



Offshore Wind Power Limited

West of Orkney Windfarm Onshore EIA Report

Volume 1, Chapter 3 –
Planning Policy and
Legislative Context

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3 PLANNING POLICY AND LEGISLATIVE CONTEXT

3.1 Introduction

This chapter of the Onshore Environmental Impact Assessment (EIA) Report sets out the key legislation, policies, and other material considerations applicable to the onshore Project. Additional legislation, policies, and other material considerations for specific receptors are listed within the relevant topic-specific chapters of this Onshore EIA Report (chapters 8 to 17).

The key legislation and policies covered within this chapter include:

- Scottish planning framework and policies;
- Local planning policy context;
- Planning requirements;
- EIA legislation;
- Habitats and birds regulations; and
- Other licensing requirements.

The key international, European Union (EU), United Kingdom (UK) and Scottish climate change and renewable energy legislation and policies that establish the need for the Project are discussed in Onshore EIA, chapter 2: Need for the Project.

Additionally, Offshore Wind Power Limited (OWPL) has submitted a separate Onshore Planning Statement alongside the Application for Planning Permission in Principle (PPP) (OWPL, 2023a). The Onshore Planning Statement provides further detail on the key legislation and policies applicable to the onshore Project and includes an assessment of compliance against these.

3.2 EU exit

On 31st January 2020, after triggering Article 50 of the Lisbon Treaty, the UK formally left the EU, in what is often referred to as 'Brexit' or 'EU Exit'. Since formally leaving the EU, the UK Government has committed to implementing international environmental obligations in accordance with the European Union (Withdrawal) Act 2018 and to maintain existing environmental and legislative commitments. Table 3-1 outlines the key EU Exit Regulations.



Table 3-1 European legislation

RELEVANT LEGISLATION	DESCRIPTION
<p>EU Exit Regulations</p>	<p>The policies and procedures under the EIA Regulations remain unchanged (addressed fully in section 3.6). However, as the UK is no longer part of the EU, amendments were made to the EIA Regulations in Scotland to ensure that they continue to work in the same manner. Many of the amendments made are minor and technical in nature. Amendments were made to The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019, The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 and The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019.</p> <p>The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, ensure that policy on the protections and standards afforded by the Habitats Regulations remains unchanged, but there have been some changes in terminology and the Scottish Ministers now exercise some functions that were previously carried out at an EU level.</p> <p>Guidance on the implications of Brexit on environmental legislation (including EIA) and Habitats Regulations Appraisal (HRA) are available through the Scottish Government website (Scottish Government, 2020a; Scottish Government, 2020b).</p>

3.3 Scottish planning framework and policies

Table 3-2 outlines the main Scottish planning framework and policies relevant to the onshore Project, including the newly adopted National Planning Framework (NPF) 4 (Scottish Government, 2023a), which establishes the planning framework in Scotland.

It is a legislative requirement that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The statutory development plan for any given area in Scotland consists of the NPF and the relevant Local Development Plans (LDPs). NPF4 is outlined in Table 3-2 and the relevant LDPs for the onshore Project are summarised in section 3.4.

Table 3-2 Scottish legislation and policy

LEGISLATION OR POLICY	DESCRIPTION
<p>The Planning (Scotland) Act 2019</p>	<p>The Planning (Scotland) Act 2019 came into force on 26th July 2019 as an amendment to the Planning Act and set out a broad range of changes to be made across the planning system, including a requirement to prepare Regional Spatial Strategies and changes to the process of preparing LDPs. Overall the Planning (Scotland) Act 2019 sets out the roles of local authorities with regard to development plans, development management and enforcement.</p> <p>The recently published NPF4 builds on the provisions made in The Planning (Scotland) Act 2019.</p>



LEGISLATION OR POLICY	DESCRIPTION
National Planning Framework (NPF) 4	<p>After two years of extensive consultation the Scottish Government laid the 'Revised Draft NPF4' before parliament on the 8th November 2022. The draft was approved in January 2023 and NPF4 was adopted by Scottish Ministers on 13th February 2023 (Scottish Government, 2023a). NPF4 replaces NPF3 and the Scottish Planning Policy (SPP). NPF4 represents a package of planning policies to guide planning and development and sets out sustainable policies against which planning applications would be assessed up to 2045, and details how the approach to planning and development will help to achieve a net-zero, sustainable Scotland by 2045 with a strong focus on infrastructure and economic investment.</p> <p>NPF4 differs from NPF3 by encompassing both thematic and spatial planning policies. For the first time, NPF comprises part of the statutory development plan in Scotland and therefore its policies will have a stronger role in day-to-day planning with an enhanced legal status. Overall, NPF4 will take on a stronger role for influencing planning decisions compared with NPF3.</p> <p>A key concept introduced in NPF4 is biodiversity. NPF4 references the biodiversity crisis and proposes Policy 3: Biodiversity which sets out a requirement for all developments, with the exception of aquaculture and householder applications, to provide biodiversity enhancements within their proposals. Policy 3 outlines that for National Developments specifically, such as the onshore Project, proposals will only be supported where they can demonstrate how they meet a set of criteria aimed at securing conservation, restoration and enhancement of biodiversity. The Policy clarifies that these biodiversity enhancements are required, importantly, in addition to any proposed mitigation, and sets out a preference for nature-based solutions to be used where feasible. In accordance with this, the Project has developed an outline Biodiversity Enhancement Plan (BEP) which has been submitted alongside the onshore PPP Application (OWPL, 2023b). The final version of the BEP will be developed once the Project design is finalised.</p> <p>Further information on NPF4 with respect to the Project need is provided in detail in Onshore EIA, chapter 2: Need for the Project.</p>

3.4 Local planning policy context

As detailed in Onshore EIA, chapter 2: Need for the Project, NPF4 forms part of the statutory development plan, along with the LDPs and its Supplementary Guidance. As the development plan system transitions to one without statutory Supplementary Guidance, provisions are in place to allow for local authorities to continue to prepare and adopt Supplementary Guidance associated with LDPs until 31st March 2025. Supplementary Guidance adopted under those provisions is to be treated as forming part of the development plan for the area to which the LDP relates (Scottish Government, 2023b).

Table 3-3 provides a description of the LDPs which are of relevance to the onshore Project due to its location within the jurisdiction of The Highland Council (THC). The main planning policy documents of relevance to the onshore Project are:

- Highland-wide LDP (HwLDP) (THC, 2012a) and Emerging HwLDP;
- Caithness and Sutherland LDP (CaSPlan) (THC, 2018); and
- Supplementary Guidance.



Table 3-3 Local development plans (LDPs)

RELEVANT PLAN	DESCRIPTION
<p>HwLDP and Emerging HwLDP</p>	<p>The HwLDP was adopted by THC on 5th April 2012 (THC, 2012a) and sets out a strategy to support the growth of all communities across THC region.</p> <p>It seeks to enable sustainable Highland communities, safeguard the environment, support a competitive, sustainable and adaptable Highland, achieve a healthier area, and provide better opportunities for all. With regards to renewable energy, the LDP's vision states that the Council will ensure that the development of renewable energy resources is managed effectively, with clear guidance on where renewable energy developments should and should not be located.</p> <p>As set out in section 3.3, NPF4 has been adopted as of February 2023 and for the first time, comprises part of the statutory development plan in Scotland. THC have stated that with the publication of NPF4 there will likely be a reduction in the number and range of policies required in THC's LDP, and therefore THC are undertaking a review of the existing HwLDP under the new arrangements for LDPs set out in NPF4. This review began in spring 2023. Previous review of the HwLDP produced a Main Issues Report in 2015 (THC, 2015), which refers to the potential to review the existing policy 69 relating to Electricity Transmission Infrastructure:</p> <p><i>"Existing Policy 69 Electricity Transmission Infrastructure will be improved to cover energy storage and distribution infrastructure. A more comprehensive policy is proposed outlining expectations for the preparation and assessment of proposals for electricity infrastructure. National Developments (defined by NPF3) will be supported in principle with transmission routing options being fully considered under this policy as well as the detail of proposals. The updated policy will set the context for any site-specific matters that may be picked up in Area LDPs. We invite the submission of information from the energy industry to help us identify areas for national and local electricity network improvement (as illustrated on the Spatial Strategy Map), as well as areas for potential decentralised and mobile energy storage installations."</i></p> <p>There has been no further update on the revised HwLDP since the release of NPF4. Notwithstanding this, the onshore Project is considered to align with the aims of the Main Issues Report, because it is a National Development aligning with the future aims of Policy 69.</p>
<p>CaSPlan</p>	<p>The CaSPlan was adopted in August 2018 (THC, 2018) and is the second of three new area LDPs that, along with the HwLDP and Supplementary Guidance (see below), form THC's Development Plan that guides future development in Highland, particularly in the Caithness and Sutherland area, and focuses on where development should and should not occur over the next 10 to 20 years. The CaSPlan should be used by development proposals which should consider all of the contents of the LDP and not just single policies.</p>

Table 3-4 and Table 3-5 provide further details of the HwLDP and the CaSPlan policies, respectively, that are considered relevant to the onshore Project. Further information on the climate change and renewable energy position stated within these Plans is provided in Onshore EIA, chapter 2: Need for the Project.



Table 3-4 Relevant HwLDP Policies

POLICY	SUMMARY
<p>Policy 28 – Sustainable Design</p>	<p>Sets out the criteria against which developments will be assessed in terms of promoting and enhancing the social, economic, and environmental wellbeing of the people of the Highlands.</p>
<p>Policy 29 – Design Quality and Place-Making</p>	<p>Outlines that new development should be designed to make a positive contribution to the architectural and visual quality of the place in which it is located. It encourages applicants and developers to demonstrate sensitivity and respect towards the local distinctiveness of the landscape, architecture, design and layouts in their proposals.</p>
<p>Policy 30 – Physical Constraints</p>	<p>States that developers must consider whether proposals would be located within areas of constraints. Where a development is affected by a physical constraint the application must demonstrate how this has been designed around or mitigated against.</p>
<p>Policy 31 – Developer Contributions</p>	<p>States that where a development creates the need for new or improved public services, facilities or infrastructure, the Council will seek from the developer a fair and reasonable contribution proportionate to the scale and nature of the development proposed.</p>
<p>Policy 34 – Settlement Development Areas</p>	<p>States that development proposals within Settlement Development Areas will be supported where they are meeting the requirements of Policy 28 – Sustainable Design. Developments will also be judged as to how compatible they are with existing patterns of development and landscape character, how they conform with existing and approved adjacent land uses, and the effect on any natural, built and cultural heritage features.</p>
<p>Policy 36 – Development in the Wider Countryside</p>	<p>Where a development falls outwith the Settlement Development Areas, the application will be assessed against the criteria set out in Policy 36:</p> <ul style="list-style-type: none"> • <i>“are acceptable in terms of siting and design;</i> • <i>are sympathetic to existing patterns of development in the area;</i> • <i>are compatible with landscape character and capacity;</i> • <i>avoid incremental expansion of one particular development type within a landscape whose distinct character relies on an intrinsic mix / distribution of a range of characteristics;</i> • <i>avoid, where possible, the loss of locally important croft land; and</i> • <i>would address drainage constraints and can otherwise be adequately serviced, particularly in terms of foul drainage, road access and water supply, without involving undue public expenditure or infrastructure that would be out of keeping with the rural character of the area.”</i>



POLICY	SUMMARY
Policy 42 – Previously Used Land	<p>The Council will support development proposals that bring previously used land back into beneficial use provided:</p> <ul style="list-style-type: none"> • Site investigation and risk assessment are undertaken and demonstrate that the site is in, or is capable of being brought into, a condition suitable for the proposed development; and • Proposed development accords with all other relevant policies of this plan.
Policy 49 – Coastal Development	<p>Development proposals for the coast or for installations in nearshore waters should, in both their location and their design, show consideration to the range of existing interests ensuring best use of resources taking account of existing and planned marine activities and development. Proposals should not have an unacceptable impact on the natural, built or cultural heritage and amenity value of the area.</p>
Policy 51 – Trees and Development	<p>Outlines the Council’s support for development which promotes significant protection to existing hedges, trees and woodlands on and around development sites. The acceptable developable area of a site is influenced by tree impact, and adequate separation distances will be required between established trees and any new development. Where appropriate a woodland management plan will be required to secure management of an existing resource.</p>
Policy 52 – Principle of Development in Woodland	<p>The applicant is expected to demonstrate the need to develop a wooded site and to show that the site has capacity to accommodate the development. The Council will maintain a strong presumption in favour of protecting woodland resources. Development proposals will only be supported where they offer clear and significant public benefit. Where this involves woodland removal, compensatory planting will usually be required.</p>
Policy 55 – Peat and Soils	<p>States the requirement for development proposals to demonstrate how unnecessary disturbance, degradation or erosions of peat and soils has been avoided. States that unacceptable disturbance of peat will not be permitted unless reasoning has been reasonably demonstrated.</p>
Policy 56 – Travel	<p>States that proposals should consider on and off site transport implications of the development, including (but not limited to); being accessible by sustainable and desirable modes of transport, ensuring opportunities for walking and cycling are maximised, consider incorporation of improving access routes.</p>
Policy 57 – Natural, Built and Cultural Heritage	<p>States that proposals will be assessed considering the ‘<i>level of importance and type of heritage features, the form and scale of the development, and any impact on the feature and its setting</i>’. Policy 57 is supported by Appendix 2 ‘Definition of Natural, Built and Cultural Heritage Features’ of the HwLDP.</p>
Policy 58 – Protected Species	<p>Outlines the requirement for surveys to determine presence and if required, a mitigation plan, for protected species on development sites to avoid or minimise impacts on the species.</p>



POLICY	SUMMARY
Policy 59 – Other Important Species	Outlines the Council’s regard for protecting Annex II and V species (as listed within the Habitats Directive), priority species (as listed in the UK and local Biodiversity Action Plans (BAP)) and species listed on the Scottish Biodiversity List.
Policy 60 – Other Important Habitats	<p>Outlines the Council’s commitment to safeguard habitats and Article 10 features, defined as habitats and features which <i>‘are of major importance because of their linear and continuous structure or combination as habitat “stepping stones” for the movement of wild fauna and flora’</i>.</p> <p>Other Important Habitats include:</p> <ul style="list-style-type: none"> • Habitats listed in Annex I of the European Commission (EC) Habitats Directive; • Habitats of priority and protected bird species; • Priority habitats listed in the UK and Local BAP; and • Habitats included on the Scottish Biodiversity List.
Policy 61 – Landscape	States that new development should be designed with consideration for the landscape characteristics and special qualities of the landscape character area within which they are located. Consideration should include an appropriate scale, form, pattern and construction materials. When assessing new developments, the Council will consider Landscape Character Assessments (LCAs), Landscape Capacity Studies and Supplementary Guidance on Siting and Design and Sustainable Design. Policy 61 also states the Council’s preference for developments to enhance the landscape characteristics of an area.
Policy 62 - Geodiversity	States that the Council will support development proposals which seek to protect and enhance the geodiversity interests of the wider countryside.
Policy 63 – Water Environment	States that the Council will support development proposals which do not compromise the objectives of the Water Framework Directive (WFD) (2000/60/EC) (European Parliament, 2000). The Council will also assess proposals against the River Basin Management Plan (Scottish Government, 2021).
Policy 64 – Flood Risk	Outlines the Councils position with regards to proposals which are located within or bordering areas susceptible to flooding and state the Council’s support for sustainable flood management. Outlines the requirements where a Flood Risk Assessment (FRA) may be required.
Policy 65 – Waste Water Treatment	<p>States that connection to the public sewer as defined in the Sewerage (Scotland) Act 1968 is required for all new development proposals unless it can be demonstrated that the development is unable to connect to a public sewer for technical or economic reasons; and that the proposal is not likely to result in or add to significant environmental or health problems.</p> <p>For proposals where connection to the public sewer is not possible, a private system will only be supported if the system is designed to and built to a standard which will allow adoption by Scottish Water, or the system is designed such that it can easily connect into a public sewer in the future.</p>



POLICY	SUMMARY
Policy 66 – Surface Water Drainage	States that all development proposals must be drained by Sustainable Drainage Systems (SuDS) to ensure long-term maintenance of the scheme.
Policy 67 – Renewable Energy Development	<p>Outlines the considerations against which the Council will assess and support renewable energy developments. The Council will support proposals where it has been reasonably demonstrated that there will not be significant adverse effects on specific environmental designations and receptors.</p> <p>Proposals for renewable energy developments will be assessed against the development plan, the Highland Renewable Energy Strategy (HRES)¹ and Planning Guidelines. See Onshore EIA, chapter 2: Need for the Project, for further details.</p>
Policy 69 – Electricity Transmission Infrastructure	<p>States that proposals for transmission infrastructure will be considered in line with their level of strategic significance in transmitting electricity from areas of generation to areas of consumption. Subject to this consideration, the Council will:</p> <p><i>"...support proposals which are assessed as not having an unacceptable significant impact on the environment, including natural, built and cultural heritage features. In locations that are sensitive, mitigation may help to address concerns and should be considered as part of the preparation of proposals."</i></p>
Policy 72 – Pollution	Outlines the requirements for a detailed assessment on predicted emissions where proposals are likely to result in significant pollution (including noise, air, water and light), and mitigation to appropriately avoid this.
Policy 73 – Air Quality	States that where proposals have the potential to adversely affect the air quality to an extent where it could harm human health and/or the natural environment, the proposal must be accompanied by provisions such as an Air Quality Assessment, demonstrating how impacts will be mitigated.
Policy 74 – Green Network	States the requirement for protection and enhancement of green networks where possible. Development in areas identified for the creation of green networks should seek to avoid the fragmentation of the network and take steps to improve its connectivity, where this is appropriate.
Policy 77 – Public Access	Outlines that where a proposal impacts a core path route, wider access rights or an access point to water, there is a requirement to retain and enhance the path or ensure alternative access provisions.
Policy 78 – Long Distance Routes	States the Council's commitment to safeguarding and enhancing long distance routes and their settings.

¹¹ In August 2016 THC Planning, Development and Infrastructure Committee agreed that HRES will no longer be used as a material planning consideration but that generation targets would be carried forward for monitoring purposes.



Table 3-5 Relevant CaSPlan policies

POLICY	SUMMARY
Employment (paragraphs 53 and 54)	States that renewable energy investment in North Highland is helping to meet Council level and national level climate change targets, as well as delivering economic benefits for the area. The CaSPlan aims to maximise the benefits to the local economy by adopting a more targeted, but still flexible, approach to identifying business and industrial land.
Environment and Heritage (paragraph 72)	Stresses the richness of the natural and historic environment which contains internationally and nationally recognised sites, species, and habitats; locally valued sites and landscapes; dramatic landforms, and a diverse cultural heritage. HwLDP policies provide safeguards for these features.
Climate Change (paragraphs 80, 81 and 82)	States THC’s commitment to working with communities, businesses, and partners to mitigate impact on climate change by reducing Greenhouse Gas (GHG) emissions, maximising renewable energy contributions, taking steps to adapt to the unavoidable impacts of a changing climate and to working with communities to respond to climate change. Acknowledges that the area also has a substantial renewable energy resource, with onshore wind and hydro energy sectors well established and offshore and marine energy developments currently emerging.
Caithness Settlements – Halkirk (paragraph 101)	Stresses that development in Halkirk has the potential to have an adverse effect on the River Thurso Special Area of Conservation (SAC) alone or in combination. Development around particular sites in Halkirk will be required to assess and demonstrate appropriate mitigation measures which ensure avoidance of any adverse effect on the integrity of the River Thurso SAC.
Forss Business and Energy Park	States that the Park has potential to provide further support to the growth of the renewable energy industry.

In addition to the statutory LDPs listed, key Supplementary Guidance relevant to the onshore Project are outlined in Table 3-6 below.



Table 3-6 Supplementary Guidance

SUPPLEMENTARY GUIDANCE	SUMMARY
<p>Scottish Natural Heritage - LCA: Guidance for England and Scotland (SNH, 2002)</p>	<p>This document outlines the systematic approach that should be taken when identifying and describing the variety in landscapes when undertaking LCAs, including due consideration of the appropriate scale, form, pattern and construction materials of the proposed development.</p>
<p>THC – Sustainable Design Guide Supplementary Guidance (THC, 2013a)</p>	<p>Outlines guidance which is intended to encourage developers to design proposals which respond to the local landscape and local climate.</p>
<p>THC – Physical Constraints: Supplementary Guidance (THC, 2013b)</p>	<p>This guidance is intended to provide developers with a comprehensive list of physical and technical constraints, including those that relate to public health matters, that should be assessed when considering development, including factors such as noise, pollution and odour.</p>
<p>THC – Highland Historic Environment Strategy (THC, 2013c)</p>	<p>This guidance establishes comprehensive principles for the protection of the regions heritage assets and provides a statement of the Council's strategic aims for the protection and management of the historic environment.</p>
<p>THC – Highland's Statutorily Protected Species (THC, 2013d)</p>	<p>This guidance supplements Policy 58 of the HwLDP. This guidance is not intended to cover all aspects of the planning process in relation to biodiversity but to focus on protected species to ensure that all stakeholders in a development have a clear understanding of their legal responsibilities.</p>
<p>THC – Special Landscape Area Citations (THC, 2011)</p>	<p>This guidance supplements Policy 57 of the HwLDP. The role of this document is to assist in the determination of planning applications. These citations provide background on the Special Landscape Areas. The document highlights particular landscape values which should be safeguarded and how sensitive they are to change.</p>
<p>THC – Standards for Archaeological Work (THC, 2012b)</p>	<p>This document sets practical standards for a consistent approach to the management of the historic environment in Highland.</p>
<p>THC – Trees, Woodlands and Development (THC, 2013e)</p>	<p>This document supplements Policy 51 of the HwLDP and ensures applicants seeking planning permission on development in areas of woodland effectively consider and manage existing woodland.</p>



3.5 Planning requirements

As noted with Onshore EIA, chapter 1: Introduction, the following consent is being sought for the onshore Project:

- PPP under the Town and Country Planning (Scotland) Act 1997 (as amended).

Further information on this planning requirement, as well as others relevant to the onshore Project are outlined in Table 3-7.

Table 3-7 Planning requirements

RELEVANT REQUIREMENTS	DESCRIPTION
Town and Country Planning (Scotland) Act 1997 (as amended)	<p>The principal planning statute in Scotland is the Town and Country Planning (Scotland) Act 1997 ('the Planning Act') as amended by the Planning etc. (Scotland) Act 2006, and more recently The Planning (Scotland) Act 2019 (detailed further in Table 3-2). The Planning Act sets out the roles of local authorities with regard to development plans, development management and enforcement.</p> <p>To construct and operate the required onshore transmission infrastructure to export electricity from the offshore Project to the National Grid network, consent is required under the Planning Act.</p> <p>The Application is for the construction and operation of the required onshore transmission infrastructure. The Application is supported by this Onshore EIA Report which has been prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. Consent for the onshore Project is being sought via an Application for PPP, in accordance with the Town and Country Planning (Scotland) Act 1997 to THC.</p>
The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009	<p>This is the relevant legislation referring to categories of development. The hierarchy is intended to deliver a planning system in which different types of applications will be dealt with in different ways depending on their scale and complexity and decisions will be taken at the most appropriate level (e.g., Local, Major or National development).</p> <p>The onshore Project is classed as a 'National Development', as set out in NPF4. As such the Application for PPP, in accordance with the Town and Country Planning (Scotland) Act 1997, will be considered as a significant development of national importance that will help to deliver the spatial strategy outlined in NPF4.</p>
The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended)	<p>This legislation requires National Developments, such as the onshore Project, to submit a proposal of application notice and undertake Pre-Application Consultation (PAC) with communities in accordance with the Planning Act and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. This process provides opportunities to receive feedback from the public and third sector organisations that can then be addressed in the application and supporting Onshore EIA Report.</p> <p>Details of the PAC process undertaken to inform this Onshore EIA Report are presented in chapter 6: Stakeholder engagement and within the associated PAC Report (OWPL, 2023c) accompanying the Application.</p>



3.6 EIA legislation

The requirement for an EIA is defined through the EIA directive (85/337/EEC) (as amended). The purpose of the EIA Directive is to ensure that the potential effects of a project on the environment are taken into consideration before development consent is granted. If a development is deemed to have the potential to cause a significant effect on the environment by virtue of its scale, size, and/or location, then an EIA is required. The results of any such EIA must be provided by the developer to the decision-maker in the form of an EIA Report. The competent authority cannot grant consent for an EIA development without considering the EIA Report.

The EIA Directive was transposed into Scottish law through domestic legislation prior to the UK's withdrawal from the EU, and relevant EU Exit legislation has ensured that the EIA requirements have remained effective in the UK, as described in section 3.2. The EIA Regulations which transpose the requirements of the EIA Directive into the Scottish Planning system are presented in Table 3-8. These EIA Regulations establish the statutory process and minimum requirements for the EIA, with which this Onshore EIA Report has been compiled. Chapter 7: EIA methodology includes further details on how the EIA Regulations and EIA guidance have guided the onshore Project EIA.

Table 3-8 EIA legislation

RELEVANT LEGISLATION	DESCRIPTION
<p>The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA Regulations)</p>	<p>The requirements for EIA are defined in the EIA Directive (85/337/EEC) (as amended). The EIA Regulations transpose the EIA Directive 2011/92/EU (as amended by Directive 2014/52/EU) into the Scottish planning system, and cover EIA requirements for developments for which an Application for PPP has been submitted under the Planning Act.</p> <p>The EIA Regulations determine whether a development is classed as 'Schedule 1' or 'Schedule 2', and whether a proposed development is classed as an 'EIA development' i.e. requires an EIA. All developments falling within a description in Schedule 1 of the EIA Regulations require an EIA, and developments listed within Schedule 2 of the EIA Regulations will require EIA if they are likely to have a significant effect on the environment, due to factors such as their size, nature or location.</p> <p>Whilst the onshore Project does not fall explicitly within the 'descriptions of proposed development' set out in Schedule 1 or Schedule 2 of the EIA Regulations, it forms part of the offshore Project which in itself is classified as an EIA development under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. OWPL therefore has elected to treat the development as an EIA development as a matter of good practice.</p>

In addition to the above legislation, the Onshore EIA Report has been prepared in accordance with the applicable EIA planning advice including:

- Planning Circular 1/2017: The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017; and
- Planning Advice Note (PAN) 1/2013 Environmental Impact Assessment (Revision 1; updated to reflect the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017).



Topic-specific guidance is detailed within the relevant topic-specific chapters of this Onshore EIA Report.

As the UK is no longer part of the EU, amendments were made to the EIA Regulations in Scotland to ensure that they continue to work in the same manner in Scotland, as detailed in section 3.3.

3.7 Assessment of effects on designated sites

An assessment of the potential effects of the onshore Project on designated sites is a requirement under EU, national and Scottish legislation. This Onshore EIA Report, as well as the HRA Screening Report and the Report to Inform the Appropriate Assessment (RIAA) have adhered to the relevant Regulations, outlined in Table 3-9.

Table 3-9 Habitats legislation

RELEVANT LEGISLATION	DESCRIPTION
<p>Habitats and Birds Directives</p>	<p>Both the Habitats Directive (92/43/EEC) (the 'Habitats Directive') and Directive (2009/147/EC) on the conservation of wild birds (the 'Birds Directive') form a network of designated 'European Sites'. Under this legislation, these sites include SACs, Special Protected Areas (SPAs) and Ramsar Sites. As these directives aim to maintain the biodiversity of European Sites to a favourable conservation status, EU Member States must afford these sites robust protection measures.</p> <p>Following Brexit, the Habitats Regulations, detailed below, which transpose the requirements of the Habitats and Birds Directive into Scottish law, remain in force. This includes the general provisions for the protection of European Sites, policy and standards, and the procedural requirements to undertake HRA to assess the implications of plans or projects for European sites.</p>
<p>Habitats Regulations</p>	<p>The Conservation (Natural Habitats &c.) Regulations 1994 (as amended), and The Wildlife and Countryside Act 1981 ('The Habitats Regulations'), transpose the requirements of the Habitat and Birds Directives for developments in Scotland.</p> <p>Recent legislative amendments focused on the changes necessary to ensure that the Habitats Regulations remain operable now that the UK has left the EU; however, there have been some changes to terminology (Scottish Government, 2020a) and Scottish Ministers now exercise some functions which were previously carried out at EU level. Within the UK, the Habitats Regulations now apply to the 'UK National Site Network', which covers SACs, SPAs, and Ramsar sites designated at various points in time before Brexit (i.e. UK sites that formed part of the EU Natura 2000 network prior to the UK's exit from the EU) and any sites designated under the Habitats Directive post-Brexit.</p> <p>Where there is potential for a project to have an adverse effect on a SAC, SPA or Ramsar site, including proposed or candidate sites e.g. proposed SPAs (pSPAs) or candidate SACs (cSACs), an Appropriate Assessment is required in accordance with the UK legislation that gave effect to the Habitats Directive, and which continues to apply post Brexit (i.e. the Habitats Regulations), to ascertain whether a project will adversely affect the integrity of a site given the conservation objectives of the site.</p> <p>In accordance with the Habitats Regulations, and as part of the HRA process, where it is identified that there is potential for a Likely Significant Effect (LSE) on a designated site, through HRA Screening, the Applicant is required to provide a RIAA. The RIAA details information on the effects of the project on the integrity of a European site to the Competent Authority (i.e. THC), to enable them to undertake an AA of the onshore Project.</p>



RELEVANT LEGISLATION	DESCRIPTION
	<p>As such, OWPL undertook a HRA Screening (OWPL, 2023d) to identify designated sites that are protected for their conservation interests and their qualifying features that have potential connectivity to the onshore Project (within which the PPP is being sought) to assess whether LSE to these designated sites from potential impacts could be ruled out. OWPL subsequently produced an Onshore RIAA for the onshore Project where potential LSE could not be ruled out (OWPL, 2023e). The RIAA assesses whether the onshore Project will have an adverse effect on site integrity of the designated sites screened in for assessment in order to fulfil the requirements of HRA. This has been submitted to THC alongside this Onshore EIA Report.</p> <p>Similarly, a HRA process has been undertaken for the offshore Project, with an Offshore RIAA submitted to Marine Directorate – Licensing Operations Team in support of the Section 36 consent and Marine Licence applications for the offshore Project (OWPL, 2023f).</p>

3.8 Other licencing requirements

Other licences may be required across the onshore Project lifecycle. These are outlined within Table 3-10.

Table 3-10 Other licences potentially required during onshore Project lifecycle

STAGE	LICENCE DESCRIPTION
Construction	<ul style="list-style-type: none"> • NatureScot Derogation Licences <ul style="list-style-type: none"> - In the event that any protected species (e.g. bats, otter, water vole and badger) be identified through pre-construction surveys, specific mitigation would be developed in consultation with NatureScot. For example, in the event that the onshore Project cannot be sited to avoid potential effects on an otter shelter, works would only be carried out under a NatureScot otter derogation licence, with appropriate mitigation and compensation measure implemented to ensure that otter are maintained at a favourable conservation status within the onshore Project area. Derogation licences may also be sought for other protected species, as required. • Controlled Activities Regulations (CAR) Licence <ul style="list-style-type: none"> - If consent is granted, and following detailed design, OWPL will engage with Scottish Environment Protection Agency (SEPA) to discuss the need for a CAR Licence during construction of the onshore Project under the CAR Regulations and the extent of the information required by SEPA to assess any license application.
Operation and maintenance	<ul style="list-style-type: none"> • CAR Licence <ul style="list-style-type: none"> - OWPL will engage with SEPA to discuss the need for a CAR Licence during operation and maintenance of the onshore Project under the CAR Regulations and the extent of the information required by SEPA to assess any license application.
Decommissioning	<ul style="list-style-type: none"> • Additional licences required during decommissioning works are likely to be similar to that during the construction stage, for example, potential requirement for CAR licences and NatureScot Derogation Licences. The need for these will be assessed and discussed with SEPA and NatureScot prior to decommissioning activities commencing.



3.9 References

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3.10 Abbreviations

ACRONYM	DEFINITION
BAP	Biodiversity Action Plan
BEP	Biodiversity Enhancement Plan
CAR	Controlled Activities Regulations
CaSPlan	Caithness and Sutherland Local Development Plan
cSAC	Candidate Special Area of Conservation
EIA	Environmental Impact Assessment
EC	European Commission
EU	European Union
FRA	Flood Risk Assessment
GHG	Greenhouse Gas
HRA	Habitats Regulations Appraisal
HRES	Highland Renewable Energy Strategy
HwLDP	Highland-wide Local Development Plan
LCA	Landscape character Assessment
LDP	Local Development Plan
LSE	Likely Significant Effect
NPF	National Planning Framework
OWPL	Offshore Wind Power Limited
PAC	Pre-application Consultation



ACRONYM	DEFINITION
PAN	Planning Advice Note
PPP	Planning Permission in Principle
pSPA	Proposed Special Protected Area
RIAA	Report to Inform Appropriate Assessment
SAC	Special Areas of Conservation
SEPA	Scottish Environment Protection Agency
SPA	Special Protected Area
SPP	Scottish Planning Policy
SuDS	Sustainable Drainage Systems
THC	The Highland Council
UK	United Kingdom
WFD	Water Framework Directive