates (SMRU seal usage maps) and the worst case dive profile (random), the maximum percentage of the PBR from either type of device array is 4.63% (from MCT devices). MSS therefore do not consider this to be a significant issue for the management area, and 425 seals from the PBR remain.

MSS also state that the PBR for grey seals in the West Scotland management area is currently 386 (2013 data). Using the worst case density estimates (SMRU seal usage maps) and the worst case dive profile (random), the maximum percentage of the PBR from either type of device array is 11.01% (from MCT devices). MSS therefore do not consider this to be a significant issue for the management area, and 343 seals from the PBR remain.

MSS assumed that the statement in table 7.8, of a minimum of 15 MCT devices, does not mean that they might intend to install more MCT devices than this, since

doing so would mean that the Company has installed more than 30MW capacity. Therefore MSS has assumed this in their collision risk calculations.

HRA

MSS agreed that there is potential for likely significant effect on the South-East Islay Skerries SAC.

Marine fish and shellfish

MSS noted the measures that the Company were proposing for basking sharks and found these acceptable considering the risk.

Commercial fisheries

MSS commented that, in general, the Company had assessed the issues regarding commercial fisheries adequately. However, they were of the opinion that there is some ambiguity as to how long the self-burial would be perceived to take, and to what extent it is envisaged the cable would be buried. MSS suggested that some indication on the burial rate should be provided along with the expected extent and depth of burial. MSS would not, however, recommend this as the burial method for the cable as it may have complications in terms of safety for scallop vessels along the route.

MSS recommended cable protection/actual burial to a depth of at least 1 meter along the entirety of the cable route, with consultation with the fishing sector as to the most suitable protection for the gear used.

Aquaculture

MSS stated that there are no active fish or shellfish sites within the immediate vicinity of the proposed project area. However, there are two inactive, and one active Pacific oyster trestle farms on Islay. The active farm is located approximately 28 km to the north east of the proposed development area. The two inactive sites are located approximately 30 km to the east. The closest active finfish site is located approximately 5 km east of the proposed development area on the east side of Gingham. This is a pumped seawater tank site stocked with halibut.

Diadromous Fish

MSS stated that the project lies in an important channel for salmon movements. They commented that the distribution of the salmon throughout the channel, and water column, will determine the potential interaction with the tidal turbine array. MSS also stressed that the potential risk of collision with tidal turbines needs to be taken into consideration. However, MSS do not consider that there is likely to be a significant effect for any salmon SAC, as salmon leaving and returning to the Blanch SAC will likely use the North Channel of the Irish Sea.

MSS stated that they provided the Company with guidelines on what information and the level of detail they expected to see in the ES in terms of diadromous fish, but felt

that these guidelines were not completely followed, and that information was missing. MSS commented that although there are details of the salmon and sea trout caught in nearby rivers, there is no consideration of whether any salmon and trout will be of local origin, or whether significant numbers of salmon from further afield are to be expected. They also said that salmon migration routes needs expanded to cover the wider picture.

MSS commented that the possibilities of the turbines and/or infrastructure acting as barriers to diadromous fish or creating collision risks are inadequately discussed, and suggested that more detailed consideration is required. MSS felt that the concerns are largely dismissed on the basis (with no robust information in support) that the abundances are very low and there is sufficient spacing between turbines to allow fish to pass. MSS said that they would have expected modelling to support the Company's assumptions that the spacing between the tidal turbines is enough to mitigate the risk of collision with salmon.

Benthic Ecology

MSS noted that the section of benthic ecology does not provide much detail on the development as decisions on the devices and foundations to be used have not been made yet.

It was highlighted by MSS that the ES states that bedrock and stony reef is present on the development area which is Annex 1 Habitat. However, the ES does not identify any Annex 1 Habitats. MSS are concerned about the potential impacts of the Development on Annex 1 Reef; however they agree that the introduction of harder substrate will have little effect.

MSS stated that the use of the methods of vessel anchoring set out in the ES will cause considerable damage and recovery rates are unlikely to be rapid. The most significant impact could be the smothering of filter and suspension feeders from the increased suspended solids load. MSS urge the Company to consider the whole suite of species found on the rocky reefs and not just a selected few. MSS also suggested more evidence and references to support the statement that '*mortality not expected to occur beyond the immediate area*' and said that the EIA significant of '*Not Significant*' seems low.

MSS reviewed the Benthic Video Report was provided in Appendix 8.1 of the ES and raised concerns over maerl and burrowed soft muds with seapens, both a UK Priority Habitats, being present in the project area, in particular the cable route. These habitats will be impacted by cable trenching or ploughing.

The advice received from MSS has helped inform the draft conditions set out at Annex D.

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. Detail on the public representations is contained within **ANNEX F – PUBLIC REPRESENTATIONS**.

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.

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 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 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.

MS-LOT consider that sufficient information has been supplied regarding the visual impact of this Development to reach a conclusion on the matter, and therefore

advise the Scottish Ministers that 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 Gross Value Added ('GVA') of approximately £0.1 million per annum.

MS-LOT consider that sufficient information has been supplied regarding the formulation of jobs from the Development, to reach a conclusion on the matter, and therefore advise the Scottish Ministers that 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 the 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.

MS-LOT consider that proper assessments have been undertaken for the Development, and proper opportunity was afforded for consultation with stakeholders and members of the public, in compliance with the Public Participation Directive, to reach a conclusion on the matter. MS-LOT is committed to applying strict environmental assessment procedures. MS-LOT, therefore, advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact upon tourism and recreation industry

Most representations were concerned about the impact on Islay’s tourism 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 is 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, ICC, RYAS and VS and no objections were raised in terms of impacts upon the tourism and recreation industry. 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 has 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 Rinn of Islay. However, the Company has 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 has 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.

MS-LOT consider that sufficient information has been supplied regarding the potential impacts upon the tourism and recreation industry to reach a conclusion on the matter, and therefore advise the Scottish Ministers that 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.

MS-LOT consider that sufficient information has been supplied regarding this issue to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact on 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 at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**. The SFF and CFA have not formally removed their objections, however they are content with the proposed conditions.

MS-LOT consider that sufficient information has been supplied regarding the potential impacts of the Development on the fishing industry to reach a conclusion on the matter, and therefore advise the Scottish Ministers that 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.

MS-LOT consider that sufficient information has been supplied regarding the efficiency of technology to reach a conclusion on the matter, and therefore advise the Scottish Ministers that 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, RSPB Scotland and 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 included at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**.

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 **ANNEX E – APPROPRIATE ASSESSMENT**. 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 licenses will be required, since some disturbance may occur over an extended period of time.

MS-LOT consider that sufficient information has been supplied regarding the potential impacts of the Development on marine wildlife to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

Other Responses - In relation to the Application and Environmental Statement

The **Chamber of Shipping, Crown Estate, Inshore Fishery Groups, Marine Safety Forum, Marine Scotland Compliance, Scallop Association, Scottish Canoe Association, Scottish Fishermen's Organisation, Scottish Surfing Federation, Scottish Wildlife Trust, Sport Scotland and Transport Scotland (Ports & Harbours)** were consulted but no responses were received.

Summary

MS-LOT has fully and carefully considered the Application and accompanying documents and all relevant responses from Consultees, as well as all the third party representations that have been received, with a view to determining whether a public inquiry should be held with respect to the Application.

MS-LOT considers that there are no significant issues which have not been adequately considered in the ES, and in consultation responses from the relevant onshore planning authority, SEPA, SNH and other relevant bodies, together with all other objections and third party representations. MS-LOT therefore considers that it

has sufficient information to recommend to the Scottish Ministers that they are able to make an informed decision on the Application without the need for a Public Inquiry.

Environmental Benefits and Carbon Payback

As the design of the turbines has not yet been finalised, and the local bathymetric features of the tidal area make it difficult to calculate energy generated, it is not possible to accurately predict the energy that will be produced by the Development over its lifespan. Therefore a calculation of the displacement of CO₂ cannot be made. The Development will act as a contributor to reducing the amount of CO₂ released into the atmosphere, and help meet targets forming part of Scotland's commitments on climate change action to reduce greenhouse gases.

If consented, the Development could result in an increase in the amount of renewable energy produced in Scotland, and is consistent with the Government's policy on the promotion of renewable energy.

The Company and its project partners have been in consultation with a number of the major distilleries on Islay with a view to reducing the islands dependency on heavy fuel required to provide steam for the distilling process. The Company is assessing the feasibility of converting the electricity generated by the Development to heat energy required by the distilleries. This would expedite the project and provide cost benefits, as well as substantially reducing the carbon footprint of the distilleries, resulting in a substantial direct carbon saving.

Economic Benefits

Scottish Planning Policy ("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 has 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 Gross Value Added (“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 has 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.

MS-LOT 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. MS-LOT do not consider the lack of any specific details, at this stage, concerning any local, or Scotland wide economic benefit, should prevent consent being granted should you determine that is appropriate.

CALLS FOR A PUBLIC LOCAL INQUIRY (“PLI”)

There is no presumption in law in favour of PLIs being held regarding applications for s.36 consent under the Electricity Act. The circumstances of the case are such that there is no statutory requirement under Paragraph 2(2) of Schedule 8 to the Electricity Act for the Scottish Ministers to cause one to be held. The decision to hold a PLI in this case is entirely at the discretion of the Scottish Ministers. Such discretion must always be exercised in accordance with the general principles of public law.

Under paragraph 3(2) of Schedule 8 to the Act, the Scottish Ministers must be persuaded that it is appropriate for them to hold an inquiry (either in addition to or instead of any other hearing or opportunity of stating objections to the Application).

Consideration

When considering whether to cause a PLI to be held the Scottish Ministers may have regard as to whether:

1. they have been provided with sufficient information to enable them to weigh up all of the conflicting issues and, without a public inquiry, whether they can properly weigh any such issues;
2. those parties with a right to make representations have been afforded the opportunity to do so; and
3. they have sufficient information available to them on which to take their decision such that a public inquiry would not provide any further factual evidence which would cause them to change their view on the Application.

The Scottish Ministers can draw upon information contained within:

1. the Environmental Statement;
2. the representations from the Company;
3. the representations from consultees;
4. the representations made from members of the public; and
5. the Appropriate Assessment.

In all the circumstances, as outlined, the Scottish Ministers can be satisfied that they have sufficient information to weigh up the various competing considerations and properly take account of the representations the various parties have made without the need for an inquiry. The AA concluded that the Development would 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, and SNH have agreed with this conclusion.

It is clear that all interested parties (statutory consultees, consultees and other persons) have had the opportunity to make representations on the Application. Representations have been accepted, and have continued to be accepted, by MS-LOT even following the expiry of the statutory consultation period. All such

representations have been taken into account for the purposes of making a decision regarding the causing of a PLI to be held.

In light of the terms of the various documents that have been provided to MS-LOT, taken together with all the other information on the subject that is publicly available, any inquiry would not be likely to provide any factual information to assist the Scottish Ministers to resolve the issues of risk and planning judgment raised by the Application.

On the evidence that is before MS-LOT, it is considered sufficient to reach a decision that a PLI would not provide any further factual evidence which would require the Scottish Ministers to take a different view on the substantive issues on the Application for consent under s.36. As such, MS-LOT concludes that Scottish Ministers possess sufficient information upon the Development in order to determine the Application.

ANNEX C – ADVICE TO THE SCOTTISH MINISTERS AND RECOMMENDATION

APPLICATION FOR CONSENT 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

ADVICE TO THE SCOTTISH MINISTERS IN RELATION TO PUBLIC LOCAL INQUIRY

When considering whether to cause a Public Local Inquiry (“PLI”) to be held the Scottish Ministers may have regard to whether:

1. they have been provided with sufficient information to enable them to weigh up all of the conflicting issues and, without a PLI, whether they can properly weigh any such issues;
2. those parties with a right to make representations have been afforded the opportunity to do so; and
3. they have sufficient information available to them on which to take their decision such that a PLI would not provide any further factual evidence which would cause them to change their view on the Application.

You can draw upon information contained within:

1. the Environmental Statement;
2. the representations from the Company;
3. the representations from consultees;
4. the representations made from members of the public; and
5. the Appropriate Assessment.

Having regard to the considerations set out in **Annex B - BACKGROUND INFORMATION AND SCOTTISH MINISTERS CONSIDERATIONS**, Marine Scotland Licensing Operation Team’s (“MS-LOT”) advice is that you have sufficient information to weigh up the various competing considerations and properly take account of the representations the various parties have made without the need for an inquiry.

You can be satisfied that:

1. you possess sufficient information upon the Development in order to determine the Application for consent under section 36 of the Electricity Act 1989 (“the Electricity Act”) to construct and operate a tidal energy park with a maximum generating capacity of 30 megawatts (“MW”) (“the Application”);
2. a PLI into the issues raised by consultees or members of the public would not be likely to provide any further factual information to assist the Scottish Ministers to resolve any issues raised by the Application or to change their views on these matters;

3. the various material considerations relevant to the Application have been taken into account; and
4. both consultees and members of the public have been afforded the opportunity to provide information and to make representations, following prescribed consultation processes set out in the various legislation and regulations set out in **Annex A – Regulatory Requirements: Legislation and Policy**.

Accordingly, you may conclude that it is not appropriate to cause a PLI to be held into these matters.

MS-LOT recommend that you determine that it is not appropriate to cause a PLI to be held.

ADVICE TO THE SCOTTISH MINISTERS IN RELATION TO THE DECISION WHETHER TO GRANT CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989.

MS-LOT's advice is that you have sufficient information to weigh up the various competing considerations and properly take account of the representations the various parties have made without the need for an inquiry.

MS-LOT is of the view that in considering the characteristics and location of the Development and the potential impacts, you may be satisfied that the Application has had regard to the preservation of the environment and ecology and that you will have discharged your responsibilities in terms of Schedule 9 to the Electricity Act in this respect, if you decide to grant consent.

MS-LOT considers that where any adverse environmental impacts cannot be prevented, adequate mitigation can be put in place. An obligation has been placed on the Company to give effect to all the mitigation through the attachment of conditions to the consent.

For the reasons set out in **ANNEX A - REGULATORY REQUIREMENTS: LEGISLATION AND POLICY, ANNEX B - BACKGROUND INFORMATION AND SCOTTISH MINISTERS CONSIDERATIONS, and ANNEX E - APPROPRIATE ASSESSMENT**, you can be certain that the Development will not adversely affect site integrity of any European site assessed to have connectivity with the Development, and that is the case where no reasonable scientific doubt remains.

Taking into account the socio-economic benefits and the benefits of renewable energy generation, it is MS-LOT's recommendation that the Scottish Ministers' planning judgment should be that whilst you have carefully considered the environmental impacts, when weighing up that material consideration with the considerations detailed below, you can make an appropriate planning judgment, nevertheless, to grant consent, with conditions, to the Development in its location.

The considerations are:

1. the benefits that the Development would be expected to bring in terms of the contribution to the development of the renewable energy sector;
2. the need to achieve targets for renewable energy;
3. the economic and social importance of Scotland's renewable energy sector; and
4. the potential to unlock a variety of economic benefits.

You can be satisfied that the Company has had regard to the potential interference of recognised sea lanes essential to international and national navigation. None of the stakeholders responsible for navigational issues objected to the Application. MS-LOT is therefore of the view that you have discharged your responsibilities in terms of section 36B of the Electricity Act. Any obstruction or danger to navigation has been addressed through specific consent conditions at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**.

An application for a marine licence under the Marine (Scotland) Act 2010 for the West Islay Tidal Energy Park has been considered alongside this Application. It will be determined and a decision issued in due course.

SECTION 36 RECOMMENDATION

MS-LOT recommends that you determine to **grant consent under section 36 of the Electricity Act for the West Islay Tidal Energy Park subject to the imposition of conditions**. The draft decision letter with conditions is enclosed at **ANNEX D – DRAFT DECISION LETTER AND CONDITIONS**.

ANNEX D – DRAFT DECISION LETTER AND CONDITIONS

marinescotland



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E: MS.MarineRenewables@gov.scot

Mr Blair Marnie
DP Marine Energy Limited
Mill House, Buttevant
Co. Cork
Ireland

4 April 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 facilitate 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 is 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 has 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 has 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 has 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 licenses 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, 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 is 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 has 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 has 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 has 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 has 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
4 April 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 meters;
 - d) a maximum rotor width of 50 meters;
 - e) a maximum swept area of 628 square meters;
 - f) a minimum seabed clearance of 3 meters;
 - g) a minimum surface clearance of 3.5 meters (measured from LAT); and
 - h) a maximum protrusion height of 21 meters (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.

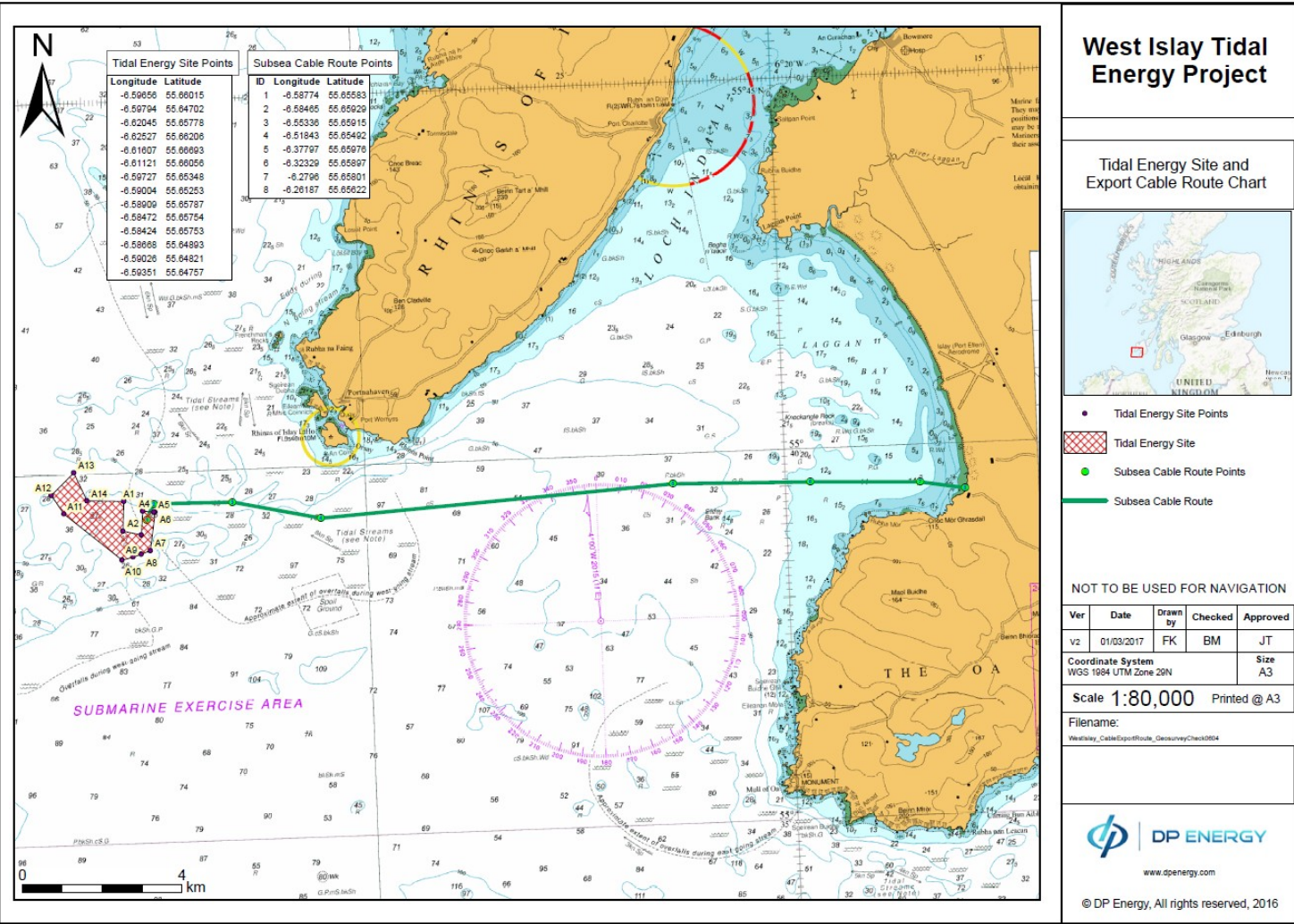


Figure – Development Location - West Islay Tidal Energy Park and Export Cable Corridor to Kintra, Islay
Not to scale.

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 coordinated, 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 on Islay;
 - 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

“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

“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

ANNEX E – APPROPRIATE ASSESSMENT

APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND APPLICATION FOR MARINE LICENCE UNDER THE MARINE (SCOTLAND) ACT 2010 FOR THE CONSTRUCTION AND OPERATION OF THE WEST ISLAY TIDAL ENERGY PARK, SOUTH WEST ISLAY.

MARINE SCOTLAND’S CONSIDERATION OF A PROPOSAL AFFECTING DESIGNATED SPECIAL AREAS OF CONSERVATION (“SACs”), SPECIAL PROTECTION AREAS (“SPAs”). CANDIDATE SPECIAL AREAS OF CONSERVATION (“cSACs”) AND PROPOSED SPECIAL PROTECTION AREAS (“pSPAs”)

SITE DETAILS: DP Marine Energy Limited (“DPME”) – West Islay Tidal Energy Park, South West of Islay.

FILE REF: 011/TIDE/DPSW1 - 2

APPROPRIATE ASSESSMENT (“AA”) CONCLUSION:

1. Marine Scotland’s Licensing Operations Team (“MS-LOT”) concludes that, based on the content of the following assessment, the proposed West Islay Tidal Energy Park (“the Development”) will not, on its own or in-combination with other projects currently holding a marine licence, adversely affect the integrity of the Ailsa Craig SPA, the Canna and Sanday SPA, Mingulay and Berneray SPA, the North Colonsay and Western Cliffs SPA and the Rum SPA.

INTRODUCTION

2. This is a record of the Appropriate Assessment (“AA”) for the West Islay Tidal Energy Park development and associated offshore transmission works. The assessment has been undertaken by MS-LOT and Marine Scotland Science (“MSS”) on behalf of the Scottish Ministers. This assessment is required to be undertaken under Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora (“the Habitats Directive”) under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 in respect of applications for section 36 consents under the Electricity Act 1989 and Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 for marine licence applications under the Marine (Scotland) Act 2010 for projects within 12 nautical miles (“nm”) of the mainland before the Scottish Ministers may decide to give consent to the Development. As the Development requires both a section 36 consent and marine licence, both sets of regulations (“the Habitats Regulations”) apply to this assessment.

3. Scottish Ministers, as a 'competent authority' under the Regulations, must be satisfied that the proposal will not adversely affect the integrity of any European site (special areas of conservation ("SACs") and special protection areas ("SPAs")) either alone or in combination with other plans or projects before authorisations can be given for the proposal. The precautionary principle requires to be applied when complying with obligations under the Habitats Regulations and in preparing an AA. In accordance with the ECJ case of Waddenzee¹ MS-LOT may only authorise a development if they are certain that it will not adversely affect the integrity of European protected sites; and "that is the case where no reasonable scientific doubt remains as to the absence of such effects".

4. Scottish Ministers are currently in the process of identifying a suite of new marine SPAs in Scotland and in the Scottish offshore region. In 2014 advice was received from the statutory nature conservation bodies ("SNCBs") on the sites most suitable for designation and at this stage they became draft SPAs ("dSPAs"). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA ("pSPA") and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPAs is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45). In addition, the Inner Hebrides and Minches candidate Special Area of Conservation (cSAC) and the North Channel (Northern Ireland) cSAC for harbour porpoise have been submitted to the European Commission, and are also considered under domestic policy as if fully designated.

5. It is not a legal requirement under the Habitats Directive or relevant domestic regulations for this assessment to assess the implications of the proposal on the pSPAs and pSACs. The assessment includes an assessment of implications upon those sites in accordance with domestic policy. Scottish Ministers are also required to consider article 4(4) of Council Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") in respect of the pSPAs. The considerations under article 4(4) of the Birds Directive are separate and distinct to the considerations which must be assessed under this Habitats Directive assessment but they are, nevertheless, set out within this assessment (paragraph 27).

6. In accordance with regulation 50 of the Conservation (Natural Habitats, &c.) Regulations 1994 and regulation 63 of the Conservation of Habitats and Species Regulations 2010 the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPAs, review their decisions authorising the proposal. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated (as they are currently pSPAs and pSACs their conservation objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

Details of proposed operation

7. The applications submitted on 16th September 2013 are for the construction and operation of a tidal generating station, consisting of between 15 and 30 tidal energy convertors (“TECs”) and associated cabling located on the seabed within the array boundary making landfall at Kintra on Islay. The generating capacity of each TEC is between 1 and 2 MW. The foundation for each TEC will be (pin) piled to the sea bed.

Consultation

8. MS-LOT accepted DPME’s application and associated documents on 16 September 2013. The Environmental Statement (“ES”), which included Habitats Regulations Appraisal (“HRA”) reports for marine mammals and seabirds, was sent out for consultation then. MS-LOT received advice regarding the application from Scottish Natural Heritage (“SNH”) on 12 December 2013. SNH advised MS-LOT to carry out an AA. SNH provided further advice to inform the AA as follows:

- 5 February 2016 in relation to corkscrew injuries on seals
- 8 April 2016 in relation to the Inner Hebrides and the Minches pSAC. Following on from the public consultation this site is now a candidate Special Area of Conservation (“cSAC”), which means it has been submitted to the European Commission, but not yet formally adopted.
- 8 August 2016 in relation to pSPAs – a consultation on proposals for 10 SPAs in Scottish waters began on 4th July 2016 and SNH provided further advice in relation to these sites on 8 August 2016.

9. The Department of the Environment Northern Ireland (“DOENI”, now the Department of Agriculture, Environment and Rural Affairs (“DAERA”), for consistency DAERA will be used throughout the document) provided comment on 21 March 2013 on SPA and SAC features within Northern Ireland that may be affected by the Development. Further comment from the DAERA was provided in relation to a pSAC (The North Channel, now a cSAC as of January 2017) on 06 July 2016 and two new pSPAs in Northern Irish (East Coast SPA and a marine extension to Carlingford Lough SPA) waters on 22 July 2016.

10. A detailed AA has been undertaken and SNH have been consulted, as is required, under the Habitats Regulations. As it was considered that the Development may have a likely significant effect on European protected sites in Northern Ireland, it was also thought appropriate to consult the DAERA.

11. The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) in their response dated 18 December 2013 did not object to the Development, and although raising some concerns regarding impacts on bird species from the potential for collision with the turbines and disturbance, suggested that a comprehensive programme of monitoring be put in place.

12. Whale and Dolphin Conservation (“WDC”) in their response dated 4 December 2013 raised some concerns regarding the potential for seals and harbour porpoise to collide with turbines, as well as corkscrew injuries to seals from vessels associated

with the installation. SNH provided updated advice on 5 February 2016 regarding corkscrew injuries to seals following evidence that these injuries are likely to be the result of grey seal predation. WDC concluded no likely significant effect for harbour porpoise from Skerries and Causeway SAC due to the low numbers of the species recorded.

13. The Habitats Regulations allow for the competent authority to consult the general public on the AA if they consider it appropriate. This has not been done as the general public have already had the opportunity to respond to the application through the Environmental Impact Assessment process where information regarding the potential impacts on European protected sites was available in the ES. The ES contained HRA reports which were also made publically available and consulted on. No representations were received from members of the public raising concerns about Natura issues.

14. Table 1a. provides links to the Scottish Natural Heritage Interactive (“SNHi”) website/ DAERA website where the background information on the sites being considered in this assessment are available.

15. Table 1b. details the qualifying features of the SACs, cSACs, SPAs and pSPAs in this assessment. The conservation objectives being considered are detailed in section 1c. For the qualifying interests where likely significant effect (“LSE”) has been identified (section 2b) the appropriate assessment assesses whether or not the relevant conservation objectives will be achieved.

Figure 1 below shows the location of the Development and the SACs, cSACs, SPAs and pSPAs discussed in this document.

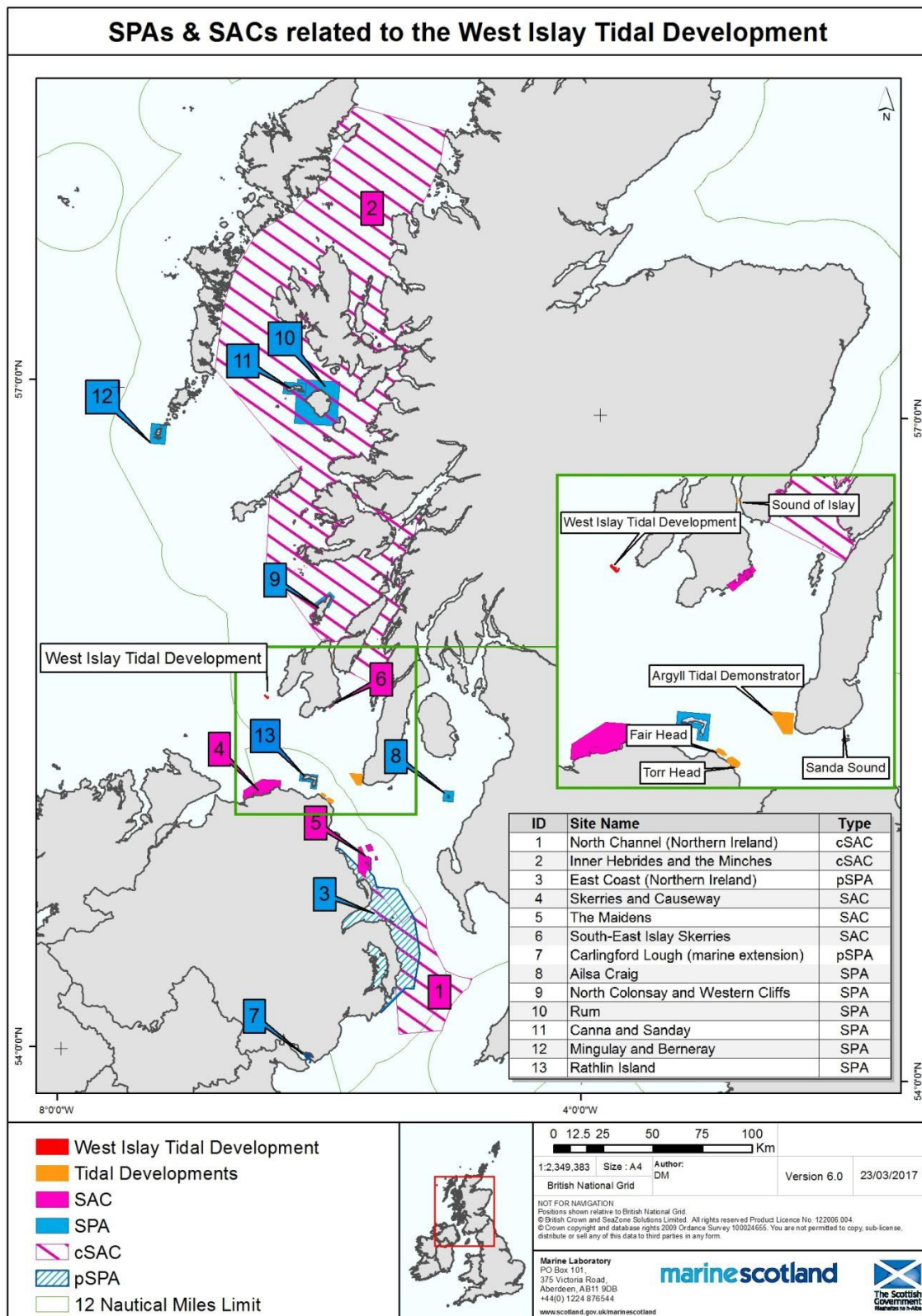


Figure 1. Location of West Islay Tidal Development site and relevant SPAs, pSPAs, SACs and cSAC

1a. Name of Natura site affected & current status available from:

Ailsa Craig SPA

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8463

Canna and Sanday SPA

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8480

Carlingford Lough Marine pSPA*

<https://www.daera-ni.gov.uk/consultations/carlingford-lough-spa-renotification>

East Coast (Northern Ireland) Marine pSPA*

<https://www.daera-ni.gov.uk/consultations/east-coast-northern-ireland-marine-special-protection-area-consultation>

Mingulay and Berneray SPA

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8545

North Colonsay and Western Cliffs SPA

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8555

Rathlin Island SPA

<https://www.daera-ni.gov.uk/publications/rathlin-special-protection-area>

Rum SPA

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8574

Inner Hebrides and the Minches cSAC**

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=10508

South-East Islay Skerries SAC

http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8381

Skerries and Causeway SAC***

<http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0030383>

The Maidens SAC***

<http://jncc.defra.gov.uk/ProtectedSites/SACselection/sac.asp?EUCode=UK0030384>

The North Channel cSAC**

<http://jncc.defra.gov.uk/pdf/NorthChannelSelectionAssessmentDocument.pdf>

*pSACs refer to possible SACs and are sites that are undergoing the process of consultation prior to being submitted to the European Commission for adoption.

**cSACs refer to candidate SACs and are sites that have been submitted to the European Commission, but not yet formally adopted.

***The status of both these SACs is Site of Community Importance which are sites that have been adopted by the European Commission but not yet formally adopted by the Northern Irish government. For the purposes of this document they are considered in the same way as SACs and referred to as such.

1b. European qualifying interests & whether priority/non-priority:

Ailsa Craig SPA Gannet (<i>Morus bassanus</i>), breeding Guillemot (<i>Uria aalge</i>), breeding Herring gull (<i>Larus argentatus</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Lesser black-backed gull (<i>Larus fuscus</i>), breeding Seabird assemblage, breeding	Rum SPA Golden eagle (<i>Aquila chrysaetos</i>), breeding Guillemot (<i>Uria aalge</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Manx shearwater (<i>Puffinus puffinus</i>), breeding Red-throated diver (<i>Gavia stellata</i>), breeding Seabird assemblage, breeding
Canna and Sanday SPA Guillemot (<i>Uria aalge</i>), breeding Herring gull (<i>Larus argentatus</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Puffin (<i>Fratercula arctica</i>), breeding Seabird assemblage, breeding Shag (<i>Phalacrocorax aristotelis</i>), breeding	Inner Hebrides and the Minches cSAC Harbour porpoise (<i>Phocoena phocoena</i>)
East Coast (Northern Ireland) pSPA Great crested grebe (<i>Podiceps cristatus</i>) Red-throated diver (<i>Gavia stellata</i>) Sandwich tern (<i>Thalasseus sandvicensis</i>) Common tern (<i>Sterna hirundo</i>) Arctic tern (<i>Sterna paradisaea</i>) Manx shearwater (<i>Puffinus puffinus</i>) Eider duck (<i>Somateria mollissima</i>)	South-East Islay Skerries SAC Harbour seal (<i>Phoca vitulina</i>)
Carlingford Lough Marine pSPA (extension) Sandwich tern (<i>Thalasseus sandvicensis</i>) Common tern (<i>Sterna hirundo</i>) Light bellied goose (<i>Branta bernicla hrota</i>)	Skerries and Causeway SAC Harbour porpoise (<i>Phocoena phocoena</i>)
Mingulay and Berneray SPA Fulmar (<i>Fulmarus glacialis</i>), breeding Guillemot (<i>Uria aalge</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Puffin (<i>Fratercula arctica</i>), breeding Razorbill (<i>Alca torda</i>), breeding Seabird assemblage, breeding Shag (<i>Phalacrocorax aristotelis</i>), breeding	The Maidens SAC Grey seal (<i>Halichoerus grypus</i>)
North Colonsay and Western Cliffs SPA Chough (<i>Pyrrhocorax pyrrhocorax</i>),	The North Channel cSAC Harbour porpoise (<i>Phocoena phocoena</i>)

breeding Chough (<i>Pyrrhocorax pyrrhocorax</i>), non-breeding Guillemot (<i>Uria aalge</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Seabird assemblage, breeding	
Rathlin Island SPA Peregrine falcon (<i>Falco peregrinus</i>), breeding Guillemot (<i>Uria aalge</i>), breeding Razorbill (<i>Alca torda</i>), breeding Kittiwake (<i>Rissa tridactyla</i>), breeding Fulmar (<i>Fulmarus glacialis</i>), breeding Common gull (<i>Larus canus</i>), breeding Lesser black-backed gull (<i>Larus fuscus</i>), breeding Herring gull (<i>Larus argentatus</i>), breeding Puffin (<i>Fratercula arctica</i>), breeding Seabird assemblage, breeding	

1c. Conservation objectives for qualifying interests:

SPA -

16. To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and

To ensure for the qualifying species that the following are maintained in the long term:

- (i)) Population of the species as a viable component of the site
- (ii) Distribution of the species within site
- (iii) distribution and extent of habitats supporting the species
- (iv) function and supporting processes of habitats supporting the species
- (v) No significant disturbance of the species*

SAC –

17. To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and

18. To ensure for the qualifying species that the following are maintained in the long term:

- (i) Population of the species as a viable component of the site
- (ii) Distribution of the species within site

- (iii) Distribution and extent of habitats supporting the species
- (iv) Structure, function and supporting processes of habitats supporting the species
- (v) No significant disturbance of the species*

*As the potential effects of the proposed Development, as identified, occur outside the SPA itself, any disturbance to the qualifying interests is only considered to be significant in terms of the relevant conservation objective if it could undermine the conservation objectives relating to population viability.

ASSESSMENT IN RELATION TO REGULATION 48 OF THE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 1994 AND REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

2a. Is the operation directly connected with or necessary to conservation management of the site?

19. The operation is not connected with or necessary to conservation management of the site.

2b. Is the operation likely to have a significant effect on the qualifying interest?

20. This assessment is directly based on advice received from SNH and the DAERA. The timeline of when the advice was received is given below.

- Final list of SPAs and SACs to be included in the assessment was provided by SNH in their advice dated 12 December 2013
- On 8 April 2016 SNH provided further advice on the Inner Hebrides and the Minches Harbour Porpoise cSAC and, in addition, provided updated advice (dated February 2015) on the risk of seal corkscrew injuries
- A consultation on proposals for 10 SPAs in Scottish waters began on 4th July 2016 and SNH provided further advice in relation to these sites on 8 August 2016
- A draft of the AA was sent to SNH for comment and they replied on 7 December 2016 to say they were content with the commentary and conclusion reached
- The DAERA provided advice on the relevant marine features in Northern Ireland on 21 March 2013 and provided updated advice on the East Coast Marine pSPA and the Carlingford Lough Marine pSPA (extension) on 22 July 2016
- The DAERA also sent comment on 5 August 2016 that the Marine and Fisheries Division had no further comment in respect of the DP Marine Energy West Islay Tidal Energy Park proposal in relation to marine mammals

SPAs

21. SNH noted that the applicant had considered the following points when providing their advice on the likelihood of significant effects:

- Whether the project area overlaps with the species foraging range during the breeding season
- Whether the project lies within an identified migratory path
- Whether a species was observed in the project area during the site characterisation surveys
- Whether a species is sensitive to any of the potential impacts identified, and
- Whether or not there is potential for any of the conservation objectives to be undermined

22. Taking into account these points and having reviewed the ES, including the technical appendices and the HRA report, SNH provided the following appraisal:

23. There is a likely significant effect on the following owing to the project area being within foraging range, the species being recorded during the site surveys and being sensitive to potential impacts:

Common guillemot

Ailsa Craig SPA

Canna and Sanday SPA

Mingulay and Berneray SPA

North Colonsay and Western Cliffs SPA

Rum SPA

Atlantic puffin

Canna and Sanday SPA

Mingulay and Berneray SPA

24. It was not considered there would be a likely significant effect on the remaining qualifying interests (as listed above in 1b) owing to the very low numbers recorded and the project area not being considered important for these species.

25. Scottish pSPAs

SNH advised on 8 August 2016 that due the distance of the Development from the pSPAs (the nearest being Sound of Gigha pSPA, approximately 60 km east of the proposed tidal farm and approximately 45 km east of cable landfall at Kintra, Islay), there are no impact pathways that could affect any pSPA bird interests either directly or indirectly. As such, there would be no likely significant effect on any pSPA bird interests should this application go ahead as proposed.

26. Irish SPAs and pSPAs

The DAERA agreed with the conclusion in the ES that there is no LSE for the selected features of NI SPAs (letter dated 21 March 2013) and also stated that there would be no LSE for the two pSPAs i.e. the East Coast SPA and a marine extension to Carlingford Lough SPA (e-mail dated 22 July 2016).

27. However, as detailed at paragraph 5, as the pSPA sites are not yet designated, they also fall within the regime governed by the first sentence of Article 4(4) of the Birds Directive as follows:

“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.”

28. MS-LOT consider that all the pSPAs listed above are sufficiently far from the area of proposed works that there will be no risk of pollution, deterioration of habitats or disturbance of the qualifying interests from the Development.

29. MSS and MS-LOT agree with the identification of LSE on common guillemot from Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA and on Atlantic puffin at Canna and Sanday SPA and Mingulay and Berneray SPA and have completed an AA below (section 2c).

SACs

30. SNH noted that the applicant had considered the following points when carrying out their assessment:

- Whether the project area overlaps with the harbour seal foraging range during the breeding season
- Whether harbour seals were observed in the project area during the site characterisation surveys
- Whether Sea Mammal Research Unit (SMRU) aerial surveys and seal telemetry data indicate use of the project area by harbour seals
- Whether harbour seals are sensitive to any of the potential impacts identified, and
- Whether or not there is potential for any of the conservation objectives to be undermined

31. Taking into account these points, the information provided in the ES, their knowledge of harbour seal ecology and SACs together with available data from SMRU aerial surveys and telemetry data, SNH concluded the proposal would have no likely significant effect on the harbour seal qualifying feature interest for the South-East Islay Skerries SAC provided that it is made subject to conditions. These conditions are outlined below and are in respect of the export cable:

- Submission and agreement of details of the final design and export cable route
- Submission and agreement of Construction Methods Statements (“CMS”) for the export cable route for agreement with MS and SNH
- Submission and agreement of Vessel Management Plan(s) (“VMP”) for construction and operation/maintenance

32. When assessing whether the proposal is likely to have a significant effect on the qualifying interest of the Inner Hebrides and the Minches cSAC and the Skerries and Causeway SAC, SNH have taken into account:

- The wide ranging behaviour of harbour porpoise. Individuals may range across the project site and the cSAC, hence there is potential connectivity between the project site and the cSAC
- Whether harbour porpoise were observed and in what numbers in the project area during the site characterisation surveys
- Whether harbour porpoise are sensitive to any of the potential impacts identified

33. Using the information provided in the ES, their knowledge of harbour porpoise ecology and cSACs data, SNH advised that in their view the proposal will have no likely significant effect on the harbour porpoise qualifying interest for Inner Hebrides

and the Minches cSAC and their consideration for the Skerries and Causeway SAC reached the same conclusion.

34. The DAERA concluded that they were content with the information provided by the developer to inform a Habitats Regulations Appraisal. This information stated there was no LSE for the qualifying features of the Treshnish Isles SAC, Skerries and Causeway SAC or The Maidens SAC. A potential LSE was identified for South-East Islay Skerries SAC owing to possible interaction between seals and vessels during installation of the cable route. As noted above this issue was raised by SNH and their opinion is that there will be no LSE provided that this work is made subject to conditions (see above).

35. The DAERA noted that The North Channel site had been identified as a pSAC for harbour porpoise and should be taken into account (as of January 2017 this site is a cSAC). Marine Scotland consider that the North Channel site is far enough away from the Development for there to be no LSE. In reaching this conclusion MS-LOT have taken account of advice provided by SNH that states there is no LSE on the Inner Hebrides and the Minches cSAC (designated for harbour porpoise), which is far closer to the Development site. For this reason, it is unlikely there would be a LSE on a site further away.

36. MSS and MS-LOT agree that there is no LSE for the SACs, cSAC and pSAC noted above, subject to the following conditions with regard to the export cable being included in the marine licence. These sites are not considered further in this assessment.

- Submission and agreement of details of the final design and export cable route
- Submission and agreement of Construction Methods Statements (“CMS”) for the export cable route for agreement with MS and SNH
- Submission and agreement of Vessel Management Plan(s) (“VMP”) for construction and operation/maintenance

2c. APPROPRIATE ASSESSMENT of the implications for the site in view of the site’s conservation objectives.

37. This AA is directly based on SNH advice and from the information contained within the ES and SNH’s knowledge of the ecology of guillemots and Atlantic puffin, such as their foraging range and sensitivity to impacts, SNH advised that the proposal is:

Likely to have a significant effect on guillemots and Atlantic puffin as qualifying interests of the SPAs listed below.

1. Ailsa Craig SPA, Canna and Sanday SPA, Mingulay and Berneray SPA, North Colonsay and Western Cliffs SPA and Rum SPA

Guillemot (*Uria aalge*) (breeding)

2. Canna and Sanday SPA, Mingulay and Berneray SPA

Atlantic puffin (*Fratercula arctica*) (breeding)

38. For both qualifying interests SNH conclude that the proposal would not adversely affect the integrity of the sites. This conclusion is based on:

- The generally low densities reported from 2 years of boat-based surveys of the species of interest during the breeding season. SNH advise that there does not appear to be any likely significant effect on and, therefore, no mechanism for impact on site integrity for any of the identified qualifying interests.
- SNH agree with the conclusions of the ES and HRA which state that any potential disturbance during installation, maintenance or decommissioning from increased vessel activity or installation works is unlikely to be significant. Any potential disturbance would be temporary and over a limited area. Furthermore, any potential disturbance would not affect the population viability of the species for any of the SPAs considered.
- While assessing likely impact, the populations of breeding species using the Development site have been expressed as percentage of each SPA in turn. This would attribute maximum impact to any one SPA, and the Development area populations in each are only a fraction of a percent.
- Generally, there are low numbers of birds present in the Development area, in comparison to their reference populations and taking into consideration displacement and barrier effects, it is still clear that the risk to any populations of seabirds of national or international importance is low.
- The footprint of the site is relatively small so no significant loss of habitat is expected. Above sea structure and lighting design are not confirmed, but it was considered unlikely that even with the most obtrusive designs there will be significant impacts from barrier or displacement effects and collision impacts.

39. The HRA report only considers impacts to breeding populations. Birds present within the proposed Development area in winter are likely to be different birds from the SPA breeding populations. SNH and other statutory nature conservation bodies are currently considering how to undertake assessments of non-breeding sea bird populations. As the majority of seabird species are wide-ranging during the winter it is considered unlikely that the proposal would have a significant effect on any breeding seabird SPA populations during the non-breeding season.

40. Given the relatively small footprint of the site there is no significant loss of habitat expected. Although the tidal energy convertors to be installed at the site are still to be confirmed and, mindful that one of the proposed tidal turbine types is surface piercing, it is considered that, even with the most obtrusive design, should it be implemented at the site, would be unlikely to give rise to barrier or displacement effects and collision impacts.

Cumulative and in-combination assessment

41. MS-LOT have carried out an in combination assessment for other projects which currently have a marine licence and where LSE was identified on the qualifying interests for the SPAs discussed above. Other projects in the area where

no LSE has been identified are noted for information. For the SPAs SNH agreed with the conclusion in the ES that no in-combination effects are likely.

42. Sound of Islay Demonstration Tidal Array

The current licence expires in 2020 and is for up to 10 tidal turbine generators and associated cabling located in the Sound of Islay. The AA completed for this project did not identify LSE on any bird qualifying interest. To date (March 2017) no turbines have been installed.

43. Sanda Sound – Oceanflow Development

This project currently has a licence until February 2019 to deploy one tidal turbine at Sanda Sound, Kintyre. The turbine was taken out of the water in 2015. DPME noted impacts from this Development are anticipated to be of a very low level and would not contribute to an in-combination effect.

44. Argyll Tidal Demonstrator Project

The current licence expires in 2021 and is for a single tidal turbine at a site in the North Channel approximately 1 km off the South-West tip of the Mull of Kintyre. The AA completed for this project did not identify LSE on any bird qualifying interest.

45. Torr Head (DAERA)

This project was issued a licence in December 2016. The tidal energy project area lies approximately 1 Km offshore Torr Head, 12 km east of Ballycastle and 11 km south east of Rathlin Island. The maximum size of the tidal array will be 100MW and there will be between 50 and 100 tidal turbines depending on the final turbine technology selection. Information to inform a HRA was submitted and concluded that there was a likely significant effect at the Rathlin Island SPA for razorbill (breeding) and guillemot (breeding) and at Ailsa Craig for guillemot (breeding). In the information provided by the developer to inform the AA the conclusion was there would be no adverse effects on the integrity of either SPA from the project alone or in combination with other projects (including the adjacent Fair Head Tidal Energy Array). This information was reviewed by the licensing authority and the SNCB prior to acceptance of the conclusions.

46. Fair Head (DAERA)

DP Fair Head Tidal submitted an application to DAERA in February 2017. The proposed tidal energy project will generate 100MW and is located approximately 2km to the east of Fair Head off the north Antrim coast. The plan is to build an initial array of up to 10MW before a second phase building out a larger array up to 100MW.

47. Having considered the advice from SNH and the DAERA and taking account of cumulative and in combination effects, MS-LOT concludes the proposal will not adversely affect the site integrity of the Ailsa Craig SPA, the Canna and Sanday SPA Mingulay and Berneray SPA, the North Colonsay and Western Cliffs SPA and the Rum SPA.

2d. Conditions proposed.

Condition:	Reason:
<p>1). 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.</p>	<p>To ensure a final turbine design choice and layout, including cable routes, is submitted to protect the environment and other users of the sea.</p>
<p>2). 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.</p>	<p>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.</p>
<p>The CMS must include, but not be limited to:</p> <ul style="list-style-type: none"> 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; 	

<p>d. details of how the construction related mitigation steps proposed in the ES are to be delivered;</p> <p>e. a waste management plan for the construction phase of Development; and</p> <p>f. hydrodynamic monitoring which will be used to inform the final locations of the tidal turbines.</p> <p>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”).</p> <p>3). 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.</p> <p>The VMP must include, but not be limited to, the following details:</p> <p>a. the number, types and specification of vessels which are required;</p> <p>b. how vessel management will be co-ordinated, particularly during construction but also during operation;</p> <p>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</p> <p>d. name and role of each vessel used for laying the export cable, along with details on timing, duration and methods for cable laying.</p>	<p>To minimise disturbance to marine mammals</p>
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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.

Name of assessor	Tracy McCollin
Date	30 th November 2016
Name of approver	Gayle Holland
Date	1 st December 2016

ANNEX F – PUBLIC REPRESENTATIONS

APPLICATION FOR CONSENT 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.

SUMMARY

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 Supporting

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

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

Nine (9) representations raised concerns over the visual impacts of the tidal turbines if the devices are surface piercing, since these 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.

Eleven (11) 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.

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.

Most representations were concerned about the impact on Islay's tourism 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 a concern that environmental impacts to marine wildlife would have a negative effect on wildlife tour operators.

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.

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.

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.

MS-LOT have recorded, reviewed and taken into consideration all representations made when determining this Application.

ANNEX G – DEVELOPMENT LOCATION

APPLICATION FOR CONSENT 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

Annex G – Development Location

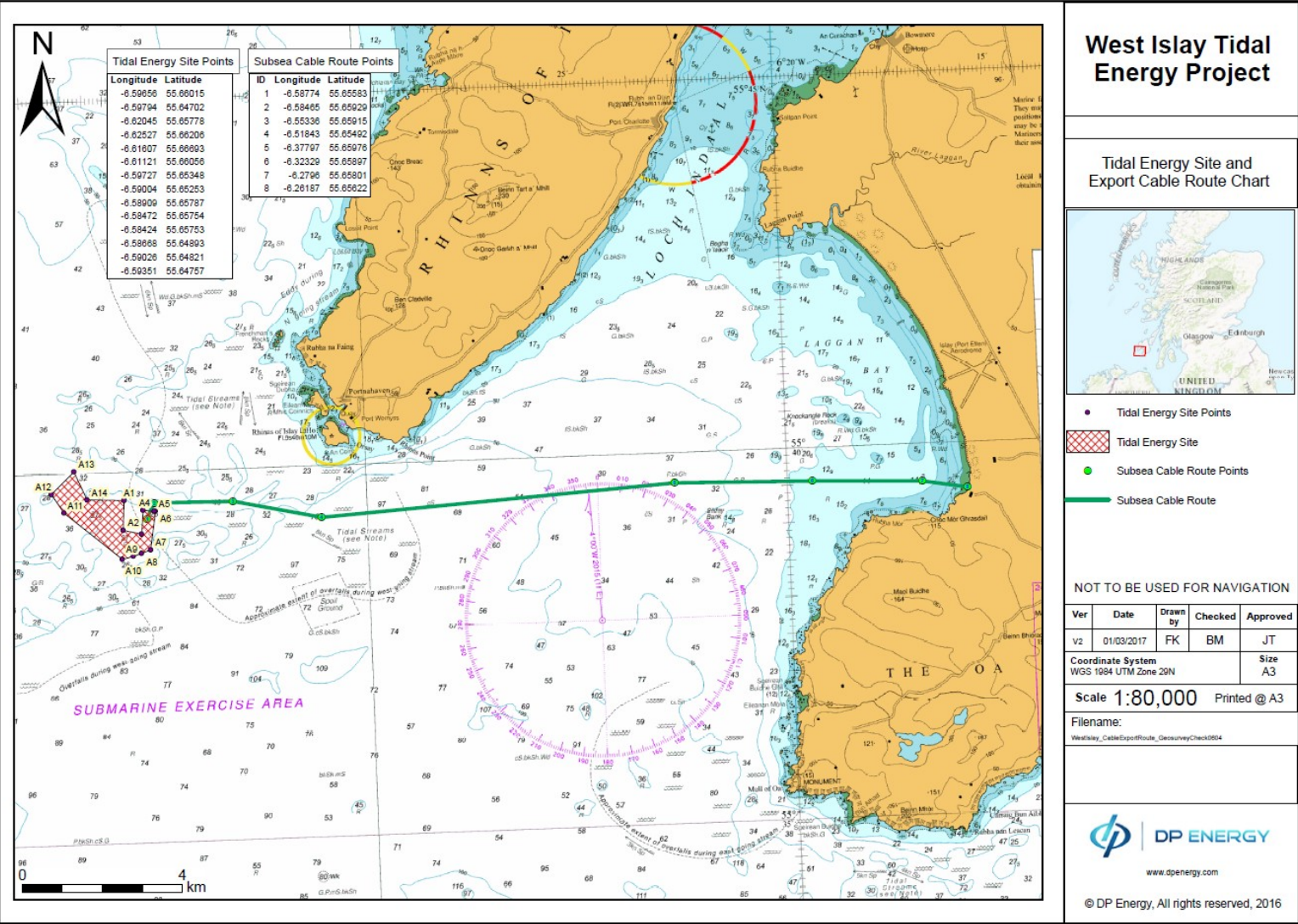


Figure - Development Location - West Islay Tidal Energy Park and Export Cable to shore.

Not to scale.