

## STROME FERRY – STATUTORY PROCESSES AT DMRB STAGE 3

### 1.1 Introduction

Within the brief for the Stage 1/Stage 2 Feasibility Study Report for the Stromeferry Bypass, there was a requirement for URS to comment on the various statutory processes associated with each route and make comment on any difficulties that may be encountered and therefore advise on route selection during the Stage 2 process.

A number of statutory processes must be followed at Stage 3 for a preferred route. This will include obtaining a number of consents and licences which depending on the route chosen could include the following:

**Table 1 – Consents, Licences and Statutory Processes**

| Consent / Licence or Statutory Process         | Applicable to   |
|--|---|
| Planning consent*                              | All options   |
| Marine Licence                                 | Northern options (N6, N9 and Online Railway Viaduct Option (O2) |
| Compulsory Purchase*                           | All options   |
| De-crofting of land                            | All options   |
| Environmental Impact Assessment                | All options   |
| Protected species disturbance licence          | All options   |
| Habitats Regulations Assessment                | All options   |
| Scheduled Monument consent*                    | Northern Options (N6, N9)                                       |
| Listed Building consent* (for setting impacts) | All options   |
| Tree felling licence                           | Northern Options (N6, N9) and Southern Option (S4)              |
| Controlled Activities Regulations Licence      | All options   |
| Waste Management Licence                       | All options   |
| Transport and Works (Scotland) Order*          | Online Railway Viaduct Option (O2)                              |

\* It should be noted that a Public Local Inquiry may be required under some of the above processes depending on circumstances/objections. Further details are provided in the text below for each statutory process.

### 1.2 Planning Consent

Competent Authority: The Highland Council (or the Scottish Government if the application is called in by ministers).

Legislation: Town & Country Planning (Scotland) Act 1997; and the Planning (Scotland) etc. Act 2006.

The construction of a new road and associated structures will require planning consent rather than a roads order as the A890 is not part of the trunk road network. Planning consent would need to be obtained from the Highland Council or the Scottish Government if the application is called in by ministers. It is reasonable to assume that under THC's scheme of delegation for planning decisions, that the THC planning committee will ultimately make a decision on the planning application. It should be noted that the planning committee is not bound by an officer's recommendation.

The Stromeferry bypass will be classified as a 'Major Development' as defined in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, Reg 2 (1). This will mean the following information must be submitted with the planning application:

- Application form;
- Detailed drawings/plans (as required);
- Pre-application consultation report;
- Design & Access Statement;
- Application fee.

A Major development proposal legally requires the submission of a Proposal of Application Notice (PAN) to the planning authority 12 weeks before submitting a planning application. This is a legal requirement and should be noted for programming of work.

A 12 week (minimum) Pre-Application Consultation (PAC) process then follows PAN during which the applicant must hold at least one public event where members of the public can make comments. At a minimum one consultation event must be held and all community councils must be notified along with a newspaper advertisement placed at least 7 days prior to the event. This is a legal requirement.

A report describing the above consultation activity must be submitted with the application (known as the PAC report).

Major planning applications should be decided by the planning authority within 4 months however this time limit is not absolute – complex applications are likely to take longer to determine due to consultation with various statutory or community bodies. In some, generally more complex, cases the applicant may agree an extension with the planning authority. It is likely that a planning application will either be refused or granted subject to conditions.

It should also be noted that development must begin within 3 years of granting planning permission or the consent will expire.

#### Planning Appeal

In the event that the planning application is refused (either by THC or the Scottish Government if the application is called in) the Council, as applicant, can appeal the planning decision. No other parties can appeal the decision; however material objections by affected parties such as landowners will be considered by the council/Scottish Government prior to a decision being made.

If a planning application for a Major Development is refused, granted subject to conditions or where no decision is made within the specified time limit, the applicant has the right to appeal to Scottish Ministers on grounds of non-determination. The majority of appeals involve Scottish Ministers delegating appeals to a Reporter. The appeal can be through written

submissions/hearing/inquiry and the format is decided by a Reporter. There is no specified time limit on how long the appeal process takes.

A notice of appeal must be lodged within three months of: the notice of the decision of the planning authority on the application, or; in the case of deemed refusal (i.e. non-determination), the expiry of four months from the date of validation of the major application. Any late objection will be rejected as invalid.

In addition to the above, it should be noted that The Court of Session in Edinburgh has jurisdiction to hear challenges of planning decisions or actions by way of the statutory appeal procedure or under its common-law (non-statutory) judicial review procedure. The Court of Session does not decide whether a decision is correct or incorrect in planning terms, rather it can only decide if a 'wrong' decision has been made in legal terms.

### 1.3 Marine Licence

Competent Authority: Marine Scotland.

Legislation: Marine (Scotland) Act 2010.

A Marine Licence would be required for the deposit or removal of a substance or object below the mean high water springs mark. Marine Scotland have also advised that if there would be any associated dredging works taking place, that involved disposal at sea, then a Marine Licence for Sea Disposal may also be required.

Under Section 20(1) of the Marine (Scotland) Act 2010 (from 0 -12nm) and Section 65(1) of the Marine and Coastal Access Act 2009 (from 12 – 200nm), a marine licence from Scottish Ministers is required if a person or organisation intends to carry out certain acts in the Scottish marine area. These acts can include:

- The deposit of a substance or object in the sea or on or under the seabed;
- The construction, alteration or improvement of works in the sea or on or under the seabed;
- The removal of a substance or object from the seabed;
- Dredging (including plough, agitation, side-casting and water injection);
- The incineration of a substance or object.

The most common types of application in Scotland are the main types of applications/licences are for:

- Dredging & Sea Disposal;
- Marine Construction;
- Marine Renewable Energy Projects;
- Moorings & Marine Fish and Shellfish Farms;
- Discharge of treatment agents (i.e. wellboat);
- Sampling & Instrument Deployments;

- Offshore Deposits.

An application form would be submitted to Marine Scotland and a decision should be received within 12 weeks however this can take longer in more complex cases.

Similar to the requirements of a planning application, The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 introduced the requirement for public pre-application consultation to take place for certain activities. These activities are:

1. Submarine Cables originating in the Scottish inshore region or Scottish offshore region that exceed 1 nautical mile in length and cross the inter-tidal boundary.
2. Reclamation projects over 10,000 square metres in extent.
3. Bridge, causeway or walkway construction over 50 metres in length.
4. Construction projects over 1000 square metres in extent.
5. Alteration or improvement to construction projects (with exception of a renewable energy structure) that extend such works over 1000 square metres in extent.

Pre-application consultation must consist of:

1. A public pre-application consultation event held in a suitable publicly accessible venue.
2. A consultation report, submitted alongside the marine licence application.

The consultation event is required to be advertised, six weeks prior to the consultation event, in such a manner as the Scottish ministers consider is most likely to bring the application to the attention of any persons likely to be interested in it. Guidance will be issued relating to the nature of the advertisement, consultation event and what Marine Scotland will expect to be included in the report. The report will be a material consideration in the determination of the licence application.

The consultation report will be considered valid for accompanying a marine licence application for a period of one year after the date of the pre-application consultation event. After this, the public consultation process must be repeated from the beginning.

Where public pre-application has been previously carried out under the requirements of other legislation (e.g. Town & Country Planning or EIA), the requirement should be considered met, as long as that public pre-application conforms with the conditions stated above.

Under schedule 3 of the Marine Licensing Appeals (Scotland) Regulations 2011, both applicants and licensees have the right to appeal to a sheriff against a licensing decision taken by the Scottish Ministers under section 29(1) of the Marine (Scotland) Act 2010. On determining an appeal, the sheriff may: (a) dismiss the appeal; or (b) allow the appeal and quash the decision in whole or in part. Where a decision is quashed, the sheriff may direct the Scottish Ministers to either grant a marine licence; or grant a marine licence on such terms or subject to such conditions as the sheriff may direct.

#### **1.4 Compulsory Purchase**

Competent Authority: The Highland Council; and Scottish Government.

Public authorities usually buy property that they need for projects in the public interest such as road construction, housing developments or town centre regeneration by reaching agreement with the owners. A compulsory purchase order can allow various organisations to acquire land without the owner's permission, if there is a strong enough case for this in the public interest. This can help local authorities and other public bodies to assemble the land they need where it is impossible or impractical to buy the land by agreement.

The Scottish Government has a formal role in the process, as orders promoted by other public bodies must be confirmed by Scottish Ministers before they can proceed. In deciding whether or not to confirm an order Scottish Ministers consider objections and weigh up the public benefit in the authority's proposals against the interests of the people affected.

Planning Circular 6/2011 Compulsory Purchase Orders provides further information on the use of compulsory purchase orders in Scotland.

Early engagement with those likely to be affected by compulsory purchase is encouraged and the authority should try to buy the land it needs by agreement before making a compulsory purchase order. However, it is noted that Scottish Ministers recognise in some cases it may be impossible or impracticable for the authority to acquire all interests by agreement in the project timeframe or at a reasonable cost.

Paragraph 10 of the circular also states that *'in deciding whether to confirm a compulsory purchase order Scottish Ministers will weigh up the public benefit in the authority's proposals against the interests of the people affected. The authority should be able to justify its proposals at any inquiry and, if necessary, in the courts. The clearer and more comprehensive a justification that the authority puts together, the stronger its case is likely to be'*. The Highland Council will be required to assess the public benefit of compulsory purchase.

Compulsory purchase under planning powers would likely be the options taken by THC (rather than under housing powers) to acquire any land required for Stromeferry bypass. THC should be satisfied that the proposal generally accords with planning policy (e.g. development plan or National Planning Framework). THC should be satisfied that it has a reasonable prospect of securing enough funding to acquire the land within the statutory three year period and completing the scheme over a reasonable timescale, however, in some cases the authority may be able to justify acquiring the land where the long term funding is not guaranteed. Additionally, paragraph 34 of the circular states that; *'the authority should be satisfied that there are no barriers likely to prevent it completing its scheme. These might include the programming of any infrastructure work or remedial work that may be required or any permission, consent or licence that will be needed. It should be satisfied that there is a reasonable prospect of carrying out any work required or securing any such permission, consent or licence'*.

When applying to the Scottish Ministers for a compulsory purchase order THC should set out its case for the compulsory purchase in a document called a 'statement of reasons'. This should include all information that Scottish Ministers will need when considering whether to confirm the order.

It should be noted that a public local inquiry must be held if any owners or tenants have objected to the CPO. If no owners or tenants have objected but other parties have (for example, residents who will be affected by the council's plans) then it is up to the Scottish Minister to decide whether or not to hold an inquiry.

## 1.5 Crofting Land

Competent Authority: Crofting Commission

The Crofters (Scotland) Act 1993 as amended by the Crofting Reform (Scotland) Act 2007 and the Crofting Reform (Scotland) Act 2010 set out the constitution, powers and duties of the Crofting Commission.

Crofting is a system of landholding which is unique to Scotland. When applying to the Crofting Commission to de-croft a site for a development that requires planning consent, the applicant must provide the Commission with a copy of the 'planning permission in principle' with the de-crofting application or the reference number of the relevant planning application.

It can take up to 12 weeks to de-croft land after an application is submitted, the Crofting Commission website states that "*it depends on the size of the site, the quality of the ground, how the removal of the site will impact onto the working of the croft and what response the Commission gets to the public notification process*". Source:

<http://www.crofting.scotland.gov.uk/faq.asp>

It should also be noted that section 23 of the Crofters (Scotland) Act 1993 allows Scottish Ministers to promote a compulsory purchase order to acquire land or buildings no longer forming part of a croft (Planning Circular 6/2011, Appendix B).

## 1.6 Environment Impact Assessment (EIA)

Competent Authority: The Highland Council; Marine Scotland (for Options N6, N9 and O2); Forestry Commission Scotland (FCS).

An EIA may be required under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, the Marine Works (EIA) Regulations 2007 (As Amended) and the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999. As there may be a requirement for EIA under multiple regulatory frameworks early engagement with relevant consenting authorities and consultation bodies will be essential to discuss the scope for coordinating the different consenting processes and their EIA requirements (Planning Advice Note 1/2013: Environmental Impact Assessment).

The requirement for EIA comes from European Directive 2011/92/EU (soon to be amended by Directive 2014/52/EU in 2014). Development of a type listed in Schedule 2 to the 2011 EIA Regulations will require EIA if it is likely to have a significant effect on the environment, by virtue of factors such as its size, nature or location. Stromeferry bypass would be considered a Schedule 2 project under the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 as it is:

- An infrastructure project (construction of roads) and the area of works exceeds 1 hectare.

### Screening:

THC will need to be contacted to provide a screening opinion on whether EIA is required for the preferred route. In the case of Options N6, N9 or O2 proceeding, Marine Scotland will also need to provide a separate screening opinion as engineering works will take place in the marine environment. FCS may also need to provide a screening opinion based on the requirement for tree felling and its extent.

It should be noted that even if one consenting authority advises that EIA is not required, another may advise that EIA is required.

### Scoping:

Should it be determined that EIA is required a scoping opinion will be requested from the relevant authority (THC/Marine Scotland/FCS) where a formal opinion will outline what key topics should be assessed in the Environmental Statement (ES).

EIA:

Preparing the EIA will require a range of survey work and detailed consultation with both statutory and non-statutory consultees. The EIA is usually submitted to support a planning application (or Marine Licence/Tree Felling Licence applications where required) and is usually submitted at the same time as the planning application (although this is not a requirement).

## 1.7 Protected species disturbance licence

Competent authority: Scottish Natural Heritage (SNH), Marine Scotland (Options N6, N9, O2).

There are several pieces of legislation giving protection to species found in Scotland including, but not limited to:

- EC Directive 92/43/EEC (known as the Habitats Directive) and translated into Scots law through the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland). These are commonly referred to as the 'Habitats Regulations' in Scotland.
- Wildlife & Countryside Act 1981
- Protection of Badgers Act 1992

For EPS, Scottish Natural Heritage issue licences for the majority of cases. Marine Scotland is the licensing authority for marine casework. A licence can only be issued under very strict conditions including:

1. The reason for the licence must relate to one of several specified purposes listed in Regulation 44(2);
2. There must be no satisfactory alternative;
3. The proposed action must not be detrimental to the maintenance of the species at 'favourable conservation status'.

An application must be submitted to SNH or Marine Scotland to obtain a protected species licence. After applying, it can take up to 8 weeks for a licence to be issued.

## 1.8 Habitats Regulations Assessment (HRA)

Competent Authority: The Highland Council

This process is an assessment required under the Habitat Regulations 1994 for any project that may impact upon a European Designated Site or its features (also known as Natura 2000 sites) such as a Special Protection Area (SPA) or Special Area of Conservation (SAC) or candidate sites for designation. The HRA assessment process incorporates the former 'Appropriate Assessment' process.

An HRA assesses a scheme against a set of criteria in order to determine if there will be 'no Likely Significant Effect' on either the designated site or the features for which it is designated. The second section is particularly important as it includes potential effects that may occur outside the boundary of the designated site itself however still impact upon a species for which



the site is designated (e.g. impacts on waders foraging on fields outside an SPA during high tide could still be assessed as an impact even though it's outside the SPA itself). The assessment includes an assessment of 'in-combination effects' where a scheme's impacts are assessed alongside potential impacts from other projects and plans.

The assessment is officially carried out by the 'Competent Authority' (in this case Highland Council), however it is for the applicant to provide all necessary information the competent authority required in order to carry out the assessment. Most often this information is provided in the form of an Environmental Statement or other assessment documentation, however it can be provided in a standalone HRA document specifically addressed to the key points of HRA.

The process of carrying out an HRA roughly mirrors the EIA process in that there is data collection (survey, mapping) followed by assessment of impacts against set criteria. The difference is that a much greater portion of the HRA process is generally spent at the screening stage, avoiding and removing impacts rather than mitigating them later. This is because HRA requires a high level of certainty in its assessment of mitigation and in the absence of certainty, it's precautionary principle system assumes there will be 'Likely Significant Effects'.

If a scheme is found to have 'Likely Significant Effects' on a European Site or it's features it cannot be consented unless it meets strict criteria regarding 'Imperative Reasons of Overriding Public Interest'.

In terms of timeframe an HRA will take approximately the same time it takes to complete an EIA with a slight overlap at the end as the final HRA stage will require the ES and any required mitigation to have been agreed. This is because HRA usually requires very similar information to be gathered and a similar level of consultation during the assessment. Where this changes is in the final assessment 'Appropriate Assessment' stage of an HRA, as in order to achieve avoidance of impacts (see above) the HRA process is likely to still be at the screening stage until the ES is almost complete and mitigation agreed, the HRA is then completed on the basis of the agreed mitigation.

## 1.9 Scheduled Monument consent

Competent Authority: Historic Scotland

Whilst none of the Options under consideration will directly affect a Scheduled Monument, the two North Shore options (N6 and N9) have potential to impact on the setting of two Scheduled Monuments (Strome Castle and Lochcarron Old Parish Church). Policies in the Scottish Historic Environment Policy provide guidance on setting, which often extends beyond the property boundary, or 'curtilage', of an individual historic asset into a broader landscape context.

Following discussion with Historic Scotland, if it is considered that scheduled monument consent is required an application will be submitted to Historic Scotland for consideration. According to guidance on Historic Scotland's website the scheduled monument consent process normally takes a maximum of 9 weeks from start to finish. The application is first validated to check that sufficient information is included and an acknowledgement issued. Where all the necessary information is included in the application, and the works are acceptable, consent may be granted without conditions. This will usually be done within 5 weeks of receipt of the application. It is sometimes necessary to apply conditions to consent. In these circumstances, a provisional view on the application is normally issued within 5 weeks of receipt. If the applicant is content with the conditions, a final view is then issued within a further 4 weeks.



If the provisional view on the application is a refusal of consent, the applicant can either accept this provisional view within 28 days or make further representations. If agreement cannot be reached, Scottish Ministers will decide the most suitable means of determining the application. This may take the form of written submissions, a hearing or a public local inquiry.

Historic Scotland can refuse to entertain applications for scheduled monument consent where a similar application has been refused in the previous two years and there has been no significant change in any material considerations since the similar application was refused.

It should also be noted that scheduled monument consent for some minor works can be issued through a fast track process within 2 weeks. For fast track applications the applicant must submit letter(s) from all owners of the monument confirming they are content with the works proposed. The applicant must first enter into pre-application discussions with Historic Scotland, who will advise whether the application is eligible for the fast track process. Works which have the potential to affect European Protected Species, Natura Sites or Sites of Special Scientific Interest cannot be considered through the fast track process.

### **1.10 Listed building consent**

Competent Authority: The Highland Council.

It may be a requirement to obtain listed building consent for the options under consideration. Listed building consent allows you to alter, extend or demolish a listed building or affect its setting. An application for listed building consent is usually submitted to the planning authority at the same time as a related planning application (where required).

When submitting an application for listed building consent a number of supporting documents are required including, but not limited to:

- Location plan showing the building affected;
- Drawings as required – plans, elevations, block plan, cross sections showing any work proposed. Design Statement, Building Condition Survey, Conservation Plan and/or or other supporting information can also be helpful where appropriate.

There is no fee for listed building consent.

The planning authority will advertise the application and a decision cannot be made until at least 21 days after being publicised, which allows representations to be made by owners of any affected buildings. In most cases the planning authority will not grant consent without first notifying Scottish Ministers/Historic Scotland, who have 28 days to consider calling in the application to make their own decision (this only applies to Category A and B listed buildings and demolition of Category C listed buildings).

Planning authorities will normally process any associated applications for planning permission and listed building consent at the same time, however a general decision time is 8 weeks. In cases where permission is granted, conditions are usually attached. Listed building lapses after 5 years, however in some cases an attached condition can reduce this time period.

Should listed building consent be refused an appeal can be submitted to the Scottish Ministers. An appeal must be submitted within six months of the decision or expiry of the two month period in which the local authority should issue a decision. The appeal procedure is similar to that of a planning appeal.

### 1.11 Tree felling license

Competent Authority: Forestry Commission Scotland

If any tree felling is required prior to obtaining planning consent, for example if geotechnical works require felling etc. a tree felling licence may need to be obtained. Should the scheme obtain planning consent a further tree felling licence will not be required for felling of trees as this is covered by the planning consent.

Additionally, under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 an EIA may be required as a result of felling of trees and using land for a different use. Further consultation with Forestry Commission Scotland will be required at Stage 3 to determine whether EIA is required.

In the case that a licence application is refused an appeal can be made to the Forestry Minister but only where the applicant has been refused a licence twice for the same area and work proposals. Similarly, there is an appeal process where the applicant is not happy with replanting conditions attached to a licence that has been granted.

The Scottish Government's Policy on Control of Woodland Removal would also need to be considered.

### 1.12 Water Environment (Controlled Activities) (Scotland) Regulations (CAR)

Competent Authority: Scottish Environment Protection Agency (SEPA).

A licence may be required under the Water Environment (Controlled Activities) (Scotland) Regulations (CAR Licence) for the following activities:

- Any activity liable to cause pollution of the water environment, including discharges of polluting matter and disposal of waste sheep dip and waste pesticides;
- Abstraction of water from the water environment;
- Construction, alteration or operation of impounding works (e.g. dams and weirs) in surface water or wetlands;
- Carrying out building or engineering works (a) in inland water (other than groundwater) or wetlands; or (b) in the vicinity of inland water or wetlands and having or likely to have a significant adverse effect on the water environment;
- Artificial recharge or augmentation of groundwater;
- The direct or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant;
- Any other activity which directly or indirectly has or is likely to have a significant adverse impact on the water environment.

The time period for SEPA to issue a licence is 4 months after an application has been received. During this time, SEPA can also ask for more information or ask for proposals to be advertised to the public. The decision time period can be halted until any request is carried out.

### 1.13 Waste Management Licence

Competent Authority: Scottish Environment Protection Agency (SEPA)

The majority of waste management facilities are licensed by way of a Waste Management Licence issued under The Waste Management Licensing (Scotland) Regulations 2011. Some facilities fall to be licensed under a Pollution Prevention and Control (PPC) permit (issued under The Pollution Prevention and Control (Scotland) Regulations 2012).

The objective of the waste management licensing system is to ensure that waste management facilities do not:

- Cause pollution of the environment;
- Cause harm to human health; and
- Become seriously detrimental to the amenities of the locality.

An application must be completed and submitted to SEPA to obtain a licence. The target decision time period is 4 months. During this time, SEPA may ask for more information or ask the applicant to advertise your proposals to the public. The decision time period will be halted until SEPA's request is carried out. Where applicants and operators do not agree with the conditions and requirements imposed by a PPC authorisation or notice, an appeal can be made to Scottish Ministers. The submission of an appeal does not suspend the operations of all authorisations or notices and its conditions.

### 1.14 Transport and Works (Scotland) Act 2007 ('TAWs')

Competent Authority: Scottish Ministers

This legislation is applicable to Online Option O2 in the event that the railway is diverted on to a viaduct. The kinds of matters that can be authorised by a Transport and Works (Scotland) (TAWs) order can include: powers to construct, alter, maintain and operate a transport system or inland waterway; compulsory powers to buy land; the right to use land (for example, for access); amendments to, or exclusion of, other legislation (including Private Acts); the closure or alteration of roads and footpaths; provision of temporary alternative routes. A TAWs order can include planning permission for development described in the order if requested.

THC would need to submit an application to Scottish Ministers for a TAWs order for moving the railway line. This process is similar to a Roads order and processes for consenting and dealing with objections are similar.

A 'statutory objector' is normally someone whose land, or rights in land, may be bought compulsorily under the TAWs order, and who makes an objection in line with the TAWs order procedure. Any local authority, National Park authority or regional Transport Partnership for the area in which any works would be carried out would also be a statutory objector if they made objections to the application. Similarly any navigation authority concerned with waters which would be affected by any works authorised by the proposed order would also be a statutory objector and the same holds true for Network Rail Infrastructure Ltd., who would be a statutory objector, if the proposed order affected the construction or operation of a railway.

In the event of an objection being raised Scottish Ministers may arrange for either a public local inquiry or a less formal (but still public) hearing. Alternatively the written procedure may be employed by Scottish Ministers, for example where there are relatively few objections and no statutory objector wishes to use their right to be heard, or the application does not appear to raise complicated issues. This means that the applicant and objectors are each invited in

turn to comment in writing on the other's arguments. This is expected to provide a quicker route to a decision and is less costly and time-consuming for everyone involved.

The expectation is that most applications will take less than 9 months from application to decision. However a major technical project which generates a substantial interest may take considerably longer.

**1.15 Timescales**

Timescale involved for each of the above processes is identified below:

| Process  | Timescale  |
|--|--|
| Planning consent                               | 4 months (approximate – may take longer for complex cases)   |
| Marine Licence                                 | 12 weeks (approximate – may take longer for complex cases)   |
| Compulsory Purchase                            | Scottish Ministers will decide as quickly as possible whether to confirm the compulsory purchase order. Ministers will consider each order on its merits and may take longer to make a decision on some orders than on others, depending on the circumstances. |
| De-crofting of land                            | 3 months   |
| Environment Impact Assessment (EIA)            | Approximately 6 – 12 months depending on survey requirements – seasonality constraints must be considered along with detailed consultation with stakeholders. Design freeze would also be required.  |
| European protected species disturbance licence | 2 months (approximate)   |
| HRA  | Similar to EIA (HRA is completed slightly after the EIA)   |
| Scheduled Monument consent                     | 9 weeks  |
| Listed building consent                        | 4 months   |
| Tree felling license                           | Approximately 10 weeks   |
| CAR Licence                                    | 4 months   |
| Waste Management Licence                       | 4 months   |
| Transport and Works Scotland (TAWs) Order      | Timescale depends on how complicated the proposed order is, how many people object to it and whether a public local inquiry is held. The expectation is that most applications will take less than 9 months from application to decision.                      |

**1.16 Conclusion**

Considering the three best routes being put forward in conclusion to the Stage 2 work (i.e. North Route N9, Online Railway Viaduct O2, and Southern Route S4) we comment in the table below on the potential requirement for each option for obtaining consents/licences.

Table X

| Process   | Northern Route (N9) | Online Route (O2)   | Southern Route (S4) | Timescale  |
|---|---------------------|---|---------------------|--|
| <b>Planning consent</b>                               | Yes                 | Yes (less complex as the existing road layout will be utilised) | Yes                 | 4 months   |
| <b>Marine Licence</b>                                 | Yes                 | Yes   | No                  | 12 weeks   |
| <b>Compulsory Purchase</b>                            | Yes                 | Yes (less complex as THC and Network Rail are main landowners)  | Yes                 | 6 – 9 Months   |
| <b>De-crofting of land</b>                            | Yes                 | No  | No                  | 3 months   |
| <b>Environment Impact Assessment (EIA)</b>            | Yes                 | Yes   | Yes                 | 6 – 12 months  |
| <b>European protected species disturbance licence</b> | Yes                 | Yes   | Yes                 | 2 months   |
| <b>Appropriate Assessment</b>                         | Possible            | Possible  | Possible            | Similar to EIA (HRA is completed slightly after the EIA) |
| <b>Scheduled Monument consent</b>                     | Yes                 | No  | No                  | 9 weeks  |
| <b>Listed building consent</b>                        | Possible            | Possible  | Possible            | 4 months   |
| <b>Tree felling license</b>                           | Possible            | Possible  | Possible            | Approximately 10 weeks                                   |

|  |     |     |     |          |
|--|-----|-----|-----|----------|
| <b>CAR Licence</b>                               | Yes | Yes | Yes | 4 months |
| <b>Waste Management Licence</b>                  | Yes | Yes | Yes | 4 months |
| <b>Transport and Works Scotland (TAWS) Order</b> | No  | Yes | No  | 9 months |

It can be seen that the more complex route for delivery with regard to statutory processes is the Northern Route (N9) where all processes are likely to feature.

The least complex is the Online Route with Railway Viaduct (O2) mainly because development is within the existing transportation corridor. Complexities will be encountered with the TAWS Act with regard to moving the railway however to date Network Rail are very supportive.

The issues around the Southern Route (S4) focus on the undeveloped and greenfield nature of the route and landownership. It is likely that the route will be severely tested a Public Inquiry.