

3 POLICY AND CONSENTING

3.1 Introduction

3.1 This section provides a summary and overview of the international, UK, Scottish, regional and local planning policies and guidance (and associated legislation) which are directly relevant to the Project and the assessment of potential likely environmental impacts.

3.1.1 The need for renewable energy

3.2 The UK has committed to sourcing 15% of its total energy needs from renewable sources by 2020 under the 2009 Directive on Renewable Energy (2009/28/EC) including electricity, heat and transport. The UK and Scottish Governments have also made legally binding commitments through the Climate Change Act 2008 and the Climate Change (Scotland) Act 2009.

3.3 There are four key drivers for the shift in energy production to low carbon sources, including renewable energy, in the UK and Scotland and these are discussed in the following sections:

- The need to tackle climate change;
- The need to secure energy supply;
- The need for new energy infrastructure; and,
- The need to maximise economic opportunities.

The need to tackle climate change

3.4 The potential effects of climate change are well documented. A continuation of global emissions, including greenhouse gases like carbon dioxide, at current levels could lead average global temperatures to rise by up to 6°C by the end of this century (IPCC, 2007). The implications of such predicted effects would be profound, with a rise in frequency in extreme weather events like floods and drought resulting in increased global instability, conflict, public health-related deaths and migration of people to levels beyond any recent experience (DECC, 2011). Within the UK it is considered that heat waves, droughts, and floods would become more prevalent (DECC, 2011).

3.5 Climate change also poses a significant economic threat. The Stern Report (Stern, 2006) investigated the economic implications of not addressing this issue and concluded that with no action, the overall costs and risk of climate change will be equivalent to losing at least 5% of global gross domestic product (GDP) each year. Taking a wide range of risks and impacts into account, global GDP could be 20% lower than it might otherwise be (Stern, 2006).

The need to secure energy supply

3.6 Indigenous energy production with the UK has fallen year on year since 1999 and, in 2004, the United Kingdom became a net importer, at a level of 4.5% of inland consumption. This increased to 26.7% in 2009, the highest level since 1976 (DECC, 2010). This reliance has long been identified as an unsustainable energy model. It puts the UK at both financial and demand risk through increased global competition for resources combined with increased national growth and exacerbated by the loss of 25% of our existing electricity generating capacity by 2018 through scheduled power station closures (DECC, 2009).

3.7 Without action the UK will become even more reliant on imported energy sources and would have greater exposure to global energy price fluctuations (DECC, 2009). In 2009, the UK Government released the Low Carbon Transition Plan White Paper which plots how the UK will meet the 34% cut in emissions on 1990 levels by 2020. Within this White Paper it was identified that by decarbonising our electricity supplies we can greatly reduce our reliance on fossil fuels. Developing a low carbon energy sector for the longer term

can deliver both increased energy security for the UK and ensure that it meets international targets for the reduction of greenhouse gas emissions (HM Government, 2009).

The need for new energy infrastructure

3.8 There are four key themes driving the requirement for new energy infrastructure within the UK:

- Currently three quarters of UK electricity comes from coal and gas. To meet climate change targets by 2050, virtually all electricity will need to come from zero carbon energy generation such as renewable sources, nuclear or fossil fuel (where they employ carbon capture and storage techniques) (DECC, 2009);
- There will be an increased emphasis on electricity as the source for supporting the heat and transport sectors. This could see the UK's demand for electricity in 2050 increasing to 50% higher than it is today, making it possible that electricity could account for half of the UK's overall energy use (DECC, 2009);
- As the UK moves to low carbon energy sources it is acknowledged that there will be a need for net additional electricity generating infrastructure to ensure adequate supplies because of changes in the nature and location of generating capacity. It is estimated that this will require about 43GW net of new capacity by 2020 and about 60GW by 2025 (DECC, 2011); and,
- This rise in electricity demand will coincide with the scheduled closure of around sixteen power stations by 2018 representing approximately 25% (18GW) of our electricity generating capacity and also the decline of North Sea oil and gas reserves (DECC, 2010 and DECC, 2009).

3.9 In the UK, at least 22GW of existing electricity generating capacity will need to be replaced in the coming years, particularly by 2020. This is as a result of tightening environmental regulation and ageing power stations.

The need to maximise economic opportunities

3.10 The energy industries in the UK play a central role in the economy and supporting a key commitment within the UK's Low Carbon Transition Plan to help make the UK a centre of green industry by supporting the development and use of clean technologies (DECC, 2009).

3.11 The growth of a decarbonised energy sector can play a key role in supporting the economy. In 2009, the energy industries contributed 3.7% GDP and directly employed over 150,000 people (5% of industrial employment) (DECC, 2010). In addition, the low carbon and environment sector currently employs around 880,000 people and is worth £106 billion per year. It is estimated that employment levels could rise to more than a million people by 2020, if the UK is able to maximise the opportunity presented by being a world leader in low carbon technologies (DECC, 2009).

3.12 The Scottish Government estimates that if the 2020 electricity target alone is met it will create up to 40,000 jobs and £30bn investment in Scotland (2020 Renewables Routemap).

3.1.2 Benefits of tidal energy generation

3.13 Tidal energy is a form of low carbon electricity generation benefitting from a predictability of generation as it is powered by the tides which, unlike other forms of renewable energy production, are not affected by weather conditions. Tidal energy schemes such as the Project will make a significant contribution to the mix of energy sources.

3.14 This Project will generate 86MW of renewable energy by 2016. This will represent a significant contribution towards meeting UK and Scottish targets.

3.2 Energy Policy

3.2.1 International energy context

- 3.15 The Kyoto Protocol (to the United Nations Framework Convention on Climate Change (1997)) forms the highest level of international agreement on Climate Change across 189 States. In 2005 it set binding targets for 37 industrialised countries and the European community for reducing greenhouse gas emissions by an average of 5% against 1990 levels over the five-year period 2008-2012.
- 3.16 At a European level, Directive 2001/77/EC, on the "Promotion of Electricity Produced from Renewable Energy Sources in the Internal Electricity Market", was adopted in September 2001. Among other measures, it requires under Article 3 that Member States take appropriate steps to encourage greater consumption of renewable electricity in conformity with national indicative targets.
- 3.17 In January 2008 the European Commission published the "20 20 by 2020" package (COM(2008)30 final). This package proposed committing the EU to a 20% reduction in its greenhouse gas emissions and to achieving a target of deriving 20% of the EU's final energy consumption from renewable sources by 2020. In order to achieve the overall European Union (EU) renewable energy target of 20% the proposal included individual targets for each Member State (with the UK's proposed target being 15%). In January 2008, the European Commission proposed binding legislation to implement the 20-20-20 targets. The "climate an energy package" was agreed by the European Parliament and Council in December 2008 and became law in June 2009. The Renewable Energy Directive (2009/28/EC) also provides for European Climate Change Opportunity, where the Commission set the emissions reduction target at 20% "rising to 30% if there is an international agreement".

3.2.2 National Policy and Guidance

UK energy policy

- 3.18 The UK's agreed (legally binding) target under the Kyoto Protocol is to reduce greenhouse gas emissions (comprising six gases, including carbon dioxide) by 12.5% compared to 1990 levels, averaged over the period 2008 to 2012.
- 3.19 The Climate Change Act 2008 introduces into UK law a legal requirement on the UK Government to cut emissions by 80% compared to 1990 levels by 2050.
- 3.20 A Government objective of working towards the target of obtaining 10% of the UK's of the UK's electricity supply from renewable sources by 2010 with an extension of this target to 15% by 2015, with an aspiration that by 2020 the renewables share of the electricity supply will be increased to 20%.

Scottish energy policy

- 3.21 The Scottish Government has signalled its commitment to tackling climate change and strong support for renewable energy development through both legislation and policy.
- 3.22 The Climate Change (Scotland) Act 2009 imposes a legal commitment on the Scottish Government to reduce emissions by 42% from 1990 levels by 2020 and 80% by 2050.
- 3.23 In July 2011 the Scottish Government published the 2020 Routemap for Renewable Energy in Scotland. This document builds upon the 2009 Scottish Renewables Action Plan.
- 3.24 The Scottish Government's stated objective¹ is for the equivalent of 100% of Scotland's electricity demand to be generated from renewable sources by 2020, with an aim of Scotland generating twice as much electricity as it needs (50% from renewables and 50% from conventional sources) and exporting as much as it consumes.
- 3.25 The Marine Energy Roadmap (published by FREDS in 2010) highlights the key role marine renewables will play in meeting these targets and objectives.

¹ 2020 Routemap for Renewable Energy in Scotland

3.2.3 Renewables Obligation

- 3.26 The Renewable Obligation Order for Scotland (ROS) came into effect in 2002. The Order places an obligation on licensed electricity suppliers to source an increasing proportion of electricity from renewable sources. The current proportion of electricity that must be sourced from renewable sources is 10.4%, and will rise to 15.4% by 2015. The ROS has recently been amended to provide a legal guarantee that the ROS will apply to accredited schemes until 2037.
- 3.27 Electricity Market Reform (EMR) aims to develop and deliver a new market framework that will enable the cost effective delivery of secure supplies of low carbon energy. The EMR Project will overhaul the electricity market to help to promote investment in energy infrastructure, especially low-carbon generation and is a replacement mechanism for the renewables obligation.

3.3 Marine Planning Framework

3.3.1 Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009

- 3.28 The Marine (Scotland) Act 2010 created a new legislative and management framework for the marine environment within Scottish Territorial Waters (0 to 12 nautical miles). This follows the UK Marine and Coastal Access Act 2009 under which Scottish Ministers have devolved authority for marine planning and conservation powers in the offshore region (12 to 200 nautical miles).

3.3.2 Marine Policy Statement - UK

- 3.29 The UK Marine Policy Statement (MPS) applies to all UK waters and has been adopted by the UK Government, the Scottish Government, the Welsh Assembly Government and the Northern Ireland Executive.
- 3.30 The function of the MPS is to provide the framework for preparing Marine Plans and taking decisions affecting the marine environment. All national and regional marine plans must be in conformity with the MPS.
- 3.31 The objectives of the MPS are given as:
- "Promote sustainable economic development;
 - Enable the UK's move towards a low-carbon economy, in order to mitigate the causes of climate change and ocean acidification and adapt to their effects;
 - Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and
 - Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.
- 3.32 The MPS emphasises the importance of renewable energy and recognises the importance of considering marine renewable projects in marine planning, stating that "Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning" (paragraph 3.3.1).

3.3.3 National and regional marine plans

- 3.33 Under the Marine (Scotland) Act 2010 and Marine and Coastal Access Act 2009 the Scottish Government must prepare a National Marine Plan for Scottish Territorial Waters and the offshore zone. The Scottish Government may also choose to prepare Regional Marine Plans.
- 3.34 Section 15(1) of the Marine (Scotland) Act 2010 states that "a public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise". This includes consents and licences. However, there are currently no adopted marine plans in place for the purposes of s.15(1).

- 3.35 The National Marine Plan is being developed to clarify the overall objectives which provide the basis for managing Scotland's marine environment. A pre-consultation draft of the National Marine Plan was published in March 2011 and the responses to the consultation were published in a document in July 2011. The responses are now being evaluated although it is hoped to publish a final version in the spring/summer of 2012.
- 3.36 Regional marine boundaries for the Regional Marine Plans are in the process of being formulated. These are expected to be finalised in line with the publication of the National Marine Plan. Thereafter, the regional marine plan preparation process will be undertaken.
- 3.37 A framework for the Pentland Firth and Orkney Waters Marine Spatial Plan was published in 2011. The document sets out the framework for future development of the Pentland Firth and Orkney Waters Marine Spatial Plan. It summarises existing and proposed uses of the seas and shows how these uses may impact on each other. The document also sets out draft Regional Locational Guidance for the development of wave and tidal resources and identifies the Project site (referred to as Stroma Sound) as a suitable site for tidal development²

3.3.4 Marine Protected Areas

- 3.38 Marine Protected Areas (MPAs) are a requirement of the Marine (Scotland) Act 2010. The purpose of MPAs is to afford protection to particular features of the marine environment. There are three categories of MPA, namely Nature Conservation MPAs, Demonstration and Research MPAs and Historic MPAs.
- 3.39 The Scottish Government is currently consulting on suitable areas for Nature Conservation MPAs. This has resulted in 30 locations identified for possible designation as MPAs. None of these include, or are adjacent to, the Project.
- 3.40 Nature Conservation MPAs are scheduled to be approved by the Scottish Government in late 2012.

3.4 Terrestrial Planning Framework

- 3.41 The principal planning legislation is contained within and derived from The Town and Country Planning (Scotland) Act 1997. Statutory planning control under the Town and Country Planning (Scotland) Act 1997 extends to the mean low water springs. The Marine (Scotland) Act extends to the mean high water mark of ordinary spring tides and there is a degree of overlap between the marine and terrestrial planning frameworks.

3.4.1 National Planning Framework 2

- 3.42 The Framework sets out the Scottish Government's strategy for long term strategic development up to 2030. National Planning Framework 2 (NPF2) was published in June 2009 and contains policies on the marine and coastal environment and the development of renewable energy and grid infrastructure.

3.4.2 Scottish Planning Policy

- 3.43 The Scottish Planning Policy (SPP) sets out Scottish Government policy on nationally important land use planning matters. Paragraph 184 of the SPP states "*Planning authorities should support the development of a diverse range of renewable energy technologies, guide development to appropriate locations and provide clarity on the issues that will be taken into account when specific proposals are assessed*".

- 3.44 There are a range of other land use planning documents which are relevant to the Project, these include:

- PAN 42: Archaeology–Planning Process and Scheduled Monument Procedures
- PAN 45: 2002 Renewable Energy Technologies (including online supplementary guidance)
- PAN 50: Controlling the Environmental Effects of Surface Mineral Workings

- PAN 51: Planning, Environmental Protection and Regulation
- PAN 58: Environmental Impact Assessment
- PAN 60: Planning for Natural Heritage
- PAN 62: Radio Telecommunications
- PAN 68: Design Statements
- PAN 69: Planning and Building Standards Advice on Flooding
- PAN 75: Planning for Transport
- PAN 79: Water and Drainage
- PAN 81 and PAN 3/2010 (Community Engagement)
- PAN 1/2011 – Planning and Noise

3.4.3 Statutory development plan

- 3.45 ***At the time of ES compilation the Highland-wide Local Development Plan (HWLDP) had not been adopted. However, during the final stages of ES review this situation changed and the plan was adopted in April 2012. The text of the ES still refers to the previous plan but also takes account of policies in the recently adopted HWLDP.***

- 3.46 The statutory development plan applicable to the onshore elements of the Project comprises the Highland Structure Plan 2001 and Caithness Local Plan 2002.

- 3.47 These plans are to be superseded by the HWLDP. Following an examination in public, reporters appointed by the Scottish Government have submitted their report on the draft HWLDP to The Highland Council for consideration. It is expected that the HWLDP will be adopted in the autumn of 2012. Prior to adoption the emerging HWLDP is a material consideration to which weight will be attached. (See italics above regarding the earlier adoption of the HWLDP).

3.4.4 Statutory development plan policies

- 3.48 The Highland Structure Plan provides the spatial framework for development across the Highlands. The Plan contains general policies which are applied to most types of development and policies which are more specific to a location or type of development, e.g. renewables.

- 3.49 The Plan also includes a proposals map, which shows both onshore sites (Ness of Quoys and Ness of Huna) as located within a "rural development area". This defined as an area that offers opportunities for the further development of natural resources.

- 3.50 Relevant policies within the Structure Plan are:

- Policy G2 – Design for sustainability
- Policy G4 - Community benefit and commitment
- Policy T6 - Scenic views
- Policy E1 - Distributed renewable energy developments
- Policy E6 – Offshore energy developments

² Pentland Firth and Orkney Waters Marine Spatial Plan p166

- Policy L4 – Landscape character

3.51 The Caithness Local Plan provides more site specific and detailed policies to augment the Structure Plan. However, it has limited policies that are directly relevant to the Project. The Local Plan is broadly supportive of renewable energy projects (paragraph 1.34) and contains similar guidance to policy T6 of the Structure Plan regarding coastal development.

3.4.5 Emerging Highland - wide Local Development Plan

3.52 The Vision section of the Plan makes a commitment to safeguarding the environment by promoting the development of renewable energy schemes, but ensuring such schemes are sited so as to protect and enhance the special quality of the natural built and cultural environment. They also wish to provide opportunities that encourage economic development and create new employment through renewables development.

3.53 Ness of Quoy and Ness of Huna are identified in the spatial strategy as an offshore renewable base, in an area for potential offshore renewable energy and also an area for electricity grid reinforcement.

- General policies
- Policy 29 - Sustainable Design
- Policy 37 – Wider Countryside
- Policy 50 – Coastal Development
- Safeguarding our environment policies
- Policy 58 – Natural, Built and Cultural Heritage
- Policy 59 – Protected species/ Policy 60 – Other important Species/Policy 61 - Other important Habitats
- Policy 62 – Landscape
- Sustainable Development and Climate Change
- Policy 68 Renewable Energy Developments
- Policy 70 – Electricity Transmission Infrastructure

3.4.6 Existing supplementary guidance

3.54 In addition to the extant and emerging HWLDP there is a range of supplementary guidance produced by The Highland Council relevant to the Project (Table 3.1).

Document	Policies
	opportunities for local businesses. Policy J.1:- states that all renewable projects should undertake a pre-scoping phase of evaluation before locations, timing and development type are specified; and, Policy J2:- states that at a national or major level the proposal will have considered alternatives.
Highland Council Renewables Action Plan	The purpose of the plan is to ensure that there is a co-ordinated planning approach to the delivery of on-shore development for the marine renewables industry. It provides focus on key actions and gives information on timescales, lead agency and partners involved.
North Highland Vision June 2011	The Highland Council published an action plan which sets out a framework designed to coordinate the delivery of onshore development required for marine renewables in North Highland.

Table 3.1: Highland Council Supplementary Guidance

3.5 Environmental Impact Assessment Legislation

3.55 The purpose of the EIA Directive (Council Directive 2011/92/EU) is to ensure that the competent authority, in relation to development that is likely to have significant effects on the environment, has appropriate information to enable it to come to a decision on whether or not to grant consent. The EIA Directive sets out procedures that must be followed for such projects before they can be given 'development consent'.

3.56 If a development is deemed to need an EIA, environmental information must be provided by the developer in the form of an ES. The competent authority cannot grant consent for an EIA development without taking into account an ES.

3.57 The Directive is legally transposed into Scots Law via statutory instruments known as regulations. The following regulations are applicable to the Project:

3.5.1 Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)

3.58 These regulations are relevant to those elements of the Project which requires Section 36 consent under the Electricity Act 1989.

3.5.2 The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

3.59 These regulations are relevant to those elements of the Project which require a marine license under the Marine (Scotland) Act 2010.

3.5.3 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

3.60 These regulations are relevant to those elements of the Project which require planning permission under the Town and Country Planning (Scotland) Act 1997.

3.61 This ES has been produced in accordance with the regulations listed above.

3.6 Habitats Regulations

3.62 The European Habitats Directive (92/43/EEC) and Birds Directive (79/409/EEC) are transposed into Scots law by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended in 2004, 2007 and 2008.

3.63 European sites protected under this legislation include Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and RAMSAR sites. The European Habitats Directive (92/43/EEC) aims to promote the maintenance of biodiversity by requiring EU Member States to maintain or restore representative natural habitats and wild species at a favourable conservation status, through the introduction of robust protection for those habitats and species of European importance.

Document	Policies
Highland Coastal Development Strategy - May 2010	The Council will support marine renewable energy and this strategy envisages assisting in finding the most appropriate sites for such development. The Pentland Firth is identified as an appropriate site.
Highland Renewable Energy Strategy and Planning Guidelines – May 2006	Policy E.14:- supports the full investigation and exploration of the potential for tidal energy production, but recognises that there are significant gaps in knowledge including nature conservation impacts that need to be filled before large scale exploitation of tidal energy is supported. Nevertheless, the large amount of energy that could be available means that finding answers should be a key priority. Policy F.1:- is a recommendation for the management of renewables projects to be locally based to assist with "local empathy and awareness" and also to encourage procurement and

3.6.1 Habitats Regulations Appraisal and Appropriate Assessment

- 3.64 Habitats Regulations Appraisal (HRA) is an iterative process which aims to determine likely significant effects and if necessary assess adverse impacts on the integrity of European sites.
- 3.65 Appropriate Assessment is one stage of this process. A competent authority shall make an Appropriate Assessment of the implications for a site in view of that site's conservation objectives, before deciding to undertake or give any consent, permission or other authorisation for, a plan or project which:
- Is likely to have a significant effect on a European site in the UK (either alone or in combination with other plans or projects); and
 - Is not directly connected with or necessary to the management of the site.
- 3.66 The need for Appropriate Assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interests protected within the site. Competent authorities need to identify the qualifying interests and the conservation objectives for each European site involved in an appropriate assessment. There are a number of Natura 2000 sites in proximity to the Project which have been considered during the EIA.
- 3.67 It should be noted that HRA is a separate process from EIA. However, the HRA process has been followed for the Project and the findings of this have been used to inform specific topic sections of this ES. A stand-alone HRA report has been produced and is provided on the supporting documents CD accompanying this ES.
- 3.68 The Crown Estate, under its stewardship of the Pentland Firth and Orkney Waters wave and tidal projects, conducted a plan-level HRA to ensure that the leasing round would not have an adverse effect on European site integrity. The recommendation of the plan-level HRA was that 'the need for, and sufficiency of, project-specific mitigation measures will be taken in the context of project-level HRA and will be a matter for the consenting body as competent authority' (The Crown Estate, 2010). This should be 'completed in the context of the latest scientific information and understanding' (The Crown Estate, 2010). MeyGen has taken due regard of the recommendations of the plan-level HRA in undertaking the HRA for the Project.

3.6.2 European Protected Species

- 3.69 For any European Protected Species (EPS), Regulation 39 of the Conservation (Natural Habitats, &c.) Regulations 1994, makes it an offence to deliberately or recklessly capture, kill, injure, harass or disturb any such animal. It is also an offence to deliberately or recklessly obstruct access to a breeding site or resting place of any such animal, or otherwise to deny the animal use of the breeding site or resting place. In addition, it is an offence to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs. For cetaceans (dolphins, porpoises and whales) only, there is a more general offence deliberately or recklessly to disturb these creatures. The damage or destruction of a breeding site or resting place of any EPS of animal is an offence of strict liability. An EPS Licence is required for any activity that might result in disturbance to an EPS.

3.7 References

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