

Minister for Business, Innovation and Energy

APPLICATION TO VARY THE SECTION 36 CONSENT FOR KINCARDINE FLOATING OFFSHORE WINDFARM UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 (AS AMENDED) IN ACCORDANCE WITH THE ELECTRICITY GENERATING STATIONS (APPLICATION FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013 (AS AMENDED)

1.1 Purpose

1.1.1 To seek your approval to grant an application to vary the existing consent for the Kincardine Floating Offshore Windfarm (“the Development”). This application to vary the consent was made by Kincardine Offshore Windfarm Limited (“the Company”) on 24th November 2017 and relates to the consent granted on 7th March 2017 under section 36 (“s.36”) of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of an offshore generating station located offshore approximately 15 kilometres south east of Aberdeen.

1.2 Priority

1.2.1 Routine.

1.3 Nature of the Variation Sought by Kincardine Floating Offshore Windfarm Limited.

1.3.1 The variation application seeks to amend the s.36 consent granted on 7th March 2017 to allow the following variations:

- A reduction in the total number of turbines from eight to seven;
- A change in maximum blade tip height from 176 to 191 metres above Lowest Astronomical Tide (“LAT”);
- A change in the maximum rotor diameter from 152 to 164 metres;
- A change in the maximum turbine hub heights from 100 to 105 metres measured from LAT;
- A change in the blade width from up to 4.5 to up to 5.4 metres;
- One smaller 2 MW turbine will be installed first, followed by six larger turbines with a maximum rated capacity of up to 8.4 MW over the remainder of the installation period up to 2020.

The maximum generating capacity of the Development will continue to be limited to 50 MW.

1.3.2 The installation of the of the smaller 2 MW turbine is crucial for the Company to secure Renewables Obligation Certificate (“ROC”) accreditation with Ofgem. In

addition, the 2 MW turbine will provide key information for the larger turbines that will be installed in the development area as part of the test and demonstration nature of the varied project, as it will:

1. Provide site specific motion and monitoring technical data for the larger turbines;
2. Demonstrate and define the procedure for the disconnection and reconnection of a floating offshore wind substructure, which will represent a first operation of its kind for floating offshore wind structures;
3. Provide proof of concept for installation of the larger machines in the development area; and
4. Provide the initial site ornithology data as defined by the Project Environmental Monitoring Plan (“PEMP”).

The original text for the application for s.36 can be found in the [Marine Scotland website](#) (Decision Letter and Conditions under Kincardine Offshore Windfarm), and the proposed changes for the variation are shown in Annex C.

1.4 Publication of Application and Consultation

- 1.4.1 The publicity requirements provided in the Electricity Works (Environmental Impact Assessment) (Scotland), Regulations 2017 (as amended) and the Electricity Generating Stations (Application for Variation of Consent (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”) were met, with public notices of the variation application being placed on a website, and in a local newspaper, the Edinburgh Gazette, a national newspaper, Lloyd’s List and an appropriate fishing trade journal.
- 1.4.2 The Variation Regulations also require copies of the variation application to be served on the planning authorities, in this case, Aberdeenshire Council and Aberdeen City Council. These requirements have been met.
- 1.4.3 Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the application and the Offshore Consent Variation Application Report including but not limited to: Aberdeenshire Council, Aberdeen City Council, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”), the Maritime and Coastguard Agency (“MCA”), Historic Environment Scotland (“HES”), and the Northern Lighthouse Board (“NLB”).
- 1.4.4 The results of the consultation exercise and the supporting information submitted as part of the application and the key considerations in relation to the determination of this proposal are set out in Annex A and Annex B.
- 1.4.5 Scottish Ministers received no representations from members of the public in relation to this application, and none of the statutory consultees objected to the variation. While no objections emerged from the consultation exercise, concerns and comments have been raised by some consultees which have been considered and addressed. These are set out in Annex B.

1.5 Appropriate Assessment

1.5.1 As the proposed changes may have a significant effect on European offshore marine sites or European protected sites, an appropriate assessment (“AA”), as required under the Conservation of Habitats and Species Regulations 2017 (“2017 Habitats Regulations”), was undertaken. The AA updated the original AA (completed in February 2017) to consider the proposed changes and concluded that the changes would not adversely affect the integrity of any European offshore marine site or European protected site (see Annex D).

1.6 Environmental Impact Assessment

1.6.1 As the proposed variation includes changes to the physical parameters of the turbines it was considered that there may be a difference in likely significant effects on the environment compared with those described in the original environmental statement (submitted in April 2016 and updated in September 2016). Therefore in accordance with The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”), the Company was required to submit a new Environmental Impact Assessment (“EIA”). Having completed the EIA the Company concluded that there would be no difference in the significance of effects compared with those identified in the original environmental statement. This was the case for all receptors which were required to be considered.

1.6.2 In order for the determination process to be fully open and transparent, MS-LOT recommend that this submission is published on the Marine Scotland Licensing page of the Scottish Government website, alongside the key documentation relating to the application.

1.7 Recommendation

Having taken into account the statutory and non-statutory consultation responses, and being satisfied that all legislative requirements have been met MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held.

In addition, MS-LOT recommends that you agree to vary the wording of Annex 1 and as a result of the comments received from consultees, also agree to vary the wording of Annex 2 (conditions) and Annex 3 (definitions) of the Kincardine Floating Offshore Windfarm section 36 consent, in terms of section 36C of the Electricity Act 1989 (as amended) and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (as amended).

A draft decision letter is attached at Annex C.

If consent is granted for this variation application, the Scottish Ministers will consider exercising their discretion to vary the marine licence granted on the 7th March 2017 (licence number 05914/17/0) in respect of the development, in accordance with section 72(3)(d) of the Marine and Coastal Access Act 2009 and section 30(3)(d) of the Marine (Scotland) Act 2010 to ensure that the marine licence and consent granted under section 36 of the Electricity Act 1989 (as amended) in relation to the development are consistent.

1.8 List of Annexes

- ANNEX A Legislative Requirements
 ANNEX B Consultation exercise
 ANNEX C Draft Decision Notice and Proposed Variation
 ANNEX D Appropriate Assessment

Copy List:	For Action	For Comment	For Information		
			Portfolio Interest	Consist Interest	General Awareness
Cabinet Secretary for Economy, Jobs and Fair Work			X		
Cabinet Secretary for Rural Economy and Connectivity			X		
Cabinet Secretary for Environment, Climate Change and Land Reform			X		
DG Economy Director of Marine Scotland, Marine Scotland Helena Gray, Marine Scotland Jim McKie, Marine Scotland Gayle Holland, Marine Scotland Mark Christie, Marine Scotland Nicola Bain, Marine Scotland Phil Gilmour, Marine Scotland Ian Davies, Marine Scotland Neal Rafferty, Energy Directorate David Stevenson, Energy Directorate Joanna Dingwall, SGLD Alan Williams, SGLD Fiona McClean, SGLD David Miller, Special Advisor Communications - Economy, Rural Economy, and Environment					

2. ANNEX A - Legislative Requirements

2.1 Legislative Background

- 2.1.1 Section 36C of the Electricity Act 1989 (as amended) (“the Electricity Act”) has, since 1st December 2013, enabled persons who are entitled to the benefit of a s.36 consent to apply to the appropriate authority (in Scotland this is the Scottish Ministers) for a variation of such s.36 consents. The procedure is set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”). The Variation Regulations provide for a consistent and transparent process for making, publicising, and consideration of applications to vary s.36 consents.
- 2.1.2 The variation process is designed to apply to projects that have been consented under s.36, where the operator wishes to carry out development or operation or any other aspects of their proposals as set out in the s.36 consent in a way that is inconsistent with the existing s.36 consent. Scottish Government guidance on s.36 consent variations considers that the process is not intended as a way of authorising any change in a developer’s plans that would result in development that would be fundamentally different in terms of character, scale or environmental impact from what is authorised by the existing consent.
- 2.1.3 Under section 36C(4) of the Electricity Act the Scottish Ministers may make variations to consents as appear to them to be appropriate, having regard in particular to the applicant’s reasons for seeking the variation, the variations proposed, and any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.

2.2 Environmental Impact Assessment

- 2.2.1 The process to vary s.36 consents is primarily governed by the Variation Regulations. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) amend the Variation Regulations and provide that an EIA is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.
- 2.2.2 Officials consider that an environmental statement (“ES”) to support a variation application can take the form of the original ES (which supported the original s.36 application) supplemented by a supporting statement that details the environmental effects resulting from the variations being sought.
- 2.2.3 The present application for varying the s.36 consent was accompanied by a ‘*Section 36C Variation Environmental Statement*’ which included an updated ‘*Section 36C Variation ES Visualisation Appendix*’, a ‘*Section 36C Variation Non-technical Summary*’ and an ‘*HRA Variation*’ document, all of which detail the main areas where the environmental effects of the proposed development would differ from the original ES as a result of the variation.

2.3 Appropriate Assessment

2.3.1 Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (“2017 Habitats Regulations”) requires that:

“(1) Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site’s conservation objectives.

(2) In paragraph (1), a “relevant plan or project” is a plan or project which—

(a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation;

(b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects); and

(c) is not directly connected with or necessary to the management of the site.”

2.3.2 This assessment is required to be undertaken under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) under a process referred to as a Habitats Regulations Appraisal (“HRA”).

2.3.3 Details of the appropriate assessment (“AA”) are set out in Annex D.

2.4 Marine Licence Variation

2.4.1 If consent is granted for the s.36 variation application, the Scottish Ministers will consider exercising their discretion to vary the marine licence granted in respect of the windfarm on the 7th March 2017 (licence number 05914/17/0) (“Marine Licence”). The variation would revise the description in Paragraph 2.2 of the Marine Licence to reflect the changes proposed by the variation application.

2.4.2 The Scottish Ministers would consider the variation of the Marine Licence under section 72(3)(d) of the Marine and Coastal Access Act 2009 and section 30(3)(d) of the Marine (Scotland) Act 2010 to ensure that the Marine Licence and s.36 consent are consistent.

2.5 Summary and conclusions

2.5.1 MS-LOT considers that the legislative requirements set out above have been complied with throughout the process of determining the s.36 consent variation application.

3. ANNEX B Consultation exercise

3.1 Background information

- 3.1.1 On 23rd March 2016, the Scottish Ministers received an application for a consent under section 36 (“s.36”) of the Electricity Act 1989 for the construction and operation of the offshore generating station: the Kincardine Floating Offshore Windfarm (“the Development”) located south east of Aberdeen, approximately 15 km offshore from the nearest landfall, with a maximum generating capacity not exceeding 50 MW. The Scottish Ministers granted the s.36 consent for the Development on 7th March 2017.
- 3.1.2 On 24th November 2017, the Company submitted an application to vary the s.36 consent granted. This application sought to vary the consent for the construction and operation of the Development. The Company intend to install up to seven turbines (one smaller 2 MW turbine will be installed first, followed by six larger turbines over the remainder of the installation period up to 2020). The purpose of the smaller 2 MW turbine is crucial for the Company to secure a Renewables Obligation Certificate (“ROC”) accreditation with Ofgem and serve as a temporary data gathering platform providing key information for the larger turbines that will be installed later in the development area as part of the test and demonstration nature of the varied project.

3.2 Application – Supporting information

- 3.2.1 The following documents were submitted by the Company to support its application to vary the s.36 consent granted for the Development. These documents were issued for consultation on 29th November 2017:
- A Variation Environmental Statement (“ES”) report;
 - A variation of Appendix A, visualisations as part of the ES report;
 - An Habitats Regulations Appraisal (“HRA”) variation report to inform an appropriate assessment (“AA”) to the application;
 - An application to vary Annex 1 of the s.36 consent in relation to the Development; and
 - A variation non-technical summary report in support of the variation application.
- 3.2.2 Full details of the consultation undertaken as part of the process are set out below.

3.3 Environmental Impact Assessment (“EIA”)

- 3.3.1 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“EIA Regulations”) require an EIA to be carried out for applications for EIA development. In complying with the EIA Regulations, the Company identified the proposed Development as an EIA development and hence one which would require an ES. This ES describes

the environmental impacts and the proposed mitigation measures associated with the Development.

- 3.3.2 In respect of variation applications, the EIA Regulations provide that a variation application relates to EIA development if the proposed variation is likely to have significant effects on the environment. The Company, in order to update the original ES, detailed the main aspects in which the environmental effects of the proposed development would differ as a result of the variation in accordance with the EIA Regulations.
- 3.3.3 The key changes and likely significant effects of the Development, as identified by the Company and relevant to the ES update, were on the following receptors:
- Military and aviation;
 - Landscape, seascape and visual impact assessment;
 - Socio-economics;
 - Other marine users; and
 - Ornithology.
- 3.3.4 As the proposed changes were related to turbine dimensions, only changes to the above water elements of the varied project were considered. Receptors such as physical environment, benthic ecology, fish and shellfish, marine mammals, underwater noise, marine navigation, marine historic environment and commercial fisheries) have not changed and therefore the previous assessment process remains valid and the residual impacts remain unchanged.
- 3.3.5 MS-LOT are content that the Company have suitably addressed, within the variation documentation, how the original ES addresses the EIA factors which are required to be assessed under the EIA Regulations.

3.4 Habitat Regulations Appraisal (“HRA”) and Appropriate Assessment (“AA”)

- 3.4.1 While the proposed changes to the size and the maximum number of turbines will not influence the maximum generating capacity of the Development (which will remain limited to 50 MW); as part of the application, the Company also submitted further information to update the HRA. This assessment is required to be undertaken under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) under the HRA process. As a result, an AA was undertaken in regard to the Development. The AA completed updated the original AA. The AA concluded that the proposed variation would not adversely affect the integrity of any European offshore marine site or European protected site (Annex D – Appropriate Assessment).

3.5 Publication of Application and Consultation

- 3.5.1 In accordance with the Variation Regulations, the Company placed public notices in the Press and Journal for two weeks and for one week each in the Edinburgh Gazette, The Herald, Lloyd's List and the Fishing News. These public notices were combined so that the public notice requirements were fulfilled as required under the EIA Regulations.

- 3.5.2 MS-LOT also instructed the Company to make the variation application available at the same locations where the original application and addendum had been available previously.
- 3.5.3 The Scottish Ministers directed that the same onshore planning authorities be served a copy of the variation as those who were served a copy of the original application. These were Aberdeenshire Council and Aberdeen City Council. Officials confirm that these requirements have been met.
- 3.5.4 The original s.36 consent decision letter was placed on the Marine Scotland website alongside the new supporting information in relation to the variation. MS-LOT consulted a wide range of relevant organisations on the application and 'Offshore Consent Variation Application Report' including: Aberdeenshire Council ("AC"), Aberdeen City Council ("ACC"), Scottish Natural Heritage ("SNH"), Scottish Environmental Protection Agency ("SEPA"), the Maritime and Coastguard Agency ("MCA"), Historic Environment Scotland ("HES"), and the Northern Lighthouse Board ("NLB").
- 3.5.5 Officials confirm that the requirements of the Variation Regulations in terms of consultation and public notices have been met.

3.6 Summary of consultation exercise

- 3.6.1 Full details of the consultation undertaken as part of the process is set out below. Most of the consultees had no comments, or did not respond to the consultation invitation.
- 3.6.2 Statutory consultees and local authorities did not raise any objections, however, comments have been submitted. In section 3.7 and 3.8 a summary of comments from statutory consultees and local authorities is presented and details on how the company has addressed these comments.
- 3.6.3 While no objections emerged from the consultation exercise, concerns and comments that have been raised by other consultees are summarised in section 3.9 including the actions undertaken by the company to resolve the issues.
- 3.6.4 In section 3.11, responses by other consultees are depicted.
- 3.6.5 Scottish Ministers received no representations from members of the public in relation to this application.
- 3.6.6 The full consultation responses are available to view on the Kincardine Offshore Windfarm section of the Scottish Government Webpage.

3.7 Summary of responses from statutory consultees

- 3.7.1 **Historic Environment Scotland ("HES")** concluded that the proposed changes to the consented scheme did not have any additional significant impacts on sites within their remit. Therefore, they did not object to the proposed development and had no further comments to make on the variation application.
- 3.7.2 **The Northern Lighthouse Board ("NLB")** was content with the application and had no objection to the variation being granted.

- 3.7.3 **The Maritime and Coastguard Agency (“MCA”)** concluded that the variation related to the turbine rated capacity and its consequential variation to the blade dimensions and, therefore, had no further comments to make.
- 3.7.4 **Scottish Environment Protection Agency (“SEPA”)** had no objection to this application to vary the Section 36.
- 3.7.5 **Scottish Natural Heritage (“SNH”)**, advised that they had no objection to the variation and that they were able to conclude that there would be no adverse effect on site integrity for kittiwake at Fowlsheugh SPA from the Development, either alone or in combination with other projects. SNH also advised that the barrier effect on puffin would be reduced compared with the existing consent because of the reduced number of turbines. With respect to the redeployment of the 2 MW Wind Turbine Generator (“WTG”) SNH concluded that it was their understanding that beyond 3 years of deployment the smaller turbine will have to be brought back to shore, and re-certified if to be re-deployed. While SNH preference would be that that the single smaller turbine should be removed from the scheme at this point to improve the visual impact, any re-deployment must be managed as indicated in section 2.1 of the ES and subject to a condition.
- 3.7.6 A condition requiring the removal of the 2 MW WTG, no later than three years from the date of commencement of the Development or such other date following the date of commencement of the Development as the Scottish Ministers may hereafter direct and that permanent siting or re-deployment of the 2 MW WTG must be requested by the Company, in writing, to the Scottish Ministers no later than six months before the proposed siting or re-deployment, have been included in Annex 2 of the draft decision letter and consent attached at Annex C. Any redeployment may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the condition or as may be required at the discretion of the Scottish Ministers.

3.8 Summary of responses from local authorities

- 3.8.1 **Aberdeen City Council** raised no objection to the variation. However, they did highlight that a clearer comparison of the original and proposed turbine parameters would have been helpful. They noted that the introduction of a smaller turbine within a grouping of larger turbines would introduce complexity and increase the visual effects. However they stated that these effects were acceptable due to the temporary period of deployment. They also stated that if the Company considers the permanent siting of a smaller WTG within the array beyond the agreed timelines, re-deployment would need to be managed as indicated in section 2.1 of the ES and subject to a condition.
- 3.8.2 A condition as described in paragraph 3.7.6 will be included if the variation is granted.
- 3.8.3 **Aberdeenshire Council** raised no objection to the variation. However, they noted the potential for the smaller 2 MW turbine to remain which they stated, may give rise to a non-uniform WTG array and therefore to differential or disjointed visual impact. They highlighted that if the Company considered the permanent siting of a smaller WTG within the array beyond the agreed

timelines, re-deployment would need to be managed as indicated in section 2.1 of the ES and subject to a condition.

- 3.8.4 A condition as described in paragraph 3.7.6 will be included if the variation is granted. The Scottish Ministers consider, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, that there are no outstanding concerns in relation to the Development's impact on landscape and visuals that would require consent to be withheld.

3.9 Other Consultees

- 3.9.1 **BT Openreach** concluded that the project should not cause interference to BT's current and presently planned radio networks.
- 3.9.2 **NATS (En-Route) plc ("NERL")** originally objected to the proposed development as its assessment meant that the development would cause an adverse impact to the Perwinnes radar and associated air traffic operations. However an agreement has since been entered into between NERL and Kincardine Offshore Windfarm Limited. NATS confirmed that the Primary Radar Mitigation Scheme agreed with the Company under a legal agreement, has now been implemented to their satisfaction. NATS is satisfied that the turbines can be erected for the purposes of the above condition subject to on-going compliance with the Primary Radar Mitigation Scheme.
- 3.9.3 **Royal Yachting Association ("RYA")** Scotland had no additional comments to make on this application.
- 3.9.4 **The Dee District Salmon Fisheries Board ("DeeDSFB")** did not raise any objection to the variation. However concerns have been noted over the proximity of the cable export corridor to the rivers Dee, Cowie and Carron. More specifically, with regard to the original consent, the Dee DSFB expressed concerns that the electromagnetic fields associated with the cabling for the proposal have not been adequately addressed in terms of potential impact on the migration of salmon and sea trout and their associated foraging habitats. The Dee DSFB requested that a monitoring and research programme be designed, approved and included as a condition of the consenting process and expressed their willingness to work with the developer on such a programme. A condition requiring the submission of a Project Environmental Monitoring Programme ("PEMP") was included in the existing consent to address diadromous fish and is attached to the consent at Annex 2.
- 3.9.5 Where matters have arisen, the Company has proactively attempted to resolve them. MS-LOT has been provided with evidence to demonstrate that the Company has engaged with the Dee DSFB to cooperate on the future plans. Conditions requiring the submission of a Construction Method Statement ("CMS"), a PEMP, a Cable Plan ("CaP"), an Environmental Management Plan ("EMP") and the appointment of an Ecological Clerk of Works ("ECoW") are already included in the existing consent at Annex 2.
- 3.9.6 **The Esk District Salmon Fisheries Board ("Esk DSFB")** did not object to the proposed variation; however, with regard to the original consent, the Esk DSFB raised concerns which were noted on the potential impacts on wild Atlantic

salmon and sea trout being dismissed or downplayed. The Esk DSFB was of the opinion that this proposed development has the potential to have a significant impact on wild Atlantic salmon and sea trout populations due to its nature and location. The Esk DSFB therefore is in agreement with the Dee DSFB (letter dated 12th January 2018) that the developer should commission a programme to monitor migratory fish movements within the vicinity of the proposed development.

- 3.9.7 Where matters have arisen, the Company has proactively attempted to resolve them. MS-LOT has been provided with evidence to demonstrate that the Company has engaged with the Esk DSFB to cooperate on the future plans. Conditions requiring the submission of a CMS, a PEMP, a CaP, anEMP and the appointment of an ECoW are already included in the existing consent at Annex 2.
- 3.9.8 **The Ministry of Defence (“MoD”)** had no objection to the application provided no change would occur to conditions 18, 20 and 21 “Lighting and Marking Plan (“LMP””, “Air Traffic Control Radar Mitigation” and “Charting requirements”, respectively of the current s.36 consent.
- 3.9.9 **The Scottish Fishermen’s Federation (“SFF”)**, was content and conclude that the variation would be better for fishing than the original plan because their understanding of the variation meant that the variation means that the seabed taken up by the project will reduce by c.20%. Therefore, the SFF was content that the variation would be better for fishing than the original plan, and had no further comment.
- 3.9.10 **The UK Chamber of Shipping (“CoS”)** had no comments to make.
- 3.9.11 **Transport Scotland (“TS”)** had no objection to the development in terms of environmental impacts on the trunk road network; and it was of the opinion that both types of substructures have been assessed previously, and no further assessment in this regard was required.
- 3.9.12 **Whale and Dolphin Conservation (“WDC”)** had no particular comments to make.
- 3.9.13 The Scottish Ministers consider, having taken account of the information provided by the Company, the responses of the consultative bodies and having regard to the mitigation measures and conditions proposed, that there are no outstanding concerns in relation to the Development’s impact that would require consent to be withheld.

3.10 Summary of other consultees responses

- 3.10.1 The following consultees did not respond to the consultation and therefore nil results have been assumed:

Aberdeen and Stonehaven Yacht Club, Aberdeen Harbour Board, Aberdeen International Airport, Association of Salmon Fishery Boards, Bon Accord Golf Club, Bond Offshore Helicopters, Bristow Helicopters Ltd, British Telecom (Radio Network Protection Team, Civil Aviation Authority, Caledonian Golf Club, CHC Scotia, Dunecht estates, East Coast Scallop Association, East Grampian Coastal Partnership, Forth District

Salmon Fishery Board & Forth Fisheries Trust, Fishing Vessel Agents & Owners Association (Scotland) Limited, North & East Coast Regional Inshore Fisheries Group, Joint Radio Company, King's Links Golf Club, Stonehaven Harbour, Marine Safety Forum, Marine Scotland Compliance: Aberdeen Fishery Office, Montrose Port Authority, Murcar Links Golf club, National Trust for Scotland, Network Rail, Newburgh-on-Ythan Golf Club, Nigg Bay Golf Club, Northern Golf Club, Portlethen Golf Club, Ports & Harbours, Royal Aberdeen Golf Club, RSPB Scotland, Scottish Canoe Association, Scottish Environmental LINK, Scottish Fishermen's Organisation, Scottish Pelagic Fishermen's Association Limited, Scottish Sub-aqua club, Scottish Surfing Federation, Scottish White Fish Producers' Association, Scottish Wildlife Trust, SG Planning, Sport Scotland, Stonehaven Golf Club, Surfers Against Sewage, The Crown Estate, Trump International, Vattenfall Wind Power Ltd, Visit Scotland.

3.11 Consideration of the Application

The Scottish Ministers will exercise judgment on two distinct questions in order to determine whether any variation sought is “appropriate”:

- a) whether the change proposed to the generating stations (or proposed generating stations) concerned is of a kind that it would be reasonable to authorise by means of the variation procedure (regardless of its merits in planning / energy policy terms);
- b) if the answer to question (a) is positive, whether (from a planning / energy policy point of view) the variation should in fact be made, thereby authorising whatever development the making of the variation will permit to be carried out.

On the first question, officials consider that you can be satisfied that, in this circumstance, the changes proposed are reasonable to be authorised by means of the variation procedure.

As for the second question, the installation of the smaller 2 MW turbine is of paramount importance for the Company to secure ROC accreditation with Ofgem. In addition, due to technological advances in turbine design since the Scottish Ministers granted s.36 consent, an increase in the turbine capacity would allow the Company to use fewer, higher rated turbines in their plans and layout.

The variations proposed in the application do not fundamentally alter the character or scale of the Development whilst allowing a potential reduction of environmental impacts. This is due to the proposed reduction in turbine number and using higher capacity turbines.

3.12 Conclusion

3.12.1 You can be satisfied that the regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration.

3.12.2 Where matters have not been fully resolved, conditions have been included in the decision notice at Annex C to ensure appropriate action is taken post consent, should the variation be granted.

3.13 Recommendation

3.13.1 Having taken into account the statutory and non-statutory consultation responses, and comments received, and being satisfied that all legislative requirements have been met, MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary the wording of Annex 1 of the Kincardine Offshore Windfarm Limited section 36 consent, and the wording of conditions 3, 8, 18 and 23 of Annex 2 and the Definitions in Annex 3 the section 36 consent, in terms of section 36C of the Electricity Act 1989 (as amended) and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (as amended). A draft decision letter is attached at Annex C.

4. ANNEX C Draft Decision Notice and Proposed Variation

MS.MarineRenewables@gov.scot



Mr Allan MacAskill
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2EN

XXth May 2018

Dear Mr MacAskill,

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 7th MARCH 2017 TO CONSTRUCT AND OPERATE THE KINCARDINE FLOATING OFFSHORE WINDFARM, APPROXIMATELY 15 km SOUTH EAST OF ABERDEEN

I refer to the variation application made by Kincardine Offshore Windfarm Limited (“the Company”) (on 24th November 2017) for:

- a) variation under section 36C of the Electricity Act 1989 (as amended) to the consent granted under section 36 (“s.36”) of the Electricity Act 1989 (as amended) (“the Electricity Act”) on 7th March 2014 for construction and operation of the Kincardine Floating Offshore Windfarm (“the relevant s.36 consent”).

This letter contains the Scottish Ministers’ decision to grant the application and to vary the relevant section 36 consent.

1 Nature of the Variation Sought

- 1.1 The variation application seeks to amend Annex 1 of the s.36 consent granted on 7th March 2017 to make to allow the following variations in the Kincardine Floating Offshore Windfarm (“the Development”):
- A reduction in the total number of turbines from eight to seven;
 - A change in maximum blade tip height from 176 to 191 metres above Lowest Astronomical Tide (“LAT”);
 - A change in the maximum rotor diameter from 152 to 164 metres;
 - A change in the maximum turbine hub heights from 100 to 105 metres measured from LAT;
 - A change in the blade width from of up to 4.5 to up to 5.4 metres;
 - One 2 MW turbine will be installed first, followed by six larger turbines with a maximum capacity of up to 8.4 MW over the remainder of the installation period up to 2020 (the maximum generating capacity of the Development will continue to be limited to 50 MW).
- 1.2 The Scottish Ministers have also varied Annex 2 and Annex 3 following consultation with stakeholders.

2 Environmental Impacts

- 2.1 The Scottish Ministers are satisfied with the supporting information provided, that include details in support of the Environmental Impact Assessment (“EIA”) and updated HRA report to inform the Appropriate Assessment (“AA”). Since the proposed variation of changing the rated capacity of the turbines will result in changes to the physical parameters of the Development, Scottish Ministers have considered regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“2017 Habitats Regulations”), the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”). Having undertaken consultation and completion of an AA the Scottish Ministers consider that the proposed changes are not likely to have a significant adverse effect on the environment. The AA concluded that the proposed variation would not adversely affect the integrity of any European offshore marine sites or European protected sites. In addition, in accordance with the EIA Regulations, the Environmental Statement (“ES”) was updated.

3 Consultation

- 3.1 The Variation Regulations set out that an applicant must publish the application on a website, serve a copy of the variation application on any planning authority, and advertise by public notices in specified publications as set out in regulation 4 of the Variation Regulations. These requirements have been met. Public notices were placed in the Press and Journal for two weeks and for one week each in the Edinburgh Gazette, the Herald, Lloyd's List and the Fishing News.
- 3.2 Marine Scotland Licensing Operations Team ("MS-LOT") on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the application and "Offshore Consent Variation Application Report" including; Scottish Natural Heritage ("SNH"), Scottish Environment Protection Agency ("SEPA"), the Maritime and Coastguard Agency ("MCA"), Historic Environment Scotland ("HES"), and the Northern Lighthouse Board ("NLB"). MS-LOT also consulted Aberdeenshire Council, and Aberdeen City Council.
- 3.3 The Rivers Dee and Esk DSFB's underlined their past position and concerns, however concerning this variation request, only comments were filed. Kincardine Offshore Windfarm Limited has addressed these issues.

4 Consultation responses

4.1 Summary of responses from statutory consultees

- 4.1.1 **Historic Environment Scotland ("HES")** concluded that the proposed changes to the consented scheme did not have any additional significant impacts on sites within their remit. Therefore, they did not object to the proposed development and had no further comments to make on the variation application.
- 4.1.2 **The Northern Lighthouse Board ("NLB")** was content with the application and had no objection to the variation being granted.
- 4.1.3 **The Maritime and Coastguard Agency ("MCA")** concluded that the variation related to the turbine rated capacity and its consequential variation to the blade dimensions and, therefore, had no further comments to make.
- 4.1.4 **Scottish Environment Protection Agency ("SEPA")** had no objection to this application to vary the Section 36.
- 4.1.5 **Scottish Natural Heritage ("SNH")**, advised that they had no objection to the

variation and that they were able to conclude that there would be no adverse effect on site integrity for kittiwake at Fowlsheugh SPA from the Development, either alone or in combination with other projects. SNH also advised that the barrier effect on puffin would be reduced compared with the existing consent because of the reduced number of turbines. With respect to the redeployment of the 2 MW WTG SNH concluded that it was their understanding that beyond 3 years of deployment the smaller turbine will have to be brought back to shore, and re-certified if to be re-deployed. While SNH preference would be that that the single smaller turbine should be removed from the scheme at this point to improve the visual impact, any re-deployment must be managed as indicated in section 2.1 of the ES and subject to a condition.

- 4.1.6 A condition requiring the removal of the 2 MW WTG, no later than three years from the date of commencement of the Development or such other date following the date of commencement of the Development as the Scottish Ministers may hereafter direct and that permanent siting or re-deployment of the 2 MW WTG must be requested by the Company, in writing, to the Scottish Ministers no later than six months before the proposed siting or re-deployment, have been included in Annex 2 of the draft decision letter and consent attached at Annex C. Any redeployment may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the condition or as may be required at the discretion of the Scottish Ministers.

4.2 Summary of responses from local authorities

- 4.2.1 **Aberdeen City Council** raised no objection to the variation. However, they did highlight that a clearer comparison of the original and proposed turbine parameters would have been helpful. They noted that the introduction of a smaller turbine within a grouping of larger turbines would introduce complexity and increase the visual effects. However they stated that these effects were acceptable due to the temporary period of deployment. They also stated that if the Company considers the permanent siting of a smaller WTG within the array beyond the agreed timelines, re-deployment would need to be managed as indicated in section 2.1 of the ES and subject to a condition.
- 4.2.2 A condition as described in paragraph 3.7.6 will be included if the variation is granted.
- 4.2.3 **Aberdeenshire Council** raised no objection to the variation. However, they noted the potential for the smaller 2 MW turbine to remain which they stated, may give rise to a non-uniform WTG array and therefore to differential or disjointed visual impact. They highlighted that if the Company considered the permanent siting of a smaller WTG within the array beyond the agreed

timelines, re-deployment would need to be managed as indicated in section 2.1 of the ES and subject to a condition.

4.2.4 A condition as described in paragraph 3.7.6 will be included if the variation is granted. The Scottish Ministers consider, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, that there are no outstanding concerns in relation to the Development's impact on landscape and visuals that would require consent to be withheld.

4.3 Other Consultees

4.3.1 **BT Openreach** concluded that the project should not cause interference to BT's current and presently planned radio networks.

4.3.2 **NATS (En-Route) plc ("NERL")** originally objected to the proposed development as its assessment meant that the development would cause an adverse impact to the Perwinnes radar and associated air traffic operations. However an agreement has since been entered into between NERL and Kincardine Offshore Windfarm Limited. NATS confirmed that the Primary Radar Mitigation Scheme agreed with the Company under a legal agreement, has now been implemented to their satisfaction. NATS is satisfied that the turbines can be erected for the purposes of the above condition subject to on-going compliance with the Primary Radar Mitigation Scheme.

4.3.3 **Royal Yachting Association ("RYA") Scotland** had no additional comments to make on this application.

4.3.4 **The Dee District Salmon Fisheries Board ("DeeDSFB")** did not raise any objection to the variation. However concerns have been noted over the proximity of the cable export corridor to the rivers Dee, Cowie and Carron. More specifically, with regard to the original consent, the Dee DSFB expressed concerns that the electromagnetic fields associated with the cabling for the proposal have not been adequately addressed in terms of potential impact on the migration of salmon and sea trout and their associated foraging habitats. The Dee DSFB requested that a monitoring and research programme be designed, approved and included as a condition of the consenting process and expressed their willingness to work with the developer on such a programme. A condition requiring the submission of a Project Environmental Monitoring Programme ("PEMP") was included in the existing consent to address diadromous fish and is attached to the consent at Annex 2.

4.3.5 Where matters have arisen, the Company has proactively attempted to resolve

them. MS-LOT has been provided with evidence to demonstrate that the Company has engaged with the Dee DSFB to cooperate on the future plans. Conditions requiring the submission of a Construction Method Statement (“CMS”), a PEMP, a Cable Plan (“CaP”), an Environmental Management Plan (“EMP”) and the appointment of an Ecological Clerk of Works (“ECoW”) are already included in the existing consent at Annex 2.

- 4.3.6 **The Esk District Salmon Fisheries Board (“Esk DSFB”)** did not object to the proposed variation; however, with regard to the original consent, the Esk DSFB raised concerns which were noted on the potential impacts on wild Atlantic salmon and sea trout being dismissed or downplayed. The Esk DSFB was of the opinion that this proposed development has the potential to have a significant impact on wild Atlantic salmon and sea trout populations due to its nature and location. The Esk DSFB therefore is in agreement with the Dee DSFB (letter dated 12th January 2018) that the developer should commission a programme to monitor migratory fish movements within the vicinity of the proposed development.
- 4.3.7 Where matters have arisen, the Company has proactively attempted to resolve them. MS-LOT has been provided with evidence to demonstrate that the Company has engaged with the Esk DSFB to cooperate on the future plans. Conditions requiring the submission of a CMS, a PEMP, a CaP, anEMP and the appointment of an ECoW are already included in the existing consent at Annex 2.
- 4.3.8 **The Ministry of Defence (“MoD”)** had no objection to the application provided no change would occur to conditions 18, 20 and 21 “Lighting and Marking Plan (“LMP””, “Air Traffic Control Radar Mitigation” and “Charting requirements”, respectively of the current s.36 consent.
- 4.3.9 **The Scottish Fishermen’s Federation (“SFF”)**, was content and conclude that the variation would be better for fishing than the original plan because their understanding of the variation meant that the variation means that the seabed taken up by the project will reduce by c.20%. Therefore, the SFF was content that the variation would be better for fishing than the original plan, and had no further comment.
- 4.3.10 **The UK Chamber of Shipping (“CoS”)** had no comments to make.
- 4.3.11 **Transport Scotland (“TS”)** had no objection to the development in terms of environmental impacts on the trunk road network; and it was of the opinion that both types of substructures have been assessed previously, and no further assessment in this regard was required.

4.3.12 **Whale and Dolphin Conservation (“WDC”)** had no particular comments to make.

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

4.4 **Summary of other consultees responses**

4.4.1 The following consultees did not respond to the consultation and therefore nil results have been assumed:

Aberdeen and Stonehaven Yacht Club, Aberdeen Harbour Board, Aberdeen International Airport, Association of Salmon Fishery Boards, Bon Accord Golf Club, Bond Offshore Helicopters, Bristow Helicopters Ltd, British Telecom (Radio Network Protection Team, Civil Aviation Authority, Caledonian Golf Club, CHC Scotia, Dunecht estates, East Coast Scallop Association, East Grampian Coastal Partnership, Forth District Salmon Fishery Board & Forth Fisheries Trust, Fishing Vessel Agents & Owners Association (Scotland) Limited, North & East Coast Regional Inshore Fisheries Group, Joint Radio Company, King's Links Golf Club, Stonehaven Harbour, Marine Safety Forum, Marine Scotland Compliance: Aberdeen Fishery Office, Montrose Port Authority, Murcar Links Golf club, National Trust for Scotland, Network Rail, Newburgh-on-Ythan Golf Club, Nigg Bay Golf Club, Northern Golf Club, Portlethen Golf Club, Ports & Harbours, Royal Aberdeen Golf Club, RSPB Scotland, Scottish Canoe Association, Scottish Environmental LINK, Scottish Fishermen's Organisation, Scottish Pelagic Fishermen's Association Limited, Scottish Sub-aqua club, Scottish Surfing Federation, Scottish White Fish Producers' Association, Scottish Wildlife Trust, SG Planning, Sport Scotland, Stonehaven Golf Club, Surfers Against Sewage, The Crown Estate, Trump International, Vattenfall Wind Power Ltd, Visit Scotland.

5 **Public Representations**

5.1 There were no representations made on the application to vary the s.36 consents from members of the public.

6 **Reasoned Conclusion**

6.1 The Scottish Ministers consider that they have sufficient information to enable them to reasonably conclude that the changes proposed through the variation will not have significant effects on the environment. The Scottish Ministers are satisfied that the information which has informed this decision is relevant,

appropriate and up to date.

7 Reasons and Considerations on which the decision is based and The Scottish Ministers’ Determination

7.1 The Scottish Ministers have considered the application documentation and all responses from consultees. Having granted s.36 consent to the Kincardine Offshore Windfarm on 7th March 2017 and set out their reasons for doing so in the decision letter associated with the consent, and being satisfied that the changes proposed in this variation application do not fundamentally alter the character or scale of the Development, whilst allowing a potential reduction of environmental impacts of the Development, the Scottish Ministers are supportive of the proposed variation, on the basis that such a variation will allow the Company the opportunity to utilise most up to date commercially available technology.

7.2 The Scottish Ministers consider that amendment to the existing s.36 consent, will provide the Company opportunities to potentially reduce the environmental impacts of the project by permitting a reduced number of larger turbines (the maximum generating capacity of the Development will continue to be limited to 50 MW).

7.3 The Scottish Ministers consider that the amended s.36 consent is both reasonable and enforceable.

7.4 Accordingly, the Scottish Ministers **hereby vary the relevant s.36 consent as set out in the table below.**

Annex or Condition	Amendment
In Annex 1	<p>In the Description of the Development substitute point 1 with:</p> <ul style="list-style-type: none"> • A reduction in the total number of turbines from eight to seven; • With maximum rated capacity for each Wind Turbine of up to 8.4 MW (the maximum generating capacity of the Development will continue to be limited to 50 MW); • A change in maximum blade tip height from 176 to 191 metres above Lowest Astronomical Tide (“LAT”); • A change in the maximum rotor diameter from 152 to 164 metres; • A change in the maximum turbine hub heights from

	<p>100 to 105 metres measured from LAT;</p> <ul style="list-style-type: none"> • A change in the blade width from of up to 4.5 to up to 5.4 metres; • One 2 MW turbine, will be installed first, followed by six larger turbines of up to 8.4 MW over the remainder of the installation period up to 2020. <p>In the Description of the Development substitute the last paragraph with:</p> <p>“The Development shall be constructed in accordance with that specified in the application, the ES Addendum, the section 36 Variation and supporting documentation and by the conditions imposed by the Scottish Ministers.”</p>
<p>In Annex 2</p>	<p>“The Company must submit the required plans for the 2 MW WTG as detailed in the conditions prior to the Commencement of the Development, in writing, to the Scottish Ministers for their written approval. Updated plans to cover the 2 MW turbine and future tranches, for the entire Development must be submitted prior to the Commencement of the Development of these subsequent works and in line with the timescales of the relevant conditions, in writing to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the conditions or as may be required at the discretion of the Scottish Ministers.”</p>
<p>In Annex 2, Condition 31</p>	<p>Limitation of duration of Deployment for the 2 MW WTG</p> <p>The Company must remove the 2 MW WTG no later than 3 years from the Commencement of the Development, or such other date following the date of Commencement of the Development as the Scottish Ministers may hereafter direct in writing.</p> <p>The permanent sitting or re-deployment of the 2 MW WTG must be requested by the Company, in writing, to the Scottish Ministers no later than six months before the proposed sitting or re-deployment. Such approval may only be granted following consultation by the Scottish Ministers with the SNH, ACC, AC, HES and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.</p>

<p>In Annex 2, Condition 7</p>	<p>Substitute full text with:</p> <p>“Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the application, the Environmental Statement (as supplemented or amended by the further environmental information submitted by the Company on 22nd September 2016), the section 36 Consent Variation and supporting documentation submitted on 29th November 2017, and any other documentation lodged in support of the Application.”</p>
<p>In Annex 2, Condition 17</p>	<p>Explanation: Removed the word “inter array” for the condition to be applicable to all cables in the Development</p> <p>Substitute first paragraph with:</p> <p>“The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Cable Plan (“CaP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, MCA, SFF, Esk DSFB, Dee DSFB, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CaP must be in accordance with the ES and ES Addendum.”</p> <p>Substitute second paragraph with:</p> <p>“The CaP must include, but not be limited to, the following:</p> <ol style="list-style-type: none"> a) the location and cable laying techniques for the cables; b) the results of monitoring or data collection work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing; c) technical specification of cables, including a desk based assessment of attenuation of electro-magnetic field strengths and shielding; d) a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures; e) methodologies for surveys (e.g. over trawl) of the cables through the operational life of the windfarm where mechanical protection of cables laid on the sea bed is deployed; f) methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables; and g) demonstration of avoidance of sensitive periods for

	relevant bird species during the cable laying works within the intertidal zone”
In Annex 2 - Condition 22	Added “ Dee DSFB” to the list of consultees
In Annex 3	In Definition of “the Application” add to the end of the text: “and the section 36 Consent Variation and supporting documentation submitted to the Scottish Ministers by the Company under section 36C of the Electricity Act on 29 th November 2017”
In Annex 3	In Definition of “Organisations and Companies” added “Dee DSFB” means Dee District Salmon Fisheries Board

- 7.5 For illustrative purposes a consolidated version of the relevant s.36 consent (with variations shown in tracked changes for ease of reference) is provided.
- 7.6 Copies of this letter have been sent to the nearest onshore planning authorities; Aberdeenshire Council, and Aberdeen City Council. This letter has also been published on the MS-LOT website.
- 7.7 The Scottish Ministers’ decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for variation of a s.36 consent.
- 7.8 Your local Citizens’ Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

James McKie

Head of Licensing Operations Team,
Marine Scotland

COPY OF THE DECISION LETTER ISSUED ON 7th MARCH 2017, WITH TRACKED CHANGES SHOWING CONSOLIDATED VERSION OF THE LETTER – WITH VARIATION TO THE CONSENT HIGHLIGHTED

MS.MarineRenewables@gov.scot



Mr Allan MacAskill
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2EN

07th March 2017

Dear Mr MacAskill

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF AN OFFSHORE GENERATING STATION, THE KINCARDINE FLOATING OFFSHORE WINDFARM, APPROXIMATELY 15 km SOUTH EAST OF ABERDEEN

DECLARATION ISSUED BY THE SCOTTISH MINISTERS UNDER SECTION 36A OF THE ELECTRICITY ACT 1989 TO EXTINGUISH PUBLIC RIGHTS OF NAVIGATION SO FAR AS THEY PASS THROUGH THOSE PLACES WITHIN THE TERRITORIAL SEA WHERE STRUCTURES FORMING PART OF THE OFFSHORE WIND FARM ARE TO BE LOCATED.

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

The following application have been made by Kincardine Offshore Windfarm Limited (“KOWL”) (Company Number SC475345) having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN (“the Company”), to the Scottish Ministers for:

- i. a consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of The Kincardine Floating Offshore Windfarm, approximately 15 km south east of Aberdeen (“the Development”).
- ii. a declaration under section 36A of the Electricity Act 1989 to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area (in the main the territorial sea adjacent to Scotland)

where structures (but not, for the avoidance of doubt, the areas of sea between those structures) forming part of the Kincardine Floating Offshore Windfarm and offshore transmission works are to be located; and a marine licence under the Marine (Scotland) Act 2010 (“the 2010 Act”) and the Marine and Coastal Access Act 2009 (“the 2009 Act”) for the deposit of any substance or object, and for the construction, alteration or improvement of any works, in relation to the Kincardine Floating Offshore Windfarm.

THE APPLICATION

I refer to the application at i above made by the Company, initially submitted on 23rd March 2016, for a consent under section 36 (“s.36”) of the Electricity Act for the construction and operation of the Development approximately 15 km south east of Aberdeen (“the Application”).

In this letter, “the Development” means the proposed Kincardine Offshore Wind Farm electricity generating station as described in **Annex 1** and shown in the Figure within that Annex of this letter.

The Application received consisted of an application letter, Environmental Statement (“ES”), and a supporting marine licence application. An ES Additional Information Addendum (“ES Addendum”) was later submitted. The Application is to construct and operate the Kincardine Offshore Floating Windfarm generating station, comprising of up to 8 floating wind turbine generators (“WTGs”), with a combined maximum generating capacity of 50 MW. The Application also covers infrastructure associated with the Development including, but not limited to, inter-array cabling to the connection point at the onshore Redmoss substation, Altens, Aberdeen. The generating capacity of the individual WTGs will be finalised at a later stage post determination of this Application, but will not exceed 8 MW (but always providing that the maximum generating capacity of the Development will not exceed 50MW).

At this time, the Company also applied for a declaration under section 36A of the Electricity Act, application ii, to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area (in the main the territorial sea adjacent to Scotland) where structures (but not, for the avoidance of doubt, the areas of sea between those structures) forming part of the offshore wind farm and offshore transmission works are to be located.

In response to the responses from Aberdeenshire Council (“AC”), Aberdeen City Council (“ACC”), Scottish Natural Heritage (“SNH”) and the Royal Society for the Protection of Birds Scotland (“RSPB Scotland”), given as part of the original consultation exercise, and particularly regarding ornithology and Seascape, Landscape and Visual Impact Assessment (“SLVIA”), a ES Additional Information Addendum to the Application was submitted by the Company on 22nd September 2016 and issued for consultation on 23rd September 2016 to all organisations invited to comment on the original ES. Both documents were made publically available in the same public places where the original ES was made available for public consultation.

The ES Addendum contained information on the refinement of the sub-structure technology and a note on how it affects ornithology, revised information on impact assessment of migratory diadromous fish and additional information on the socio-economic aspects of the Development, namely employment, economy, tourism and recreation. With regard to the SLVIA, the ES Addendum provided additional details on the selection of locations for full visualisation from the initial wireline presentations, an assessment of the night time visualisations at key receptors, a cumulative assessment of the night time visualisations from key receptors (Aberdeen Harbour Expansion), and a new in-combination assessment from Viewpoint 2 (Balmedie beach) to include the European Offshore Wind Deployment Centre (“EOWDC”). The ES Addendum also contained an Habitats Regulations Appraisal (“HRA”) Addendum, containing an assessment of the Likely Significant Effects (“LSE”) of the Development on proposed Special Protection Areas (“pSPA”) and revised information on in-combination effects and proposed mitigation. Finally, the ES Addendum also included an amended list of permanent and temporary deposits applied for.

In tandem with the consultation on the applications i and ii, Marine Scotland Licensing Operations Team (“MS-LOT”) has consulted on a marine licence application for the Development, application iii, also submitted on 23rd March 2016.

STATUTORY AND REGULATORY FRAMEWORK

LEGISLATION

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

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

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in internal waters or the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 megawatt (“MW”) requires consent under section 36 (“s.36”) of the Electricity Act. A consent under s.36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such

period as may be specified in or determined by or under the consent.

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

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

Under section 36A of the Electricity Act, Scottish Ministers have the power to make a declaration, on application by an applicant when making an application for consent under section 36 of the Electricity Act, which extinguishes public rights of navigation which pass through the place where a generating station will be established; or suspend rights of navigation for a specified period of time; or restrict rights of navigation or make them subject to conditions. The power to extinguish public rights of navigation extends only to renewable generating stations situated in territorial waters.

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

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

Paragraph 2(2) of Schedule 8 to the Electricity Act provides that where a relevant planning authority notifies the Scottish Ministers that they object to an application for s.36 consent and where they do not withdraw their objection, then the Scottish Ministers must cause a Public Local Inquiry (“PLI”) to be held in respect of the application. In such circumstances before determining whether to give their consent the Scottish Ministers must consider the objections and the report of the person who held the PLI.

The location and extent of the Development to which the Applications relate (being wholly offshore) means that the Development is not within the area of any local Planning Authority. MS-LOT, on behalf of the Scottish Ministers, did however consult with the Planning Authorities most local to the Development, Aberdeenshire Council (“AC”) and Aberdeen City Council (“ACC”). The Councils did not object to the Applications. If they had objected to the Applications, and even then if they had not withdrawn their objections, the Scottish Ministers would not have been statutorily obliged to hold a PLI under paragraph 2(2) of Schedule 8 to the Electricity Act.

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

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

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

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

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

In compliance with the 2000 and 2007 Regulations, consultation has taken place with the Joint Nature Conservation Committee (“JNCC”), SNH, the Scottish Environment Protection Agency (“SEPA”), the relevant planning authorities, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the ES, the ES Additional Information Addendum and additional information in the form of statutory consultation responses.

MS-LOT has also consulted a wide range of relevant organisations, including colleagues within the Scottish Government on the Applications, on the Environmental Statement (“ES”) and as a result of the issues raised during the initial consultation, on the required ES Additional Information Addendum, in accordance with the regulatory requirements.

The Scottish Ministers are satisfied that the regulatory requirements have been met and have taken into consideration the environmental information, including the ES and ES Addendum, the responses received from the statutory consultative bodies and the representations received.

The Habitats Directive and the Birds Directive

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

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

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

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

concerned and, if appropriate, after having obtained the opinion of the general public.

6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

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

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

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

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

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

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

protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

The Habitats Directive and the Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) (“the 1994 Regulations”) for devolved matters, the Conservation of Habitats and Species Regulations 2010 (“the 2010 Regulations”) for reserved matters and for various matters which have been executively devolved to include consent under the Electricity Act, and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”) for developments out with 12 nm. Although the Crown Estate lease boundaries cross over the 12nm limit to the west the proposed Development is to be sited entirely in internal waters adjacent to Scotland, therefore the 1994, the 2007 and 2010 Regulations are applicable in respect of the Application.

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

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

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

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

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

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

In relation to the Habitats Directive and the Birds Directive, as the Development may have the potential to have an impact on a number of Special Protection Areas (“SPAs”), SNH and RSPB Scotland flagged some issues. In SNH’s view it cannot be determined that the Development will have no adverse effect on the Forth Islands SPA with respect to the puffin qualifying interest, when considered in combination with other developments (Hywind, Neart na Gaoithe, Seagreen Alpha and Bravo and Inch Cape). RSPB objected to the proposal on the grounds that insufficient and inaccurate information to support the AA. RSPB consider that a conclusion of no adverse effect on site integrity cannot be reached due to concerns in relation to the cumulative and in-combination impacts on SPAs particularly with regard to the four commercial scale offshore wind farms in the outer Firth of Forth that were granted consent in 2014 (Inch Cape, Seagreen Alpha and Bravo and Neart na Gaoithe).

Due to their proximity to the Development, the AA which has been undertaken has considered the combined effects of Hywind and the Forth and Tay offshore wind farms, (the Neart na Gaoithe Offshore Wind Limited (“NNGOWL”), Seagreen Alpha and Bravo, and Inch Cape Offshore Limited (“ICOL”) applications). The projects were consented by the Scottish Ministers in October 2015 for Hywind, and October 2014 for the Forth and Tay sites. Where appropriate (depending on the receptor) other offshore wind farm developments and licensable marine activities have also been considered in the AA. These include (but are not limited too) the Moray Firth offshore wind farms, European Offshore Wind Deployment Centre (“EOWDC”) and the Aberdeen harbour re- development.

In line with advice from SNH, and to ensure compliance with European Union (“EU”) obligations under the Habitats Directive and the Birds Directive, MS-LOT, on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development, alone or in combination with other plans or projects, will not adversely affect the integrity of any SPAs. Special Areas of Conservation (“SACs”) relevant to the Development were not considered in the AA as it was concluded that the Development is not likely to have a significant effect on the sites concerned.

SNH were consulted on the AA and agreed with all conclusions reached except in relation to Forth Islands puffin where they were unable to conclude no adverse effect on site integrity, when the Development is considered in combination with other east coast wind farms. SNH recognise that the effect from the Development in isolation is very small (only 3 additional puffin mortalities per year from Forth Islands SPA) however their conclusion in relation to the Forth and Tay offshore wind farms was adverse effect on integrity and this Development adds to that much larger effect. Reasons from diverging from the advice of SNH relate to assessment methodologies are provided in the AA which will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

Marine (Scotland) Act 2010

The Marine (Scotland) Act 2010 (“the 2010 Act”) regulates activities in the territorial sea adjacent to Scotland in terms of marine environment issues. Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act,

licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

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

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

Marine and Coastal Access Act 2009

Other than for certain specified matters, the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”) executively devolved marine planning, marine licensing and nature conservation powers in the offshore marine region (12-200 nm) to the Scottish Ministers. The 2009 Act transferred certain functions in issuing consent under s.36 of the Electricity Act from the Secretary of State to the Marine Management Organisation (“MMO”). The MMO does not exercise such functions in Scottish waters or in the Scottish part of the renewable energy zone, as that is where the Scottish Ministers perform such functions.

Where applications for both a marine licence under the 2009 Act and consent under s.36 of the Electricity Act are made, then in those cases where the Scottish Ministers are the determining authority, they may issue a note to the applicant stating that both applications will be subject to the same administrative procedure. Where that is the case then that will ensure that the two related applications may be considered at the same time.

Although the Development is within the Scottish inshore region (ie within the area 12 nautical miles from shore or, as the case may be, from the baseline from which the territorial sea is measured), the total Crown Estate lease area is larger and will also have an impact upon, although to a much lesser extent, the Scottish offshore region (which is the area of sea between 12 nautical miles and up to 200 nautical mile from shore/the baseline).

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

Climate Change (Scotland) Act 2009

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

The Company, Kincardine Offshore Wind Limited, estimates that, once the Development is fully constructed and operational, there could be a saving of 94,735 tonnes of CO₂ per year. KOWL estimates that the Development could provide renewable electricity for approximately 55,945 homes. This is approximately 2.3% of all the homes in Scotland (2012 estimate of 2.39 million households by gro-scotland.gov.uk).

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

APPLICABLE POLICIES AND GUIDANCE

MARINE POLICY

The UK Marine Policy Statement 2011

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

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

Chapter 3, paragraphs 3.3.1 to 3.3.5, 3.3.16 to 3.3.19, 3.3.22 to 3.3.24, 3.3.26, and 3.3.29 to 3.3.30 of the Statement are relevant and have been considered as part of the assessment of the Application.

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

The Scottish Ministers have, accordingly, had regard to the Statement and consider the Development accords with the Statement. The Scottish Ministers have also had regard to relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

Scotland's National Marine Plan

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

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

Of particular relevance to this proposal are:

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

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

Other Marine Policy

The Development will contribute to Scotland's renewable energy targets via its connection to the National Grid. It will also provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Route Map and the National Renewables Infrastructure Plan. Scotland has considerable potential for offshore renewable energy developments. Estimates indicate that Scotland has up to 25% of Europe's offshore wind potential (Scotland's Renewable Resource 2001). Offshore wind is seen as an integral element in Scotland's contribution towards action on climate change. The development of offshore wind also represents one of the biggest opportunities for sustainable economic growth in Scotland for a generation. Scotland's ports and harbours present viable locations to service the associated construction and maintenance activities for offshore renewable energy. In

addition, Scottish research institutions provide a base of academic excellence for delivering technological advancements and technology transfer and are also well placed to benefit from the creation of this new industry around Scotland.

TERRESTRIAL POLICY

The Scottish Ministers have had regard to the terms of relevant terrestrial planning policy documents and Plans.

In addition to high level policy documents regarding the Scottish Government's policy on renewables (2020 Renewable Route Map for Scotland - Update (published 30th Oct 2012)), the Scottish Ministers have had regard to the following documents:

Scottish Planning Policy

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

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

The Scottish Ministers are satisfied that these matters have been addressed in full both within the Applications, the ES, the ES Addendum and within the responses received to the consultations by the relevant planning authorities, SEPA, SNH, and other relevant bodies.

National Planning Framework 3

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

NPF3 sets out the ambition for Scotland to move towards a low carbon country, placing emphasis on the development of onshore and offshore renewable energy. It recognises the significant wind resource available in Scotland, and reflects targets to meet at least 30% of overall energy demand from renewable sources by 2020 including generating the equivalent of at least 100% of gross electricity consumption from renewables with an interim target of 50% by 2015. It also identifies targets to source 11% of heat demand and 10% of transport fuels from renewable sources by 2020.

NPF3 aims for Scotland to be a world leader in offshore renewable energy and expects that, in time, the pace of onshore wind development will be overtaken by the development of marine energy including wind, wave and tidal.

Chapter 3 paragraphs 3.1, 3.2, 3.4, 3.6, 3.8, 3.9 of NPF3 is of particular relevance to the Application.

Strategic and Local Development Plans

Aberdeen City and Shire Strategic Development Plan 2014

The Aberdeen City and Shire SDP 2014 has as one of its core objectives an aspiration to be a city region which takes the lead in reducing the amount of carbon dioxide released into the air, adapts to the effects of climate change and limits the amount of non-renewable resources it uses.

Aberdeen Local Development Plan 2012

The Aberdeen Local Development Plan, as part of its development strategy, aims to support all types of renewable energy generating technologies in principle.

AC, in their consideration of the Application, considers although the development is offshore, the proposal aligns with terrestrial planning policy including the Aberdeen Local Development Plan Policy R8 – Renewable and Low Carbon Energy Developments.

Aberdeenshire Local Development Plan 2012

The Aberdeenshire Local Development Plan, as part of its development strategy, aims to support wind energy where it meets the needs of a rural community by contributing to its overall social and economic wellbeing, and by promoting vigorous and prosperous rural settlements.

Summary

The Scottish Ministers consider the policies as outlined above are broadly supportive of the Development.

CONSULTATION EXERCISE

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

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

The formal consultation process undertaken by the Scottish Ministers, which related to the application for section 36 consent (application i), the marine licence application (application iii) and the ES, commenced on 23rd March 2016.

Due to further work being required to inform impacts assessment (including HRA), further information was requested from the Company. The ES Addendum was received by MS-LOT on 22nd September 2016 and public notices were placed in the press and Edinburgh Gazette to notify any interested parties. MS-LOT also consulted on the ES Addendum with all organisations invited to comment on the original Application and ES. Both documents were made publicly available.

MS-LOT consulted a wide range of relevant organisations, including colleagues within the Scottish Government, on the Application, the ES and the ES Addendum. In accordance with the statutory requirements, as part of the overall consultation, MS-LOT sought the advice of the JNCC, SNH, SEPA and the Planning Authorities most local to the Development, Aberdeen City Council and Aberdeenshire Council.

Public Representations

One public representation was received by Marine Scotland during the course of both public consultation exercises. This was made by Mainstream Renewable Power, on behalf of Neart Na Gaoithe Offshore Wind Farm Ltd ("NnGOWL").

NnGOWL noted that they were supportive of the Development, however they noted that there were some significant errors in the information submitted by the applicant which should be addressed. NnGOWL stated that if these errors were not corrected this would result in substantial overestimates of cumulative impacts.

The points raised included that the ES stated that the Neart Na Gaoithe Offshore Wind Farm project was composed of 75 to 125 turbines, which is incorrect. Over time this figure has been reduced to a maximum of 75 turbines with the possibility of a further reduction to 64. NnGOWL also noted that the number of wind turbines assessed for the Inch Cape offshore wind farm was 213, whereas the consent was

granted for a maximum of 110 turbines in October 2014. These errors combined resulted in an overestimation of 153 turbines, which would lead to an overestimate in cumulative effects with regard to the ornithology impacts.

NnGOWL noted that the construction programme was also incorrectly detailed in the ES and had not accounted for the delays in taking forward the projects to be sited in the Forth and Tay estuaries as a consequence of the court proceedings challenging the decisions of the Scottish Ministers. Therefore, NnGOWL was of the opinion that the Company should also revisit the possibility of concurrent works.

NnGOWL noted that the ES Addendum included an assessment of the new proposed Special Protection Areas. NnGOWL has recently met with MS, SNH and JNCC to discuss the data used for assessing the impacts on these sites and it was identified that future Appropriate Assessments should focus on breeding colony populations rather than the older data used for the designation process.

NnGOWL also noted discrepancy as to whether commercial fishing would be excluded from the whole site, or only around the turbines and moorings and requested clarification on this.

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

Objections

Objections were received from Aberdeen International Airport (“AIA”), the Ministry of Defence (“MOD”), NATS (En Route) plc (“NATS”), Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) and the Scottish Fishermen’s Federation (“SFF”). AIA, the MOD, NATS and SFF withdrew their objections subject to conditions being attached to the consent.

The objection from RSPB Scotland is being maintained.

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

Material Considerations

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

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

The Scottish Ministers consider that no further information is required to determine the Application.

Public Local Inquiry

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

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

The location and extent of the Development to which the Application relates being wholly offshore means that the Development is not within the area of any local planning authority. The nearest local Planning Authorities did not object to the Application. Even if they had objected to the Application, and even then if they did not withdraw their objection, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

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

The Scottish Ministers have received a representation in support of the Development as outlined above, which raising a number of issues. In summary the comments were related to the following issues:

- Incorrect design information and construction programme regarding NnGOWL and other wind farms; and
- Significant errors in the information submitted by the applicant.

In response to the representation MS LOT have reviewed the issues raised. Whilst the information supplied may contain errors, these are pertinent to other developments rather than being pivotal to this. The responder has confirmed that the information supplied was done so primarily to inform MS-LOT in their ongoing work on other wind farms on the east of Scotland. As such no further action is required.

Scottish Ministers consider that they have sufficient information in the documentation submitted by the applicant to reach a conclusion on the matter, and have concluded that it is appropriate not to cause a public inquiry to be held to further investigate this.

Consultation on the ES Addendum

No additional representations were received from members of the public. Summary

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

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

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that:

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

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

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

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

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

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

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

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

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

SNH advised that the Development is likely to have a significant effect upon some of the qualifying interests of Buchan Ness to Collieston Coast SPA, Fowlsheugh SPA, Forth Islands SPA and Troup, Pennan and Lion's Heads SPA. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA.

Having carried out the AA (considering all the representations received from SNH, MSS and other relevant consultees) it can be stated with confidence that the Development, will not adversely affect site integrity of any the identified SPAs assessed to have connectivity with the Development. SNH agreed with all conclusions reached in the AA except in relation to Forth Islands SPA with respect to puffin where they were unable to conclude no adverse effect on site integrity, when the Development is considered in combination with other east coast wind farms. SNH recognise that the effect from the Development in isolation is very small (only 3 additional puffin mortalities per year from Forth Islands SPA) however their conclusion in relation to the Forth and Tay offshore wind farms was adverse effect on integrity and this Development adds to that much larger effect. A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in the AA.

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

The Scottish Ministers are convinced that the Development will not adversely affect site integrity of the European protected sites included within the AA. The Scottish Ministers are certain that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

In Scotland Scottish Ministers are currently in the process of identifying a suite of new marine SPAs. In 2014 advice was received from the Statutory Nature Conservation Bodies ("SNCBs") on the sites most suitable for designation and at this

stage they became draft SPAs (“dSPAs”). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA (“pSPA”) and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPAs is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45). The Outer Firth of Forth and St. Andrew’s Bay Complex pSPA and Ythan Estuary, Sands of Forvie and Meikle Loch pSPA are currently at consultation and, therefore, included in the AA.

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

In accordance with regulation 63 of the 2010 Regulations the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPAs, review their decisions authorising the proposal. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated if LSE is identified (as they are currently pSPAs their conservation objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

THE SCOTTISH MINISTERS’ CONSIDERATION OF THE APPLICATION

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

For the reasons already set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also certain that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of Buchan Ness to Collieston Coast SPA, Fowlsheugh SPA, Forth Islands SPA or Troup, Pennan and Lion’s Heads SPA.

Landscape and Visual Impacts

SNH, the Scottish Ministers’ statutory advisors on visual impacts on designated landscape features, were consulted on the Application for the Development, and in their advice they raised a number of concerns, but did not object to the Development.

They concluded that the Development would not raise issues of national importance, as defined by SNH, as it does not impact on landscape resources designated for national

importance. They did, however, consider that the Development may raise issues of significant regional and local cumulative impacts and effects.

SNH advised that there was lack of a cumulative impact assessment, and that a wind farm offshore at Kincardine would contribute additional cumulative effects along the coastal seaboard. SNH considered that the Development, in addition to the consented offshore development at Aberdeen Bay (European Offshore Wind Deployment Centre, EOWDC) could lead to significant cumulative sequential impacts on high sensitivity visual receptors. They further considered that a comprehensive cumulative impact assessment should have been provided to consider the potential for significant cumulative effects on important regional and local resources, in particular the high sensitivity coastline and small coastal communities. As such, SNH advised that further information and cumulative assessment should be undertaken to inform this issue if required by the relevant authorities – Aberdeen City and Aberdeenshire Councils.

SNH noted that despite considerable advice given in the pre-application stages, their advice has only partially been used to inform the ES SLVIA and supporting graphics and visualisations. SNH's concerns with regard to the ES – SLVIA related to:

- Overall the assessment of landscape, seascape and visual impacts in the ES only summarises the assessment of effect.
- No reference was made to existing onshore wind energy development in the assessment of the landscape and coastal baseline.
- Assessment of visual receptor sensitivity is not in accordance with GLVIA.
- No assessment of sequential visual assessment along main routes.
- No comprehensive cumulative impact assessment.
- No provision of visualisations in a Viewpoint Pack as per SNH Visual Representation Guidance (July 2014).

Assessment of sensitivity and magnitude of change and significance of effect

SNH disagreed with the approach used to determine the significance of effects which adopts a high threshold, identifying only Major and Moderate/Major effects as being significant. SNH stated that given the development type and potential for significant effects, and from the experience of both long standing and more recent on and off shore wind development, it is considered among landscape practitioners that moderate effects may also be significant under EIA regulations, where they can be supported by professional judgement. As such, SNH considered Moderate effects to be significant.

In the assessment of visual receptor sensitivity, SNH considered that the SLVIA has underestimated the baseline. With reference to Guidelines for Landscape and Visual Assessment ("GLVIA"¹) residents and receptors visiting an area for landscape and scenic enjoyment are considered to be of High sensitivity. SNH noted that the SLVIA

¹ Landscape Institute (2013). Guidelines for Landscape and Visual Impact Assessment. Routledge. <https://www.routledge.com/Guidelines-for-Landscape-and-Visual-Impact-Assessment-3rd-Edition/Landscape-Institute-IEMA/p/book/9780415680042>

appears to have included a consideration of the distance of the receptor to the development, reflecting a magnitude of change rather than sensitivity of receptor. As such, SNH considered the sensitivity to be High for viewpoints where residents and/or visitors/walkers were assessed.

SNH noted that there was limited information on the marking and lighting requirements for the Windfarm; the SLVIA refers to the project description in the ES, however this conflicts with the marine navigation requirements.

Assessment of impacts on landscape character and visual amenity

Coastal character assessment

SNH considered that the impact on landscape and seascape character is likely to be marginally higher (Moderate) than that assessed within the SLVIA, taking into account the cumulative baseline of existing terrestrial wind development which contributes to a baseline coastal landscape already affected by wind developments, and from which the turbines of the Development would be experienced. However, SNH judged these effects to be not significant due to the distance offshore and the small scale of the Development, which does not intrude or dominate the experience of the coastal character.

Visual Impact Assessment

For the majority of visual receptors identified (residents, visitors, walkers), SNH considered the assessment has underestimated sensitivity of receptor, which should be High. Given this underestimation, typically in viewpoints along the coast where a moderate magnitude of change has been identified (within ~18 km of the Development), SNH considered the assessment of effect to be Moderate or greater, and therefore significant. Of the viewpoints included, SNH considered that 9 of these viewpoints should be assessed as Moderate/Major and Major significant effects.

SNH stated that, at these 9 viewpoints, the Development introduces a visible or prominent new focus into the simple sea: sky horizon, and that it will intrude upon the appreciation of the coastal view, with clearly visible rotating blades and yellow platform bases. According to SNH, the Development will only appear as two clearly separate, but related groups of 4 turbines from Girdle Ness and Doonies Farm. SNH further considered that the Development appears relatively contained within wide coastal panoramas, and is experienced as fully 'offshore' at distances ranging between 15 and 20 km. Typically from the coastal viewpoints the turbines appear clearly 'separate' from the complexity of the coastline, relating far more to the wider plane of sea and sky. Where significant effects are identified, SNH were of the opinion that the Development does not dominate or overwhelm the viewer.

SNH advised that given the predicted visibility level from the Development along the East coast, they expected the assessment to include a sequential visual impact, in accordance with GLVIA. SNH noted that the following should have been considered in the assessment: main roads and minor roads, rail lines, coastal footpaths, and cycle ways. SNH further advised that this sequential assessment should feed into a cumulative sequential assessment.

ACC and AC were also consulted on the Application and both raised concerns regarding visual impacts, however, their concerns were not sufficient to cause them to object to the Development.

ACC noted that the Development introduces a built element into an otherwise undeveloped seascape located off a largely undeveloped coastline. ACC accepted that on its own, the small scale of the Development and the distance from shore limits the impact. However ACC noted that the ES has not considered the impact of lighting at night time, nor the cumulative effects with the Aberdeen Harbour Expansion and EOWDC. ACC considered that in combination, these three developments would result in a significant change over large areas of the coastal landscapes and seascapes around Aberdeen. Whilst ACC expected the combination of effects to result in significant adverse effects on the seascape and visual characteristics of the Aberdeen coast in this area, given the current undeveloped nature of the seascape and coastal landscapes, they considered that these are acceptable on this occasion.

ACC raised a number of issues with regard to the assessment baseline and scope, namely that the baseline information used is dated and at an inappropriate scale, having used a national scale assessment not suitable as baseline assessment of the coast for detailed EIAs; that the ES relies on a land-based landscape character assessment which is not focused on coastal and seascape character, and that no further coastal character or seascape assessment has been carried out to inform the assessment; that there has been no assessment of impacts on routes, and movement corridors, including how the coast is experienced sequentially along the coastal path, national cycle route and roads; that a map is needed to illustrate the location of Landscape Character Areas, which are within Aberdeen City and within Aberdeenshire, and showing the boundaries of seascape units to aid understanding of the assessment; and finally that a map of other windfarms be provided to aid understanding of the assessment.

As such, ACC requested further information in order to assess the effects of the Development, specifically night-time lighting assessment of the proposed windfarm; a thorough and documented assessment, using appropriate baseline data, of the cumulative effects (including night-time lighting) with Aberdeen Harbour Expansion and EOWDC; and recommendations for mitigating any identified adverse night-time lighting and cumulative effects.

Having considered the information submitted by the Company in the ES Addendum, ACC maintained their support for the Development in principle, and clarified that the information supplied provided a better understanding of the likely night time effects of the project. With regard to the cumulative landscape/seascape and visual effects, ACC maintained their previous position that whilst there are likely to be adverse sequential seascape/landscape and visual effects, these were considered to be acceptable on this occasion. ACC still considered that further marine and coastal development in this area would benefit from robust assessments of cumulative landscape, seascape and visual effects, for both day and night time, and in accordance with best practice.

AC had some concerns about the robustness of the assessment contained within the ES, specifically in relation to the visual and cumulative assessment. These issues were further highlighted at Kincardine and Mearns Area Committee.

AC noted that a degree of certainty was required regarding the turbine specification, the number and layout of the turbines, as well as how the Development relates visually to other similar scale developments that potentially could be seen in combination with the proposal. In relation to these detailed site specific issues and predicted cumulative effects, AC considered there was an unconcluded aspect to the Application and requested further details on the final specifications, location and number of turbines.

AC considered the design of the turbines to be appropriate in terms of the local climate and wider seascape/landscape, and requested that no advertising should appear on any part of the turbines or associated equipment.

AC noted that the proposed height for the turbines is 176 m to tip height, making them among the tallest wind turbines proposed for the north east of Scotland. AC assumed that there will be significant visual effects up to 35 km and beyond, and based on the potential visibility, stressed that they would have preferred a more comprehensive visual assessment which included visualisations from more inland locations. On the basis of what has been provided AC felt that a full assessment of the impact was not possible.

AC had anticipated that a higher number than the 6 identified viewpoints would be illustrated with visualisations, including receptors at inland locations in order to provide a comprehensive assessment of visual effects, and advised that all the viewpoints assessed should have a clear indication of the sensitivity of the receptor, the magnitude of change to perceived seascape/landscape character and the significance of effects. The need for a greater number of visualisations was also highlighted by Members at the Kincardine and Mearns Area Committee, and further written justification was requested as to why visualisations have not been provided for the coastal communities of Newtonhill, Muchalls, Findon, Old Portlethen, Portlethen, and Hillside. A further visualisation/ photomontage taken from Balmedie beach showing any potential in combination visual impact of the Development and EOWDC was also requested by AC.

AC also felt that the Company needed to further address the issue of cumulative impact as part of the SLVIA to fully address the potential combined visual effects of the Development, and advised this should include both onshore and offshore wind developments. AC also advised that appropriate common viewpoints and sensitive receptors that may have been used for other wind energy applications should be identified and assessed. As such, AC requested that a more comprehensive cumulative assessment was provided, including a sequential visual assessment to include coastal transport corridors in relation to the offshore/onshore visual impact.

AC discussed the issues above with the Company and were provided with further information, including additional photographs and wire frame diagrams. AC was happy to continue to work with the applicant on this basis.

The Company also submitted the information requested above in the ES Addendum. Having considered this additional information, AC maintained support in principle for the Development. AC were satisfied that no further mitigation, aside from what had already been outlined, would be necessary after clarification and the addressing of these issues.

Nevertheless, AC considered that the robustness of the cumulative impact assessment, both in terms of nearby offshore wind energy development as well as in-combination effects from onshore wind energy developments, is a matter that they feel would require a far more in depth analysis in any future application process. The results submitted gave AC enough comfort that the impacts experienced would not be significant, but they advised that a more comprehensive cumulative impact assessment from the outset would be preferable.

Historic Environment Scotland (“HES”) did not object to the Development and were content that the ES provided an assessment of impacts on Dunnottar Castle, scheduled monument 986, as well as undesignated marine historic environment assets. However, HES noted that the impacts to the setting of Dunnottar Castle have been assessed in the SLVIA chapter of the ES, which they do not consider an appropriate methodology to assess impacts to historic environment assets or their setting. HES were of the opinion that a more appropriate historic environment methodology, utilising their ‘Setting Managing Change’ guidance note, would have been preferable.

HES considered there was a very limited amount of information provided directly relating to the assessment of Dunnottar Castle and as such it is difficult to be certain how the conclusions reached in the assessment (moderate impact) were arrived at. HES further noted that they had requested specific visualisations in their scoping response which were not provided. Nevertheless, using the visualisation provided, HES have carried out their own assessment of the potential impacts to the setting of the scheduled monument and were content that as a result of the offshore works, there shall be no direct impacts on designated terrestrial assets. In terms of setting impacts, HES have considered the potential for impacts on the setting of Dunnottar Castle and, despite the limited information provided, they were content that although there will be an impact to the setting of the monument, it will not be so significant as to raise issues of national significance.

Conditions requiring the submission of a Development Specification and Layout Plan (“DSLPL”), Design Statement (“DS”) and a Lighting and Marking Plan (“LMP”) have been included in **ANNEX 2**.

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

Marine Mammal Impacts

SNH agreed with the general conclusions of the ES, that the impacts on marine mammals are likely to be minor/negligible based on the sensitivities of the features and the (estimated) duration / magnitude of the activities.

As the Development will not involve piling, SNH considered that the potential impacts on marine mammals would be limited to entanglement and disturbance due to vessel movements, as well as potential disturbance during cable laying. Marine Scotland Science (“MSS”) agreed, stating that the risk of auditory injury through exposure to noise is very much reduced through the commitment not to use piling to install the turbines.

Entanglement was considered by SNH to be the key impact for the Development, with risks being greater for medium-sized cetaceans such as minke whale, rather than smaller cetaceans such as dolphins and porpoises. As such, SNH recommended that a detailed entanglement monitoring and reporting schedule is provided as part of the Project Environmental Monitoring Programme (“PEMP”) in order to mitigate and monitor entanglement for the Development.

SNH noted the lack of discussion in the ES relating to disturbance effects of the cable laying. However they considered it likely that effects will be limited, notably since installation of the export cables is estimated to take approximately 3 days.

MSS noted that the ES relies, in several instances, upon data previously presented in other applications and therefore not specific to the Development site, highlighting two main areas where this arises: the noise assessments and the baseline marine mammal distribution. Although this was a concern, because noise propagation in water is dependent upon various site specific factors such as water depth and seabed type, MSS were less concerned about noise impacts from the Development, due to the commitment not to use piling. Nevertheless, MSS would not recommend using the values that are presented in section 8 (or where they are used in section 6) of the ES.

With regard to the baseline conditions for marine mammals, MSS stated that in many cases the pattern of distribution is comparable with what would be expected at the Development area, and MSS were content that the HiDef surveys have covered the Development area and have found animal distributions that are consistent with expectations.

MSS agreed that operational noise of the turbines is unlikely to be a risk to marine mammals. However, MSS stated that for floating wind developments, the noise inputs to the marine environment will be different from those measured from turbines pinned to the seabed, and therefore advised that recordings of the sound profiles produced by the operational floating turbines would improve understanding in this area.

MSS also agreed that the issue of corkscrew seals and ducted propellers can be removed from further consideration, given the evidence that such mortalities may in fact be caused by grey seals.

MSS agreed that vessel transit routes can be addressed in the PEMP. MSS also advised that further information on the frequency with which mooring lines will be monitored for derelict fishing gear was included in the PEMP, stating that monitoring of load on the moorings should provide useful data on whether marine mammals become entangled in the moorings, and the frequency of this, should it occur. MSS considered that this could usefully be reported as part of the survey, deploy and monitor policy, should this be applied.

Whale and Dolphin Conservation (“WDC”) had no major concerns regarding the impact of the Development on marine mammals in the area, providing that construction is halted if marine mammals are seen in the vicinity of the development and activity does not commence until all animals have left the area for a specified amount of time, i.e. monitoring is based on current guidance.

SNH advised that a Marine Mammal Observer (“MMO”) should be used following agreed protocols prior to all noisy construction activities, and this was also requested by WDC. WDC further requested that Passive Acoustic Monitoring (“PAM”) should be conducted in parallel to visual observations, and that the use of Acoustic Deterrent Devices (“ADD”) should be avoided if possible. MSS agreed that ADDs should not be used during construction, unless there is demonstrated to be a risk that marine mammals will be injured (either physically or acoustically). Since the Company does not intend to use pile driving to install the wind turbines, MSS considered that it is unlikely that ADDs would provide a useful mitigation.

Given the short duration of the construction period and relatively low importance of the area for cetaceans, SNH advised that an EPS licence will not be required. MSS have, however, noted that an EPS licence may be required to carry out the required geophysical surveys, due to their potential to disturb cetaceans. MSS advised that the assessment carried out for these surveys should also consider the potential for injury to cetaceans, and mitigation options to avoid this, and also that the geophysical surveys may be required to be included on the Noise Registry for purposes of monitoring impulsive noise under the European Marine Strategy Framework Directive.

Conditions requiring the appointment of a Marine Mammal Observer (“MMO”) and the submission of a Project Environmental Monitoring Programme (“PEMP”) have been included in **ANNEX 2**.

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

Ornithological Impacts

SNH concluded that for the Development alone, there is no adverse effect on site integrity for bird interests. However, when considered in combination with other developments, specifically other wind farms consented for the east coast of Scotland, HyWind and the Forth and Tay offshore wind farms (Near na Gaoithe, Seagreen – Alpha and Bravo, and Inch Cape) within species' mean-max foraging range (mmfr), SNH could not advise that there will be no adverse effect on site integrity with respect to Black-legged kittiwake at Fowlsheugh SPA and Atlantic puffin at Forth Islands SPA in their initial consultation response. Following further consideration of the most appropriate mortality rate due to displacement for kittiwake SNH later advised the Development would not adversely affect the integrity of Fowlsheugh SPA with respect to kittiwake when considered in-combination with other projects as detailed in the AA

SNH also advised that the additional mortality predicted for gannet and apportioned to Forth Islands SPA from the Development is not sufficient to raise the overall mortality above the threshold previously agreed with Marine Scotland.

SNH stated that the Development will have impacts on some bird populations, notably on black-legged kittiwake (kittiwake), northern gannet (gannet) and common guillemot (guillemot) through a combination of predicted collision impacts and displacement from currently used foraging areas. However, SNH did not consider the impacts of the Development alone will be sufficient to result in adverse effect on site integrity for any of the SPAs where Likely Significant Effect ("LSE") is concluded.

SNH identified an error in the apportioning calculations in the ES for the Development, which greatly underestimates the impacts to SPAs. SNH stated that some small (or non-existent) colonies in the Seabird Monitoring Programme ("SMP") database have had large populations assigned to them, which has therefore overestimated the proportions of birds that originate outside of SPAs. SNH have recalculated the apportioning table in the HRA document to be able to assess the impact to kittiwakes, and advised that calculations for all other species would need to be checked if the figures from this ES are used in other cumulative assessments.

SNH noted that the area has significant seaborne traffic and is classed as a moderately busy area. SNH considered that although an increase in vessels may cause disturbance to marine birds, and that more vessel movement brings an increased risk of a vessel collision (with a risk of contamination), the proportional increase resulting from the Development is likely to be small. SNH was of the opinion that with mitigation in place, this will reduce the risk to a negligible level, and advised that the VMP should contain a protocol that seeks to avoid / minimise maintenance movements during the last two weeks of July and first two weeks of August, as it is during this period that an influx of dependent auks with their adults is recorded and this would mitigate potential impacts on auks during this vulnerable period.

SNH informed that diving bird species could potentially be caught by ghost fishing materials caught on mooring lines, noting that mitigation is proposed in the form of sensors to detect large accumulations of ghost fishing material. SNH advised that

regular inspection of mooring and anchor lines will reduce the risk of this sufficiently for it not to be considered a significant impact, and recommended that a detailed entanglement monitoring and reporting schedule is provided as part of the PEMP in order to mitigate and monitor entanglement for the Development.

SNH considered that the area of habitat disturbed by the anchors is likely to be very small and considered the loss of prey resource negligible. SNH noted that it is possible that prey aggregation could occur around the feature, which may benefit some species, and stated that no significant impacts are expected as a result of prey disturbance.

SNH supported the commitment, provided in the ES Addendum, to develop monitoring and mitigation for the Development, including using the design of the floating structures for mounting observation devices and monitoring equipment to aid data collection and monitor interactions of birds with turbines. SNH advised that such a monitoring programme should form part of the conditions for the application, and welcomed further discussion on the detail of monitoring requirements in order to validate some of the ES predictions and consider the environmental impacts of the Development.

RSPB Scotland objected to the Development on the grounds that the ES provided insufficient and inaccurate information to support the Appropriate Assessment. They stated that even if the required information could be provided, a conclusion of no adverse effect on site integrity of relevant SPAs could not be reached, due to existing unacceptable cumulative or in-combination effects arising from consented offshore wind in the Forth and Tay region. It was the opinion of RSPB Scotland that the existing consent decisions were based upon inappropriate methodologies² which misrepresented the full scale of risk of adverse effects on a number of protected seabird populations.

Another reason given for RSPB Scotland's objection was that potential impacts on dSPAs had not been considered in the ES. This information was included in the ES Addendum, and RSPB Scotland removed this reason from their response to the ES Addendum consultation, while maintaining their objection on the grounds that a conclusion of no adverse effect on site integrity of relevant SPAs cannot be reached due to existing unacceptable cumulative or in-combination effects arising from the consented projects in the Forth and Tay region.

RSPB Scotland further stated that should the existing Forth and Tay consents change as a result of ongoing legal proceedings such that their impacts reduce significantly, then they would be willing to review their position on the Development.

Notwithstanding their major concerns, RSPB Scotland advised that should the Development be granted consent, they recommended that a requirement by condition is made for a monitoring programme to monitor the effects of the development on kittiwake and puffin. RSPB Scotland recommended that this monitoring programme should take full advantage of the unique opportunity provided by the design of the floating structures for mounting observation devices and

² Cook, A.S.C.P. and Robinson, R.A. 2016. The Scientific Validity of Criticisms made by the RSPB of

Metrics used to Assess Population Level Impacts of Offshore Wind Farms on Seabirds. BTO Research Report No.665

monitoring equipment, detailing that it should include details of mechanisms for tracking breeding kittiwake and puffin between the colony SPAs and the development site, and monitoring of collisions at the wind farm, to allow an assessment of the effect of the development on the SPAs. Nevertheless, RSPB Scotland highlighted that monitoring should not itself be regarded as 'mitigation'.

Conditions requiring the submission of a Vessel Management Plan ("VMP"), a Construction Method Statement ("CMS"), a Project Environmental Monitoring Programme ("PEMP"), a Cable Plan ("CaP"), an Environmental Management Plan ("EMP") and the appointment of an Ecological Clerk of Works ("ECoW") have been attached to the consent at **Annex 2**.

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

Commercial Fisheries Impacts

MSS advised that the loss of fishing grounds needs to expand beyond mobile gears, to include interactions with static gears. MSS stated that due to high risk of fishing gear entanglement, impacts on static gears can also be considered significant. MSS noted that the potential impact of increased fishing pressure on other fishing grounds resulting from any displacement of existing fishing activity was not covered in the ES and requested that this was included. MSS further requested that proposed mitigation measures for each potential significant impact on commercial fisheries were also included.

Regarding the ES Addendum, MSS noted that the commercial fisheries section listed additional mitigation measures, such as guard vessel opportunities, the appointment of a Fisheries Liaison Officer ("FLO") and input to a Fishing Community Fund. MSS requested additional information about this initiative and the type of involvement the Company is proposing to have regarding the Fishing Community Fund.

The Scottish Fishermen's Federation ("SFF") initially objected to the Development. Whilst acknowledging that the Company engaged with them in discussions on the plan, the SFF stated that the Application does not seem to have considered the information they provided. As a result, the SFF outlined their concerns regarding the process used to define the development site within the Agreement for Lease area to MS-LOT in October 2015. The SFF considered that these concerns had not been satisfactorily addressed by the Company and the SFF therefore maintained their objection, stating it is their belief that the UK's Fisherman's Information Mapping ("UKFIM") data shared by them with the Company and described in the commercial fisheries baseline, corroborates their view.

The SFF stated that during the initial consultation with them, the UKFIM data was explained, including the cyclical nature of some fisheries, especially scallops. According to the SFF, the descriptions in the baseline do not take these details into account,

especially in what concerns the concentration of the scallop fishery in the area chosen to locate the Development.

The SFF considered that the Application missed the growth in the squid fishery which now exists on grounds between Aberdeen and Bell Rock, and which will have a material impact on the Development's interaction with fisheries.

The SFF noted the Application acknowledges that by its nature the development will lead to a complete loss of fishing grounds. Therefore they requested that in the event of consent being granted, a condition is included to ensure that mitigation in some form is found.

The SFF advised that the export cable route also needs to be carefully considered, and requested that the Company examines alternatives to rock dumping and mattresses in the event of non-burial, appropriate to the seabed and the fishery concerned.

The SFF subsequently removed their objection to the Development subject to conditions being included in the consent, after entering into an agreement with the Company regarding the provision of mitigation measures

Conditions requiring the appointment of a Fisheries Liaison Officer ("FLO"), submission of a Cable Plan ("CaP"), Project Environmental Monitoring Programme ("PEMP"), developer participation in a regional advisory group and developer participation in a Fisheries Group with the aim of producing a Fisheries Management and Mitigation Strategy ("FMMS") have been attached to the consent at **Annex 2**.

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

Economic Benefits

Scottish Planning Policy ("SPP") advises that economic benefits are material issues which must be taken into account as part of the determination process.

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

In chapter 13 of the ES, the Company advise that it is estimated that the Development will directly create job opportunities for over 50 local staff within the construction port, plus 40 local staff in the areas of assembly and installation of the turbines, in addition to generating opportunities for up to 20 local workers to establish site facilities and grid connection cabling over the 2 year construction period. This

represents a temporary, beneficial effect, of minor significance for the economy of Aberdeen City and Shire.

The ES makes a commitment to construction of the substructures which is expected to be undertaken within a Scottish port facility and this is likely to include a significant level of fabrication support for the substructure assembly at a regional/UK wide level. Scottish Ministers are fully supportive of this commitment and look forward to future confirmation of the detail of this.

The Development and enhancement of skill sets associated with the construction of the floating units will form a positive, short term (up to two years) employment opportunity for the selected port site. It is expected that over 50 people could be required to support the construction and installation of the turbines within the construction port over a two year period, which represents a net economic benefit to the regional/national economy.

It is expected that all of the WTG unit (tower, blade and nacelles) will be fabricated outside of Scotland and transported to the construction base for assembly. This is likely to provide additional local development and skill enhancement to the local port construction workforce, which could enable further windfarm development opportunities for the local workforce.

The construction of the Development is expected to create a small number of short-term employment opportunities in the area, including demand for skilled onshore and offshore construction workers, vessel operators and engineers during the construction phase. Given the nature of the Development and the type of skills available in the local labour market, it is anticipated these jobs will be fulfilled using existing employment from the Aberdeen City and Shire labour market.

The equivalent of approximately 40 jobs are anticipated to be required in order to assemble and install the turbines. The construction period for the onshore and offshore section of the connecting cable to the sub-station is anticipated to be between three to six months. It is estimated the installation of the cable will employ a maximum of 20 people. The offshore section will also require the charter of a suitable vessel and associated crew. It is expected that an existing vessel from either Aberdeen or Peterhead harbours will be used to support the offshore cable element.

In addition, further indirect jobs will be supported locally and regionally through supply linkage and income multiplier effects. This includes firms supplying construction materials and equipment.

Employment and economic impacts are considered to be a temporary, beneficial effect, of minor significance for the economy of Aberdeen City and Shire.

In order to ensure the turbines operate efficiently a regular checks and maintenance schedule will be followed. For approximately one week every month during the 25 year operational life of the windfarm, the turbines will undergo checks and maintenance, which will require approximately 4 engineers and a supporting vessel, plus around 4 onshore support staff. As with the construction phase, it is anticipated

that the required skills, for the maintenance and support work, will be supplied by the existing Aberdeen and Shire labour market. The skilled labour required and potentially the vessel used is anticipated to be shared with another offshore windfarm. Use of vessels to support operation and undertake the maintenance of the turbines will be drawn from existing fleet at either Aberdeen or Peterhead harbours.

Aberdeen City Council considers offshore wind energy, particularly floating offshore wind energy, as a prime diversification opportunity for the oil and gas industry. For ACC, the presence of the Development in waters off the Aberdeen coast would be significant in terms of lessons that can be applied to other, bigger projects and if successful should result in future access to much greater opportunities for local companies. Recognising there would be some direct beneficial local economic effect, ACC noted this would be small scale and that the ES contains little evidence about the characteristics of employment being created (e.g. skills group). ACC further noted that although some economic benefits to the city and region are suggested, these cannot be automatically translated into benefits to the local economy or communities of Altens and Cove

Reviewing the potential economic impact of the project as a whole on local ports, Scottish Ministers remain committed to seeking benefits for the local economy, and for Scotland as a whole. As such, Scottish Ministers look forward to the formalisation of commitments made in the ES to the local and Scottish economy as the project moves towards its construction phase.

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

Summary

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

- The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development.
- The Company's ES, ES Addendum and the consultation process have identified what can be done to mitigate the potential impacts of the Development.
- The matters specified in regulation 4(1) of the 2000 Regulations and regulation 22 of the 2007 Regulations have been adequately addressed by means of the submission of the Company's ES and ES Addendum, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable.
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004, such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Scottish Ministers before the Commencement of the Development (**Annex 2**).
- The Scottish Ministers have considered material details of how the Development can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies.
- The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the ES Addendum, all relevant responses from consultees and the public representations received.
- On the basis of the AA, the Scottish Ministers have ascertained, to the appropriate level of scientific certainty, that the Development in combination with the other plans and projects, will not adversely affect site integrity of any European protected sites, in view of such sites' conservation objectives.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to 50 MW (as described in **Annex 1**).

In accordance with the 2000 Regulations and the 2007 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development. The Company must provide copies of the public notices to the Scottish Ministers.

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

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

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

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

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

Yours sincerely,

JAMES McKIE

Leader, Marine Scotland Licensing Operations Team A

member of the staff of the Scottish Ministers

07th March 2017

Annex 1

DESCRIPTION OF THE DEVELOPMENT

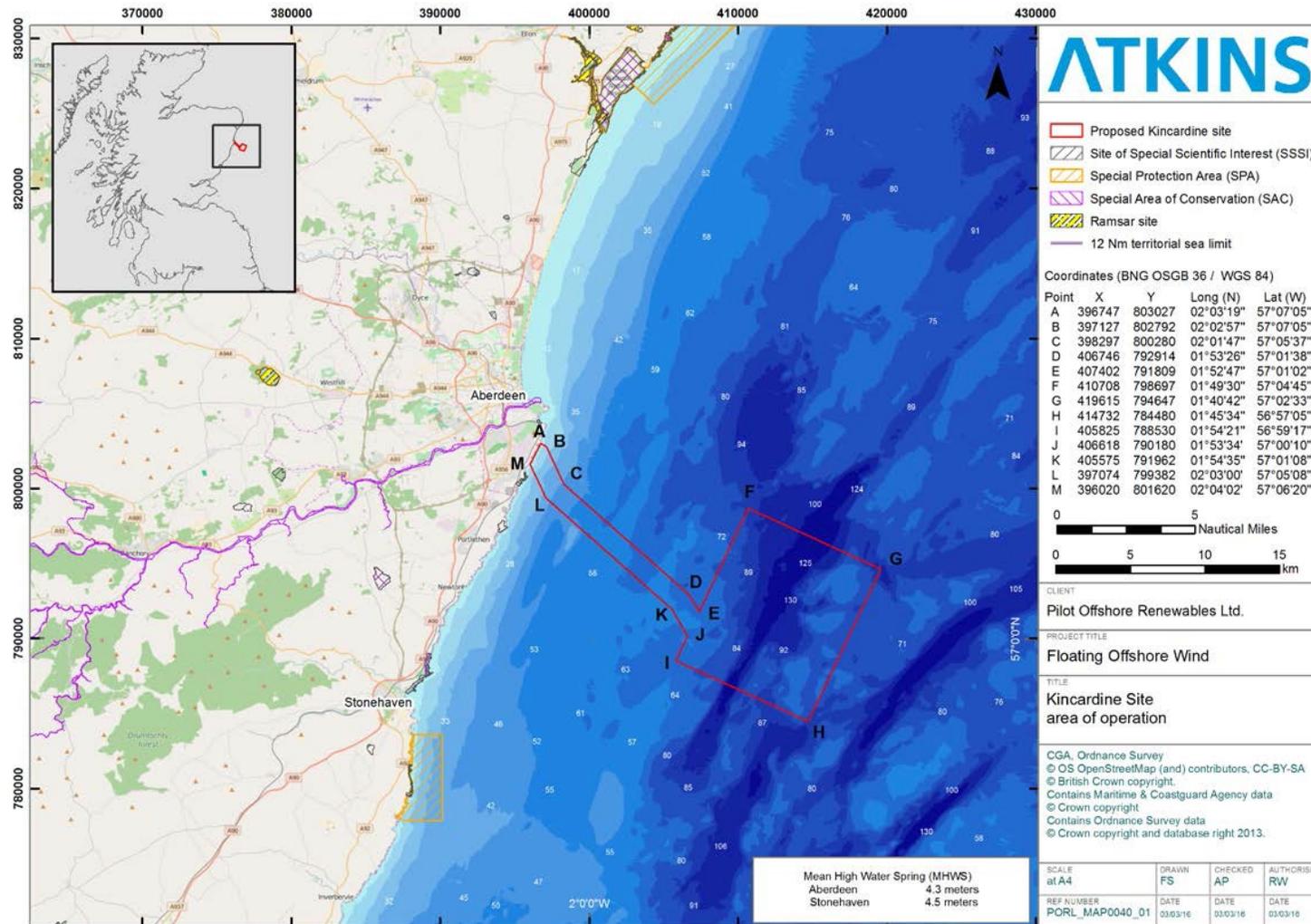
The Development shall have a permitted generating capacity not exceeding 50 MW and shall comprise of up to ~~8~~7 wind-powered electricity generating stations approximately 15 km south east of Aberdeen, including:

1. not more than ~~8~~7, three-bladed horizontal axis, WTGs, each with:
 - i. ~~6 to 8 MW generating capacity (whilst ensuring that the permitted generating capacity does not exceed 50 MW);~~ maximum rated capacity for each Wind Turbine of up to 8.4 MW (the maximum generating capacity of the Development will continue to be limited to 50 MW);
 - ii. a maximum blade tip height of ~~176~~191 metres (measured from LAT);
 - iii. a maximum rotor diameter of ~~152~~164 metres;
 - iv. a maximum hub height of ~~100~~105 metres (measured from LAT);
 - v. a minimum blade tip clearance of 22 metres (measured from LAT);
 - vi. blade width of up to ~~4.5~~5.4 metres; and
 - vii. a minimum spacing of 1,000 metres;
 - viii. One 2 MW WTG
2. all substructures, anchors and associated mooring lines;
3. grid infrastructure including the construction of two subsea cables which will connect the WTGs to the shore.

The Development shall be constructed in accordance with that specified in the Application, the ES Addendum, the Section 36 Variation and supporting documentation and by the conditions imposed by the Scottish Ministers.

References to “the Development” in this consent shall be construed accordingly.

Figure : Development Location – Kincardine Floating Offshore Windfarm Site and Export Cable Corridor to shore near Altens, Aberdeen.



ANNEX 2

CONDITIONS

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

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

The Company must submit the required plans for the 2 MW WTG as detailed in the conditions prior to the Commencement of the Development, in writing, to the Scottish Ministers for their written approval. Updated plans to cover the 2 MW turbine and future tranches, for the entire Development must be submitted prior to the Commencement of the Development of these subsequent works and in line with the timescales of the relevant conditions, in writing to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the conditions or as may be required at the discretion of the Scottish Ministers.

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

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

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

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

1. Duration of the Consent

The consent is for a period of 25 years from the date of Final Commissioning of the first Wind Turbine Generator ("WTG").

Written confirmation of the date of the Final Commissioning of the first WTG must be provided by the Company to the Scottish Ministers, ACC and SNH no later than one calendar month after the Date of Final Commissioning of the first WTG.

Reason: To define the duration of the consent.

2. Commencement of Development

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

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

3. Decommissioning

Where the Company has been given notice requiring them to submit to the appropriate authority, as defined in the Energy act 2004, a Decommissioning Programme (“DP”), pursuant to section 105(2) and (5) of the Energy Act 2004, then construction may not begin on the site of the Development until after the Company has submitted to the appropriate authority a DP in compliance with that notice.

Reason: *To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner, and in the interests of safety and environmental protection.*

4. Assignment

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

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

5. Redundant turbines

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

the Site upon which the WTG is located must be reinstated by the Company in accordance with the procedures laid out within the Company's DP.

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

6. Incident Reporting

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

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

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

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application, the Environmental Statement (as supplemented or amended by the further environmental information submitted by the Company on 22nd September 2016), the section 36 Consent Variation and supporting documentation submitted on 29th November 2017, and any other documentation lodged in support of the Application.

~~Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application, the Environmental Statement (as supplemented or amended by the further environmental information submitted by the Company on 22nd September 2016 and any other documentation lodged in support of the Application.~~

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

8. Transportation for site inspections

As far as reasonably practicable, the Company must, on being given reasonable notice by the Scottish Ministers (of at least 72 hours), provide transportation to and from the Site for any persons authorised by the Scottish Ministers to inspect the Site.

Reason: *To ensure access to the Site for the purpose of inspecting compliance with this Consent.*

9. Construction Programme

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Construction Programme ("CoP"), in writing, to the Scottish Ministers for their written

approval. Such approval may only be granted following consultation by the Scottish Ministers with the SNH, SFF, Vattenfall, Esk DSFB, CAA, MoD, MCA, NLB, SEPA, ACC, AC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) the proposed date for Commencement of Development;
- b) the proposed timings for mobilisation of plant and delivery of materials, including details of onshore lay-down areas;
- c) the proposed timings and sequencing of construction work for all elements of the Development infrastructure;
- d) contingency planning for poor weather or other unforeseen delays; and
- e) the scheduled date for Final Commissioning of the Development. The Company must, prior to the Commencement of the Development, provide a copy of the final CoP, and any subsequent revisions as agreed by the Scottish Ministers, to the DGC.

Reason: To confirm the timing and programming of construction.

10. Construction Method Statement

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

The CMS must include, but not be limited to:

- a) the construction procedures and good working practices for installing the Development;
- b) details of the roles and responsibilities, chain of command and contact details of company personnel, any contractors or sub-contractors involved during the construction of the Development;
- c) details of how the construction related mitigation steps proposed in the ES and in the ES Addendum are to be delivered; and
- d) a waste management plan for the construction phase of the Development.

The CMS must adhere to the construction methods assessed in the Application, ES and ES Addendum. The CMS must also, so far as is reasonably practicable, be consistent with the Design Statement ("DS"), the Environmental Management Plan ("EMP"), the Vessel Management Plan ("VMP"), the Navigational Safety Plan ("NSP"), the Cable Plan ("CaP") and the Lighting and Marking Plan ("LMP").

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

the marine area.

11. Development Specification and Layout Plan

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Design Specification and Layout Plan (“DSLPL”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MoD, SFF, JRC, CAA, ACC, AC, MCA, NLB, NATS, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The DSLPL must include, but not be limited to: a plan showing the location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification/numbering, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the Site;

- a) a list of latitude and longitude co-ordinates accurate to three decimal places of minutes of arc for each WTG. This should also be provided as a Geographic Information System (“GIS”) shapefile using the World Geodetic System 1984 (“WGS84”) format;
- b) a table or diagram of each WTG dimensions including – height to blade tip (measured above Lowest Astronomical Tide (“LAT”)) to the highest point, height to hub (measured above LAT to the centreline of the generator shaft), rotor diameter and maximum rotation speed;
- c) the generating capacity of each WTG used on the Site (Annex 1, Figure) and a confirmed generating capacity for the Site overall;
- d) the finishes for each WTG (see condition 18 on WTG lighting and marking); and
- e) the length and proposed arrangements on the seabed of all inter-array cables.

Reason: To confirm the final Development specification and layout.

12. Design Statement

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Design Statement (“DS”), in writing, to the Scottish Ministers. The DS, which must be signed off by at least one qualified landscape architect as instructed by the Company prior to submission to the Scottish Ministers, must include representative wind farm visualisations from key viewpoints as agreed with the Scottish Ministers, based upon the final DSLPL as approved by the Scottish Ministers as updated or amended. The Company must provide the DS, for information only, to SNH, AC, ACC, HES and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

Reason: To ensure that the Development is carried out in accordance with the approved details, and to inform interested parties of the final wind farm scheme

proposed to be built.

13. Environmental Management Plan

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit an Environmental Management Plan ("EMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must provide the over-arching framework for on-site environmental management during the phases of development as follows:

- i) all construction as required to be undertaken before the Final Commissioning of the Development; and
- ii) the operational lifespan of the Development from the Final Commissioning of the Development until the cessation of electricity generation. (Environmental management during decommissioning is addressed by the Decommissioning Programme provided by condition 3.

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

- a) mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the ES and ES Addendum, pre-consent and pre-construction monitoring or data collection, and include the relevant parts of the CMS;
- b) a pollution prevention and control method statement, including contingency plans;
- c) management measures to prevent the introduction of invasive non-native marine species;
- d) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, re-use and recycle should be encouraged;
- e) the reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, SNH, SEPA, MCA and NLB) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development or at such a time as agreed with the Scottish Ministers, submit an updated EMP to cover the operation and maintenance activities for the Development,

in writing, to the Scottish Ministers for their written approval. Such approval may be given only following consultation with SNH, SEPA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must be regularly reviewed by the Company and the Scottish Ministers, at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

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

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

14. Vessel Management Plan

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

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

- a) the number, types and specification of vessels required;
- b) how vessel management will be co-ordinated, particularly during construction but also during operation;
- c) location of working port(s), how often vessels will be required to transit between port(s) and the Site and indicative vessel transit corridors proposed to be used during construction and operation of the Development; and
- d) the means by which vehicle movements will be avoided or minimised during the last two weeks of July and first two weeks of August.

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

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

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

15. Operation and Maintenance Programme

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

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

The OMP must, so far as is reasonably practicable, be consistent with the EMP, the PEMP, the VMP, the NSP, the Cable Plan ("CaP") and the LMP.

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

16. Navigational Safety Plan

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

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

- a) navigational safety measures;
- b) construction exclusion zones;
- c) notice(s) to Mariners and Radio Navigation Warnings;
- d) anchoring areas;
- e) temporary construction lighting and marking;
- f) emergency response and coordination arrangements (ERCoP) for the construction, operation and decommissioning phases of the Development and to be in accordance with condition 3.2.1.4 of the marine licence; and
- g) buoyage.

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

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

17. Cable Plan

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

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

- a) the location and cable laying techniques for the **inter-array** cables;
- b) the results of monitoring or data collection work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing;
- c) technical specification of cables, including a desk based assessment of attenuation of electro-magnetic field strengths and shielding;
- d) a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures;
- e) methodologies for surveys (e.g. over trawl) of the cables through the operational life of the wind farm where mechanical protection of cables laid on the sea bed is deployed;
- f) methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables; and
- g) demonstration of avoidance of sensitive periods for relevant bird species during the cable laying works within the intertidal zone.

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

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

18. Lighting and Marking Plan

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Lighting and Marking Plan (“LMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MCA, NLB, MoD, CAA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The LMP must provide that the Development be lit and marked in accordance with the current CAA and MoD aviation lighting policy and guidance that is in place as at the date of the Scottish Ministers approval of the LMP, or any such other documents that may supersede said guidance prior to the approval of the LMP. The LMP must also

detail the navigational lighting requirements detailed in IALA Recommendation O-139 or any other documents that may supersede said guidance in place immediately prior to the approval of the LMP.

The Company must provide the LMP, for information, to ACC, SNH, DGC and any other bodies as may be required at the discretion of the Scottish Ministers.

Reason: To ensure navigational safety and the safe marking and lighting of the offshore generating station.

19. Primary Radar Mitigation Scheme

Prior to any works on the Development commencing above sea level, a Primary Radar Mitigation Scheme setting out measures to be taken to prevent the impairment of the performance of aerodrome navigation aids and the efficiency of air traffic control services at Aberdeen International Airport must be submitted to, and approved in writing by, the Scottish Ministers, in consultation with Aberdeen International Airport Limited.

Reason: In the interests of aviation safety.

No whole or part of any turbine shall be erected above sea level until a Primary Radar Mitigation Scheme, as agreed with the Operator, and which has been submitted to and approved, in writing, by the Scottish Ministers has been implemented in full. This is in order to avoid any impacts being caused by the Development upon the Primary Radar of the Operator located at Perwinnes and associated air traffic management operations.

The Development must, thereafter and at all times, be operated fully in accordance with such approved Scheme.

Reason: To mitigate the impact of the Development on the Primary Radar of the Operator located at Perwinnes and associated air traffic management operations and in the interest of aviation safety.

No wind turbine, or part thereof, forming part of the Development shall be erected other than in accordance with the approved Primary Radar Mitigation Scheme.

Reason: In the interests of aviation safety.

The Development must be constructed, commissioned and operated at all times fully in accordance with the approved Primary Radar Mitigation Scheme.

Reason: In the interests of aviation safety.

20. Air Defence Radar Mitigation Scheme

The Company must ensure that no part of any turbine shall be erected above sea level until an Air Defence Radar Mitigation Scheme ("the ADRM Scheme") has been

submitted to and approved, in writing, by the Scottish Ministers. Such approval may only be granted following consultation by the Scottish Ministers with the MOD.

No turbines shall become operational until:

- a) the mitigation measures which the approved ADRM Scheme required to be implemented prior to the operation of the turbines have been implemented; and
- b) any performance criteria specified in the approved ADRM Scheme and which the approved ADRM Scheme requires to have been satisfied prior to the operation of the turbines have been satisfied.

The Company must, thereafter, comply with all other obligations contained within the approved ADRM Scheme for the duration of the operation of the Development. For the purposes of this condition, the ADRM Scheme means a detailed scheme to mitigate the adverse impacts of the Development on the air defence radar at RAF Buchan and the air surveillance and control operations of the MOD. The ADRM Scheme must set out the appropriate measures to be implemented to that end.

Reason: To mitigate the adverse impact of the Development on air defence radar at Remote Radar Head (RRH) Buchan.

21. Charting requirements

The Company must, prior to the Commencement of the Development and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition 11), provide the positions and maximum heights of the WTGs and construction equipment above 91.4 m measured above LAT to the UKHO for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the co-ordinates accurate to three decimal places of minutes of arc for each WTG position and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: For aviation and navigational safety.

22. Project Environmental Monitoring Programme

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Project Environmental Monitoring Programme ("PEMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, RSPB Scotland, WDC, Esk DSFB, [Dee DSFB](#), the SWT and any other ecological advisors or organisations as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the Application, the Environmental Statement (ES) and the Environmental Statement Addendum as it relates to environmental monitoring.

The PEMP must set out measures by which the Company must monitor the environmental impacts of the Development. Monitoring is required throughout the

lifespan of the Development where this is deemed necessary by the Scottish Ministers. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing, where appropriate, in consultation with the RAG referred to in condition 23 of this consent.

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

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

- a) pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring or data collection as relevant in terms of the ES and ES Addendum and any subsequent monitoring or data collection for:
 - i) birds. This should include, but not be limited to, a detailed entanglement monitoring and reporting schedule, as well as a post-consent monitoring plan for bird strike;
 - ii) marine mammals. This should include, but not be limited to, a detailed entanglement monitoring and reporting schedule, particularly of load on the moorings from derelict fishing gear; and
 - iii) diadromous fish;
- b) the methodology to record and report noise levels from construction and sound profiles from operational floating turbines to be carried out in relation to marine mammals; and
- c) the participation and contribution to be made by the Company to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers, and may include but not necessarily be limited to:
 - i) the avoidance behaviour of breeding seabirds around turbines;
 - ii) flight height distributions of seabirds at wind farm sites; and
 - iii) effects on survival and productivity at relevant breeding colonies.

Any pre-consent monitoring or data collection carried out by the Company to address any of the above issues may be used, in part, to discharge this condition subject to the written approval of the Scottish Ministers.

The PEMP is a live document which will be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in

consultation with the RAG, or any other ecological advisors or organisations as required at the discretion of the Scottish Ministers, require the Company to amend the PEMP and submit such an amended PEMP, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the RAG, SNH, MSS, RSPB Scotland, Esk DSFB, WDC, SWT and any other ecological advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

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

23. Regional Advisory Group

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

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

24. Fisheries Management and Mitigation Strategy

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Fisheries Management and Mitigation Strategy ("FMMS"), in writing, to the Scottish Ministers for their written approval. The Company must also join and participate in the FTOWDG-CFWG, or any successor group formed to facilitate commercial fisheries dialogue, to define and finalise the FMMS.

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

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

As part of any finalised FMMS, the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they would be adversely affected by the Development. The Company must

implement all mitigation measures committed to be carried out by the Company within the FMMS. Any contractors, or sub-contractors working for the Company, must cooperate with the fishing industry to ensure the effective implementation of the FMMS.

Reason: To mitigate the impact on commercial fishermen.

25. Environmental Clerk of Works

Prior to the Commencement of the Development, the Company must at its own expense, and with the approval of the Scottish Ministers in consultation with SNH, appoint an independent Environmental Clerk of Works (“ECoW”). The ECoW must be appointed in time to review and approve the draft version of the first plan or programme submitted under this consent to the Scottish Ministers, and remain in post until agreed by the Scottish Ministers. The terms of appointment must be approved by Scottish Ministers, in consultation with SNH. The terms of the appointment must include, but not be limited to:

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

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

26. Fisheries Liaison Officer

Prior to the Commencement of the Development, a Fisheries Liaison Officer (“FLO”) must be appointed by the Company and approved, in writing, by the Scottish Ministers following consultation with SFF, the FTOWDG-CFWG or any other advisors or organisations as may be required at the discretion of Scottish Ministers. The FLO must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The identity and credentials of the FLO must be included in the EMP (referred to in condition 13). The FLO must establish and maintain effective communications between the Company,

any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

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

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

Reason: To mitigate the impact on commercial fishermen.

27. Marine Archaeology Reporting Protocol

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Marine Archaeology Reporting Protocol (“MARP”) which sets out what the Company must do on discovering any marine archaeology during the construction, operation, maintenance and monitoring of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may be given only following consultation by the Scottish Ministers with HES and any such advisors as may be required at the discretion of the Scottish Ministers. The MARP must be implemented in full, at all times, by the Company.

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

28. SpORRAn (Scottish Offshore Renewables Research Framework)

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

Reason: To ensure effective monitoring of the effects on migratory fish at a local level.

29. Marine Mammal Observer

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

activities.

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

30. Scottish Strategic Marine Environment Group

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

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

31. Limitation on duration of the Deployment for the 2 MW WTG

The Company must remove the 2 MW WTG, no later than three years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter agree and confirm in writing.

If the Company wish to re-deploy the 2 MW WTG following the initial 3 year period, the Company must provide a written request to Scottish Ministers no later than six months before that date or at such as time as agreed with Scottish Ministers. Such approval may only be granted following consultation by the Scottish Ministers with SNH, ACC, AC, HES and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

ANNEX 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment;

“ADD” means Acoustic Deterrent Device

“Commencement of the Development” means the date on which the first vessel arrives on Site to begin construction;

“Commissioning of the first WTG” means the date on which electricity is first exported to the grid network on a commercial basis from the first WTG forming part of the Development;

“Date of Final Commissioning” means the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling eighteen] months from the date of First Commissioning.

“Date of First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development;

“dSPA” means Draft Special Protection Area;

“ECoW” means Environmental Clerk of Works;

“EIA” means Environmental Impact Assessment;

“EPS” means European Protected Species;

“ERCoP” means Emergency Response & Cooperation Plan;

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Company on 6 July 2015 as part of the Application defined above;

“ES Addendum” means the Environmental Statement Additional Information Addendum submitted to the Scottish Ministers by the Company on 22nd September 2016 as part of the Application as defined above;

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

“Final Commissioning of the first Wind Turbine Generator” means the date on which electricity is first exported to the grid network on a commercial basis from any of the

wind turbines forming part of the Development, or such earlier date as the Scottish Ministers deem the first WTG to be complete;

“FLO” means Fisheries Liaison Officer;

“GIS” means Geographic Information System;

“GLVIA” means Guidelines for Landscape and Visual Assessment

“HRA” means Habitats Regulations Appraisal;

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

“LAT” means Lowest Astronomical Tide;

“LSE” means Likely Significant Effect;

“MGN 543” means the maritime and Coastguard Agency Marine Guidance Note 543 Offshore Renewable Energy Installations (OREI’s) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues;

“MHWS” means Mean High Water Spring tides;

“MLWS” means Mean Low Water Spring tides;

“MMO” means Marine Mammal Observer;

“MW” means megawatt;

“nm” means nautical miles;

“Operator” means NATS (En Route) Plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“Planning Authority” means Aberdeen City Council;

“PLI” means Public Local Inquiry;

“Primary Radar Mitigation Scheme” means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Perwinnes primary radar and air traffic management operations of the Operator;

“pSPA” means proposed Special Protection Area;

“SAC” means Special Area of Conservation;

“Scottish marine area” has the meaning given in Section 1(1) of the 2010 Act;

“SLVIA” means Seascape, Landscape And Visual Impact Assessment;

“SPA” means Special Protection Area;

“SPP” means Scottish Planning Policy;

“the Application” means the Application letters and Environmental Statement submitted to the Scottish Ministers, by the Company on 23rd March 2016 and the ES Addendum received by the Scottish Ministers on 22nd September 2016 for consent under section 36 of the Electricity Act for the construction and operation of The Kincardine Floating Offshore Windfarm, approximately 15 km south east of Aberdeen [and the section 36 Consent Variation and supporting documentation submitted to the Scottish Ministers by The company under section 36C of the Electricity Act on 29th November 2017](#)”;

“the Company” means Kincardine Offshore Windfarm Limited (“KOWL”) (Company Number 475345) having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN;

“the Development” means Kincardine Floating Offshore Windfarm, approximately 15 km south east of Aberdeen, as described in **Annex 1** of this letter authorised by this consent and deemed planning permission;

“the Site” means the area outlined in red in the **Figure** attached to this consent at **Annex 1**;

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

“UKFIM “ means UK's Fisherman's Information Mapping

“WGS84” means the World Geodetic System 1984;

“WTG” means wind turbine generator;

EOWDC means European Offshore Wind Deployment Centre

Organisations and Companies

“AC” means Aberdeenshire Council;

“ACC” means Aberdeen City Council, the nearest onshore Planning Authority;

“CAA” means The Civil Aviation Authority;

“DGC” means Defence Geographic Centre

“Esk DSFB” means Esk District Salmon Fishery Board;

“Dee DSFB” means Dee District Salmon Fisheries Board

“FTOWDG-CFWG” means Forth and Tay Offshore Wind Developers Group – Commercial Fisheries Working Group. A group formed, and set up, to develop the Commercial Fisheries Mitigation Strategy, and as a forum to facilitate on-going dialogue with the commercial fishing industry;

“HES” means Historic Environment Scotland;

“JNCC” means Joint Nature Conservation Committee;

“JRC” means Joint Radio Company;

“MCA” means The Maritime and Coastguard Agency;

“MOD” means Ministry of Defence;

“MS” means Marine Scotland;

“MS-LOT” means Marine Scotland Licensing Operations Team;

“MSS” means Marine Scotland Science;

“NATS” means NATS (En Route) Plc;

“NLB” means The Northern Lighthouse Board;

NnGOWL” means Neart Na Gaoithe Offshore Wind Farm Ltd

“NPF3” means Scotland’s National Planning Framework 3;

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

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

“SEPA” means The Scottish Environment Protection Agency;

“SFF” means The Scottish Fishermen’s Federation;

“SG” means The Scottish Government;

“SNH” means the Scottish Natural Heritage;

“SWT” means the Scottish Wildlife Trust;

“UKHO” means United Kingdom Hydrographic Office;

“Vattenfall” means Vattenfall Wind Power Ltd (Company Number 06205750) having its registered office at First Floor, 1 Tudor Street, London, EC4Y 0AH, United Kingdom;

“WDC” means Whale and Dolphin Conservation;

Plans and Programmes

“CaP” means Cable Plan;

“CMS” means Construction Method Statement;

“CoP” means Construction Programme;

“DP” means Decommissioning Programme;

“DS” means Design Statement;

“DSL P” means Design Specification and Layout Plan;

“EMP” means Environmental Management Plan;

“FMMS” means Fisheries Management and Mitigation Strategy;

“LMP” means Lighting and Marking Plan;

“NSP” means Navigational Safety Plan;

“OMP” means Operation and Maintenance Programme;

“PEMP” means Project Environmental Monitoring Programme;

“VMP” means Vessel Management Plan;

“SMP” means Seabird Monitoring Programme

Legislation and Statutory Documents

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

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

“NMP” means the National Marine Plan;

“s.36” means Section 36 of the Electricity Act;

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

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

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

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

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

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2010 Act” means Marine (Scotland) Act 2010 (as amended).

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

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

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

“the Statement” means The UK Marine Policy Statement 2011;

ANNEX D Appropriate Assessment**APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND APPLICATION FOR A MARINE LICENCE UNDER THE MARINE (SCOTLAND) ACT 2010 AND THE MARINE AND COASTAL ACCESS ACT 2009 FOR THE CONSTRUCTION AND OPERATION OF KINCARDINE OFFSHORE WINDFARM LIMITED****AND****APPLICATION TO VARY CONSENT UNDER SECTION 36C OF THE ELECTRICITY ACT 1989.**

MARINE SCOTLAND'S ASSESSMENT OF THE PROJECT'S IMPLICATIONS FOR DESIGNATED SPECIAL AREAS OF CONSERVATION ("SACS"), SPECIAL PROTECTION AREAS ("SPAS") AND PROPOSED SPECIAL PROTECTION AREAS ("pSPA") IN VIEW OF THE SITES' CONSERVATION OBJECTIVES.

SITE DETAILS: KINCARDINE OFFSHORE WINDFARM LIMITED ("KOWL") – 15km OFF THE COAST OF ABERDEEN.

Name	Assessor or Approver	Date
Tracy McCollin	Assessor	06 Dec 16
Finlay Bennet and Jared Wilson	Assessor	22 Dec 16
Gayle Holland	Approver	13 Feb 17
Section 36 Variation 24 November 2017*		
Tracy McCollin	Assessor	22/02/2018
Gayle Holland	Approver	22/02/2018

* Having been granted a marine licence and section 36 consent on 07 March 2017 KOWL submitted an application for a section 36 variation on 24 November 2017, which was accepted on 27 November 2017. This required a further appropriate assessment and this document has been updated to reflect the information received and the advice provided by SNH. The changes are in:

Sections 8 and 4

Paragraphs 1.2, 4.2, 5.6, 8.1.1, 11.6, 11.8, 12.3 and 12.5

Since the original AA was completed in February 2017 The Conservation of Habitats and Species Regulations 2010 have been revoked. Therefore in terms of the updates to the AA, any references to The Conservation of Habitats and Species Regulations 2010 should be read as The Conservation of Habitats and Species Regulations 2017.

TABLE OF CONTENTS

SECTION 1: BACKGROUND	90
1 Appropriate Assessment (“AA”) Conclusion	90
2 Introduction.....	90
3 Background to including assessment of new marine SPAs.....	91
4 Details of proposed operation.....	92
5 Consultation.....	92
6 Main issues raised during consultation.....	93
7 The main issues raised during the consultation arising from the HRA addendum were:.....	94
8 The main issues raised during the consultation arising from the HRA Variation were:.....	95
SECTION 2: INFORMATION ON NATURA SITES	95
9 Information about the Natura sites considered in this assessment.....	95
SECTION 3: ASSESSMENT IN RELATION TO REGULATION 48 OF THE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 1994, REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 AND REGULATION 25 OF THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 2007	104
10 Appropriate Assessment of the implications for the site in view of the site’s conservation objectives.	106
11 Black-legged kittiwake (breeding).....	107
12 Atlantic puffin (breeding).....	112
13 Common guillemot (breeding)	113
14 Herring gull (breeding).....	114
15 Northern Fulmar (breeding)	114
16 Northern gannet (breeding)	115
17 Razorbill (breeding)	116
18 Ythan Estuary, Sands of Forvie and Meikle Loch pSPA and Outer Firth of Forth and St. Andrews Bay Complex pSPA.....	116
SECTION 4: CONCLUSION	117
19 MS-LOT conclusion	117

FIGURES AND TABLES

Figure 1 SACs, SPAs and pSPAs relevant to the Kincardine Offshore Windfarm.... 96

Table 1 Qualifying interests for each site

Table 2 Conservation objectives for bottlenose dolphin

Table 3 Conservation objectives for Atlantic salmon and freshwater pearl mussel	102
Table 4 Conservation objectives for SPA species	102
Table 5 Conservation objectives for proposed Outer Firth of Forth and St Andrews Bay Complex SPA	103
Table 6 Estimated effects on kittiwake at Fowlsheugh SPA from KOWL alone and in combination with other east coast wind farms	109
Table 7 Estimated effects on kittiwake at Buchan Ness SPA from KOWL alone and in combination with other projects and plans	110
Table 8 Estimated effects on puffin at Forth Islands SPA from KOWL alone and in combination with other projects and plans.....	112
Table 9 Estimated effects on gannet at Forth Islands SPA from KOWL alone and in combination with other projects and plans.....	115

MARINE SCOTLAND'S ASSESSMENT OF THE PROJECT'S IMPLICATIONS FOR DESIGNATED SPECIAL AREAS OF CONSERVATION ("SACS"), SPECIAL PROTECTION AREAS ("SPAS") AND PROPOSED SPECIAL PROTECTION AREAS ("pSPA") IN VIEW OF THE SITES' CONSERVATION OBJECTIVES.

APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND APPLICATION FOR MARINE LICENCES UNDER THE MARINE (SCOTLAND) ACT 2010 AND THE MARINE AND COASTAL ACCESS ACT 2009 FOR THE CONSTRUCTION AND OPERATION OF THE KINCARDINE FLOATING OFFSHORE WINDFARM AND APPLICATION TO VARY CONSENT UNDER SECTION 36C OF THE ELECTRICITY ACT 1989

SECTION 1: BACKGROUND

1 Appropriate Assessment ("AA") Conclusion

1.1 MS-LOT concludes that, based on the content of the following assessment the proposed KOWL project will not on its own or in combination with other projects adversely affect the integrity of Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Troup, Pennan and Lion's Heads SPA, or Forth Islands SPA.

1.2 A marine licence and Section 36 consent were granted to KOWL on 07 March 2017. On 24 November 2017 KOWL submitted an application for a Section 36 variation, which was accepted on 27 November 2017, and a further AA was undertaken. On the basis of the information provided in the [HRA Variation](#) documentation and advice provided by SNH, MS-LOT have no reason to change the conclusion as outlined above.

2 Introduction

2.1 This is a record of the appropriate assessment ("AA") undertaken in regards to Kincardine Offshore Windfarm Limited ("KOWL") proposal to develop a floating offshore windfarm 15km off the coast of Aberdeen. This assessment is required to be undertaken under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") under a process referred to as Habitats Regulations Appraisal ("HRA").

2.2 As the KOWL proposal is for a site some of which falls within 12 nautical miles ("nm") of the mainland and some of which is more than 12 nm from the mainland this will be implemented by the following regulations (referred to in this assessment as "the Regulations"):

- Regulation 61 of the Conservation of Habitats and Species Regulations 2010 for Section 36 consents;
- Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 for marine licence applications for the part of the project within 12 nautical miles ("nm") of the mainland; and

- Regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 for the part of the project that is outside of 12 nm
- 2.3 The AA has been undertaken by the Marine Scotland Licensing Operations Team (“MS-LOT”) and Marine Scotland Science (“MSS”) on behalf of the Scottish Ministers.

3 Background to including assessment of new marine SPAs

- 3.1 Scottish Ministers, as a 'competent authority' under the Regulations, must be certain that the proposal will not adversely affect the integrity of any European site (special areas of conservation (“SACs”) and special protection areas (“SPAs”)) either alone or in combination with other plans or projects before authorisations can be given for the proposal.
- 3.2 In Scotland, Scottish Ministers are currently in the process of identifying a suite of new marine SPAs. In 2014 advice was received from the statutory nature conservation bodies (“SNCBs”) on the sites most suitable for designation and at this stage they became draft SPAs (“dSPAs”). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA (“pSPA”) and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPAs is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45).
- 3.3 It is not a legal requirement under the Habitats Directive or relevant domestic regulations for this assessment to assess the implications of the proposal on the pSPAs. The assessment includes an assessment of implications upon those sites in accordance with domestic policy. Scottish Ministers are also required to consider article 4(4) of Council Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”) in respect of the pSPAs. The considerations under article 4(4) of the Birds Directive are separate and distinct to the considerations which must be assessed under this Habitats Directive assessment but they are, nevertheless, set out within this assessment (see paragraphs 16.1-16.2).
- 3.4 In accordance with regulation 50 of the 1994 Regulations, regulation 27 of the 2007 Regulations and regulation 63 of the 2010 Regulations the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPAs, review their decisions if the proposal is authorised. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated (as they are currently pSPAs their conservation objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

4 Details of proposed operation

- 4.1 KOWL is a proposed demonstrator floating offshore windfarm development that is located to the south east of Aberdeen, approximately eight miles from the Scottish coastline. The development is considered a commercial demonstrator site, which will utilise floating semi-submersible technology to install six or eight wind turbine generators (WTG), with a combined maximum generating capacity of 50 MW, in approximately 60 to 80 m of water. The proposal also includes inter-array cabling to the connection point at the onshore Redmoss substation, Altens, Aberdeen. A full project description can be found in chapter 2 of the KOWL ES.
- 4.2 On 24 November 2017 KOWL submitted an [application](#) under Section 36C of the Electricity Act 1989 to vary the consent granted under Section 36 of the Electricity Act 1989 to KOWL on 07 March 2017. The application was accepted on 27 November 2017. The change to the project was that KOWL wanted to install up to seven turbines including a temporary data gathering platform of 2 MW. Therefore the turbines will be between 2 and 8.4 MW capacity.

5 Consultation

- 5.1 KOWL submitted their application, including the Environmental Statement (“ES”) and information to inform a HRA, on 23 March 2016. MS-LOT accepted the application on 05 April 2016 and the documents were sent out to the SNCBs and other relevant consultees on 08 April 2016 for a 42 day consultation period.
- 5.2 Detailed comments in relation to HRA were received from Scottish Natural Heritage (“SNH”), the Royal Society for the Protection of Birds (“RSPB”), Marine Scotland Science (“MSS”), the Dee District Salmon Fishery Board (“Dee DSFB”) and Whale and Dolphin Conservation (“WDC”). The Scottish Wildlife Trust (“SWT”) did not provide HRA specific comments but noted concerns regarding cumulative impacts. The Esk District Salmon Fishery Board and the Esk River and Fisheries Trust responded and noted that they considered salmon and sea trout migration routes would not be affected.
- 5.3 The Joint Nature Conservation Committee (“JNCC”) were consulted as they are the SNCB for marine areas outwith 12 nm. They responded to say although the development area includes a small section in offshore waters, the turbines themselves and all associated works will be within inshore waters. Given the location, they will not respond to this consultation and defer to SNH.
- 5.4 Further information, including information regarding HRA, was provided by KOWL in response to issues raised by Scottish Natural Heritage (“SNH”) and the RSPB. This was sent out for a further 42 day consultation on 23 September 2016.
- 5.5 SNH and RSPB provided further comments in relation to the further information.

5.6 On receipt of the [application](#) for the Section 36 variation a further consultation was carried out. The consultation process started on 29 November 2017 and had a deadline of 12 January 2018 for general consultees and 12 February 2018 for the local authorities. SNH provided further comments.

6 Main issues raised during consultation

6.1 The summary of the main issues raised by the consultees during the consultation on the ES and information to inform a HRA is:

6.1.1 SNH

Concluded that for this proposal alone there is no adverse effect on site integrity for bird interests. However, for the KOWL proposal in combination with other developments, specifically other wind farms consented for the east coast within species' mean-max foraging range (Hywind and the three Forth and Tay offshore wind farms – Neart na Gaoithe, Seagreen Alpha and Bravo and Inch Cape) SNH could not advise that there will be no adverse effect on site integrity with respect to:

- Black-legged kittiwake – Fowlsheugh SPA
- Atlantic puffin – Forth Islands SPA

6.1.2 RSPB

Object to the KOWL proposal as they felt there was insufficient and inaccurate information to support the AA. Even if the necessary information was provided RSPB consider that a conclusion of no adverse effect on site integrity could not be reached. They consider the existing cumulative or in-combination effects arising from the consented offshore wind in the Forth and Tay region is unacceptable. RSPB also object on the grounds that the potential impacts on draft SPAs have not been considered (since RSPB sent their response these sites are now proposed SPAs, see section 3.2-3.4).

6.1.3 WDC

Had no major concerns of the impact of the KOWL proposal on marine mammals providing that construction is halted if marine mammals are seen in the vicinity of the development and activity does not commence until all animals have left the area for a specified amount of time. WDC noted that the limited number of bottlenose dolphins observed in the vicinity of the area combined with the small scale of the development and the lack of pin or pile driving means the development would be not impact on the integrity of the bottlenose dolphin population in the Moray Firth SAC. However, they requested that an addendum to the ES and HRA be submitted should pile driving be required.

6.1.4 Dee DSFB

Notes the lack of piling removes a significant area of concern and requests that if the level of piling increases they would wish to be consulted. Expressed concern that the electromagnetic fields associated with the cabling for the proposal have not been adequately addressed in terms of potential impact on the migration of salmon as sea

trout and their associated foraging habitats. Requested that a monitoring and research programme be designed, approved and included as a condition of the consenting process and expressed their willingness to work with the developer on such a programme.

6.1.5 SWT

Expressed concerns regarding cumulative impacts of multiple windfarms such as Hywind and the three Forth and Tay offshore wind farms – Neart na Gaoithe, Seagreen Alpha and Bravo and Inch Cape on marine birds and mammals, particularly migratory species.

7 The main issues raised during the consultation arising from the HRA addendum were:

7.1.1 SNH

Reiterated that the additional information contained in the HRA addendum did not change the conclusion of their previous advice and they could not advise that there will be no adverse effect on site integrity with respect to:

Black-legged kittiwake – Fowlsheugh SPA

Atlantic puffin – Forth Islands SPA

They also noted that the addendum included assessment of potential impacts on 10 proposed SPAs and agreed with the other conclusions presented in the revised HRA.

Since the addendum was submitted a further 5 SPAs have been taken forward for public consultation, one of which was the Outer Firth of Forth and St Andrews Bay Complex. SNH provided advice in relation to this site on 02 December 2016 and concluded that there will be no likely significant effect (“LSE”) on any of the qualifying features of this site. At this time SNH also provided advice that non-breeding season assessment should be qualitative, that this had been previously agreed with KOWL and is proportionate with the risk associated to the development.

On 15 December 2016 and 12 January 2017 SNH provided further advice in relation to kittiwake as a qualifying interest of Fowlsheugh SPA in response to information provided by MS. MS summarised the in-combination effects on kittiwake at Fowlsheugh SPA and sought clarity on how closely the threshold of acceptable impact to kittiwake should be approached in the context of a qualitative approach to the non-breeding season effects, as well as asking for further advice on the most appropriate mortality rates in relation to displacement. In response, SNH advised that they were now able to conclude that it had been demonstrated that the KOWL project in combination with the Forth and Tay offshore wind farms, Hywind and EOWDC would not adversely affect the integrity of Fowlsheugh SPA with respect to kittiwake.

7.1.2 RSPB

Maintained their objection on the grounds that a conclusion of no adverse effect on site integrity of relevant SPAs cannot be reached, when the project is considered in combination with other consented east coast wind farms.

8 The main issues raised during the consultation arising from the HRA Variation were:

8.1.1 SNH

Advised that they had no objection to the variation and that they were able to conclude that there would be no adverse effect on site integrity for Kittiwake at Fowlsheugh SPA from KOWL alone or in combination with other projects as outlined in section 11 of this assessment.

SNH agreed that, taking into account the precaution built into estimated mortality rates for Atlantic puffin (see section 12) and the reduction in the number of turbines proposed for the variation, the KOWL project is adding only a very small additional effect to that already predicted from the consented Forth and Tay wind farms. SNH were able to conclude no adverse effect on site integrity for Atlantic puffin at Forth Islands SPA from KOWL alone or in combination with the other East coast wind farms.

SECTION 2: INFORMATION ON NATURA SITES

9 Information about the Natura sites considered in this assessment

9.1 This section provides links to the Scottish Natural Heritage Interactive ("SNHi") website where the background information on the sites being considered in this assessment is available. The qualifying interests for each site are listed as are the conservation objectives for each. A map (Figure 1) is also provided showing the location of KOWL, the Natura sites and the other developments considered for the in-combination assessment.

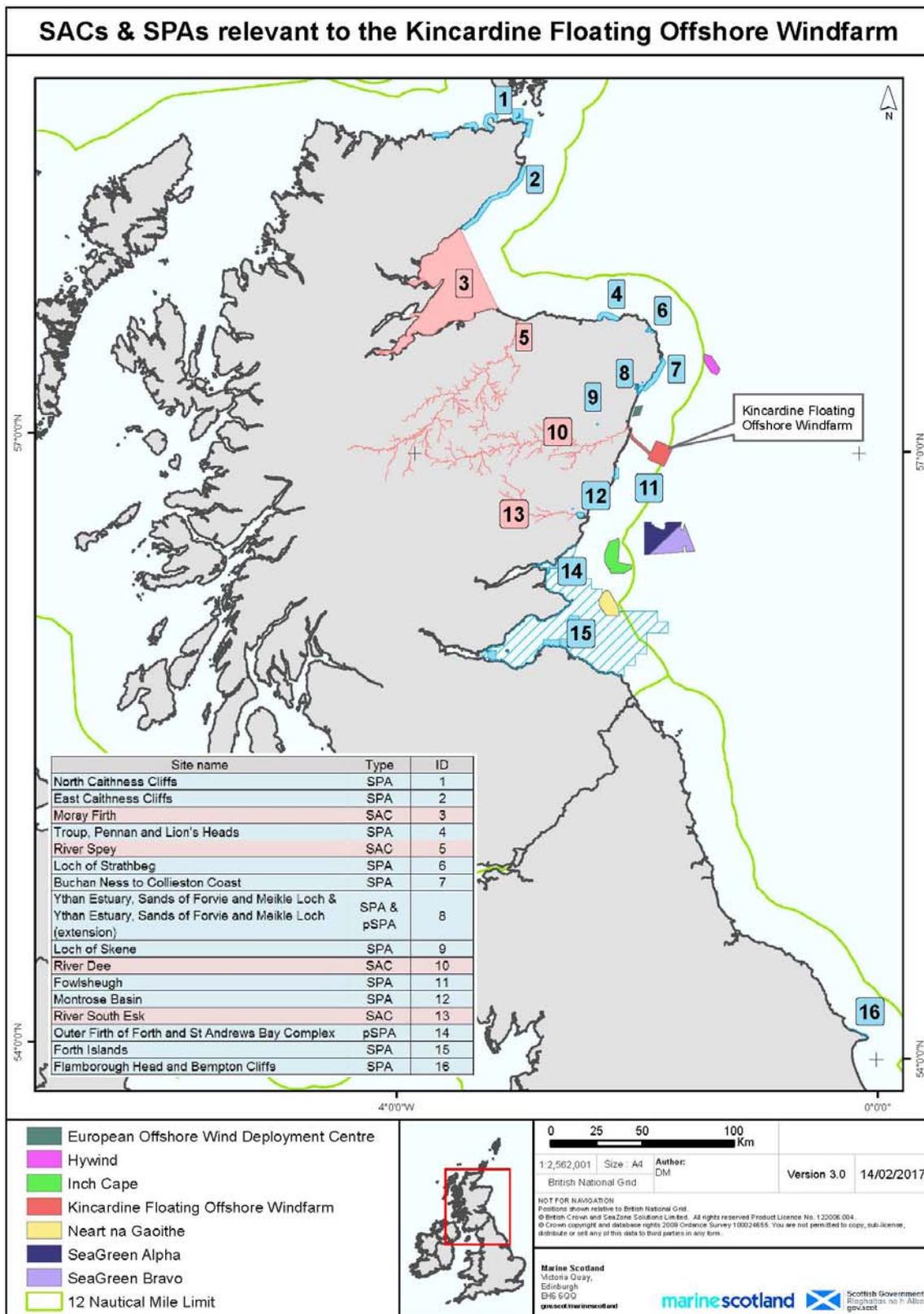


Figure 1 SACs, SPAs and pSPAs relevant to the Kincardine Offshore Windfarm

9.1.1 Name of Natura site affected and current status

1. Buchan Ness and Collieston SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8473
2. East Caithness Cliffs SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8492
3. Flamborough Head and Bempton Cliffs SPA
<http://jncc.defra.gov.uk/pdf/SPA/UK9006101.pdf>
4. Forth Islands SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8500
5. Fowlsheugh SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8505
6. Loch of Skene SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8536
7. Loch of Strathbeg SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8537
8. Montrose Basin SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8548
9. Moray Firth SAC
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8327
10. North Caithness Cliffs SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8554
11. River Dee SAC
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8357
12. River South Esk SAC
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8364
13. River Spey SAC
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8365
14. Troup, Pennan and Lion's Heads SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8587
15. Ythan Estuary, Sands of Forvie and Meikle Loch SPA
http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8592
16. Ythan Estuary, Sands of Forvie and Meikle Loch (extension) proposed SPA
https://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=10479
17. Outer Firth of Forth and St Andrews Bay Complex proposed SPA
<http://www.snh.gov.uk/docs/A2013181.pdf>

9.1.2 European qualifying interests

Table 1 Qualifying interests for each site

18. Buchan Ness and Collieston SPA	19. East Caithness Cliffs SPA
<ul style="list-style-type: none"> • Fulmar (<i>Fulmarus glacialis</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), breeding • Kittiwake (<i>Rissa tridactyla</i>), breeding • Seabird assemblage, breeding 	<ul style="list-style-type: none"> • Cormorant (<i>Phalacrocorax carbo</i>), breeding • Fulmar (<i>Fulmarus glacialis</i>), breeding • Great black-backed gull (<i>Larus marinus</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>),

<ul style="list-style-type: none"> • Shag (<i>Phalacrocorax aristotelis</i>), breeding 	<p>breeding</p> <ul style="list-style-type: none"> • Kittiwake (<i>Rissa tridactyla</i>), breeding • Peregrine (<i>Falco peregrinus</i>), breeding • Puffin (<i>Fratercula arctica</i>), breeding • Razorbill (<i>Alca torda</i>), breeding • Seabird assemblage, breeding • Shag (<i>Phalacrocorax aristotelis</i>), breeding
<p>20. Flamborough Head and Bempton Cliffs SPA</p> <ul style="list-style-type: none"> • Gannet (<i>Morus bassanus</i>) • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), breeding • Kittiwake (<i>Rissa tridactyla</i>), breeding • <i>Puffin (Fratercula arctica)</i>, breeding • <i>Razorbill (Alca torda)</i>, breeding 	<p>21. Forth Islands SPA</p> <ul style="list-style-type: none"> • Arctic tern (<i>Sterna paradisaea</i>), breeding • Common tern (<i>Sterna hirundo</i>), breeding • Cormorant (<i>Phalacrocorax carbo</i>), breeding • Fulmar (<i>Fulmarus glacialis</i>), breeding • Gannet (<i>Morus bassanus</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), breeding • Kittiwake (<i>Rissa tridactyla</i>), breeding • Lesser black-backed gull (<i>Larus fuscus</i>), breeding • Puffin (<i>Fratercula arctica</i>), breeding • Razorbill (<i>Alca torda</i>), breeding • Roseate tern (<i>Sterna dougallii</i>), breeding • Sandwich tern (<i>Sterna sandvicensis</i>), breeding • Seabird assemblage, breeding • Shag (<i>Phalacrocorax aristotelis</i>), breeding
<p>22. Fowlsheugh SPA</p> <ul style="list-style-type: none"> • Fulmar (<i>Fulmarus glacialis</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), 	<p>23. Loch of Skene SPA</p> <ul style="list-style-type: none"> • Greylag goose (<i>Anser anser</i>), non-breeding

<p>breeding</p> <ul style="list-style-type: none"> • Kittiwake (<i>Rissa tridactyla</i>), breeding • Razorbill (<i>Alca torda</i>), breeding • Seabird assemblage, breeding 	
<p>24. Loch of Strathbeg SPA</p> <ul style="list-style-type: none"> • Greylag goose (<i>Anser anser</i>), non-breeding • Pink-footed goose (<i>Anser brachyrhynchus</i>), non-breeding • Sandwich tern (<i>Sterna sandvicensis</i>), breeding • Svalbard Barnacle goose (<i>Branta leucopsis</i>), non-breeding • Teal (<i>Anas crecca</i>), non-breeding • Waterfowl assemblage, non-breeding • Whooper swan (<i>Cygnus cygnus</i>), non-breeding 	<p>25. Montrose Basin SPA</p> <ul style="list-style-type: none"> • Dunlin (<i>Calidris alpina alpina</i>), non-breeding • Eider (<i>Somateria mollissima</i>), non-breeding • Greylag goose (<i>Anser anser</i>), non-breeding • Knot (<i>Calidris canutus</i>), non-breeding • Oystercatcher (<i>Haematopus ostralegus</i>), non-breeding • Pink-footed goose (<i>Anser brachyrhynchus</i>), non-breeding • Redshank (<i>Tringa totanus</i>), non-breeding • Shelduck (<i>Tadorna tadorna</i>), non-breeding • Waterfowl assemblage, non-breeding • Wigeon (<i>Anas penelope</i>), non-breeding
<p>26. Moray Firth SAC</p> <ul style="list-style-type: none"> • Bottlenose dolphin (<i>Tursiops truncatus</i>) • Subtidal sandbanks 	<p>27. North Caithness Cliffs SPA</p> <ul style="list-style-type: none"> • Fulmar (<i>Fulmarus glacialis</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Kittiwake (<i>Rissa tridactyla</i>), breeding • Peregrine (<i>Falco peregrinus</i>), breeding • Puffin (<i>Fratercula arctica</i>), breeding • Razorbill (<i>Alca torda</i>), breeding • Seabird assemblage, breeding
<p>28. River Dee SAC</p> <ul style="list-style-type: none"> • Atlantic salmon (<i>Salmo salar</i>) • Freshwater pearl mussel (<i>Margaritifera margaritifera</i>) • Otter (<i>Lutra lutra</i>) 	<p>29. River South Esk SAC</p> <ul style="list-style-type: none"> • Atlantic salmon (<i>Salmo salar</i>) • Freshwater pearl mussel (<i>Margaritifera margaritifera</i>)

<p>30. River Spey SAC</p> <ul style="list-style-type: none"> • Atlantic salmon (<i>Salmo salar</i>) • Freshwater pearl mussel (<i>Margaritifera margaritifera</i>) • Otter (<i>Lutra lutra</i>) • Sea lamprey (<i>Petromyzon marinus</i>) 	<p>31. Troup, Pennan and Lion's Heads SPA</p> <ul style="list-style-type: none"> • Fulmar (<i>Fulmarus glacialis</i>), breeding • Guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), breeding • Kittiwake (<i>Rissa tridactyla</i>), breeding • Razorbill (<i>Alca torda</i>), breeding • Seabird assemblage, breeding
<p>32. Ythan Estuary, Sands of Forvie and Meikle Loch SPA</p> <ul style="list-style-type: none"> • Common tern (<i>Sterna hirundo</i>), breeding • Eider (<i>Somateria mollissima</i>), non-breeding • Lapwing (<i>Vanellus vanellus</i>), non-breeding • Little tern (<i>Sternula albifrons</i>), breeding • Pink-footed goose (<i>Anser brachyrhynchus</i>), non-breeding • Redshank (<i>Tringa totanus</i>), non-breeding • Sandwich tern (<i>Sterna sandvicensis</i>), breeding • Waterfowl assemblage, non-breeding 	<p>33. Ythan Estuary, Sands of Forvie and Meikle Loch (extension) pSPA</p> <ul style="list-style-type: none"> • Little tern (<i>Sternula albifrons</i>), breeding • Sandwich tern (<i>Sterna sandvicensis</i>), breeding
<p>17. Outer Firth of Forth and St. Andrews Bay complex pSPA</p> <ul style="list-style-type: none"> • Common tern (<i>Sterna hirundo</i>), breeding • Arctic tern (<i>Sterna paradisaea</i>), breeding • Northern Gannet (<i>Morus bassanus</i>), breeding • Common guillemot (<i>Uria aalge</i>), breeding • Herring gull (<i>Larus argentatus</i>), breeding • Black-legged kittiwake (<i>Rissa</i> 	

<p><i>tridactyla</i>), breeding</p> <ul style="list-style-type: none"> • Manx shearwater (<i>Puffinus puffinus</i>), breeding • Atlantic puffin (<i>Fratercula arctica</i>), breeding • Seabird assemblage, breeding • Shag (<i>Phalacrocorax aristotelis</i>), breeding • Black-headed gull (<i>Chroicocephalus ridibundus</i>), non-breeding • Common gull (<i>Larus canus</i>), non-breeding • Common scoter (<i>Melanitta nigra</i>), non-breeding • Common eider (<i>Somateria mollissima mollissima</i>), non-breeding • Common goldeneye (<i>Bucephala clangula</i>), non-breeding • Common guillemot (<i>Uria aalge</i>), non-breeding • Herring gull (<i>Larus argentatus</i>), non-breeding • Black-legged kittiwake (<i>Rissa tridactyla</i>), non-breeding • Little gull (<i>Larus minutus</i>), non-breeding • Long tailed duck (<i>Clangula hyemalis</i>), non-breeding • Razorbill (<i>Alca torda</i>), non-breeding • Red-breasted merganser (<i>Mergus serrator</i>), non-breeding • Red-throated diver (<i>Gavia stellata</i>), non-breeding • Seabird assemblage, non-breeding • Shag (<i>Phalacrocorax aristotelis</i>), non-breeding • Slavonian grebe (<i>Podiceps auritus</i>), non-breeding • Velvet scoter (<i>Melanitta fusca</i>), non-breeding 	
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9.1.3 Conservation objectives

Table 2 Conservation objectives for bottlenose dolphin

<p>(i) to avoid deterioration of their habitat or (ii) significant disturbance to them, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for the qualifying feature; and</p> <p>To ensure for bottlenose dolphins that the following are maintained in the long term:</p> <p>(iii) Population of bottlenose dolphins as a viable component of the site.</p> <p>(iv) Distribution of bottlenose dolphins within site.</p> <p>(v) Distribution and extent of habitats supporting bottlenose dolphins.</p> <p>(vi) Structure, function and supporting processes of habitats supporting bottlenose dolphins.</p> <p>Repeat of (ii) No significant disturbance of bottlenose dolphins.</p>

Table 3 Conservation objectives for Atlantic salmon and freshwater pearl mussel

<p>(i) to avoid deterioration of the habitats of Atlantic salmon and freshwater pearl mussel or (ii) significant disturbance to them, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for Atlantic salmon and freshwater pearl mussel that the following are maintained in the long term:</p> <p>(iii) Population of Atlantic salmon and freshwater pearl mussel, including range of genetic types for salmon, as a viable component of the site,</p> <p>(iv) Distribution of Atlantic salmon and freshwater pearl mussel within site.</p> <p>(v) Distribution and extent of habitats supporting Atlantic salmon and freshwater pearl mussel.</p> <p>(vi) Distribution and viability of freshwater pearl mussel host species.</p> <p>(vii) Structure, function and supporting processes of habitats supporting freshwater pearl mussel host species.</p>

Table 4 Conservation objectives for SPA species

(i) to avoid deterioration of their habitat or **(ii)** significant disturbance to them, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for the qualifying feature; and

To ensure that the following are maintained in the long term:

(iii) Population of the species as a viable component of the site.

(iv) Distribution of the species within site.

(v) Distribution and extent of habitats supporting the species.

(vi) Structure, function and supporting processes of habitats supporting the species.

Repeat of (ii) No significant disturbance to the species.

Table 5 Conservation objectives for proposed Outer Firth of Forth and St Andrews Bay Complex SPA

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, subject to natural change, thus ensuring that the integrity of the site is maintained in the long-term and it continues to make an appropriate contribution to achieving the aims of the Birds Directive for each of the qualifying species.

This contribution will be achieved through delivering the following objectives for each of the site's qualifying features:

a) Avoid significant mortality, injury and disturbance of the qualifying features, so that the distribution of the species and ability to use the site are maintained in the long-term;

b) To maintain the habitats and food resources of the qualifying features in favourable condition.

SECTION 3: ASSESSMENT IN RELATION TO REGULATION 48 OF THE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 1994, REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 AND REGULATION 25 OF THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 2007

9.2 Is the operation directly connected with or necessary to conservation management of the site?

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

9.3 Is the operation likely to have a significant effect on the qualifying interest?

SNH provided advice on 18 May 2016 regarding whether there was likely to be a significant effect on the qualifying interests of the SPAs and SACs identified in table 1 above. A likely significant effect (“LSE”) was identified for the following qualifying interests/sites. The reason for a likely significant effect was that the project was within foraging range, the species were recorded during site surveys and are sensitive to potential impacts notably collision risk or displacement.

Black-legged kittiwake (breeding)

Fowlsheugh SPA

Buchan Ness to Collieston Coast SPA

Troup, Pennan and Lions Heads SPA

Atlantic puffin (breeding)

Forth Islands SPA

Common guillemot (breeding)

Fowlsheugh SPA

Buchan Ness to Collieston Coast SPA

Troup, Pennan and Lions Heads SPA

Herring gull (breeding)

Fowlsheugh SPA

Buchan Ness to Collieston Coast SPA

Troup, Pennan and Lions Heads SPA

Northern Fulmar (breeding)

Fowlsheugh SPA

Buchan Ness to Collieston Coast SPA

Troup, Pennan and Lions Heads SPA

Forth islands SPA

Northern gannet (breeding)

Forth islands SPA

Razorbill (breeding)

Fowlsheugh SPA

- 9.4 As the proposal is likely to have a significant effect on the above qualifying interests Marine Scotland is required to carry out an appropriate assessment in view of the conservation objectives for the qualifying features. For all the other SPA qualifying interests listed in table 1 no LSE was identified due to low numbers recorded or low proportion recorded flying at collision risk height or collision risk mortality is not significant; displacement is not a significant impact or project area is not considered important for these species.
- 9.5 On 02 December 2016 SNH also provided clarification on their advice in relation to the Outer Firth of Forth and St Andrews Bay Complex pSPA. They noted that there are differences between the conservation objectives for the Forth Islands SPA and the draft conservation objectives for the pSPA. For the pSPA there is not a requirement to ensure that the 'Population of the species as a viable component of the site' is maintained. The overall conclusion of the advice for the Outer Firth of Forth and St Andrews Bay Complex pSPA was that there will be no deterioration of supporting habitat and no significant disturbance such that the distribution of the species and ability of the species to utilise the pSPA as a result of the KOWL development. No LSE was concluded.
- 9.6 SNH advised no LSE for the bottlenose dolphin qualifying interest of the Moray Firth SAC based on the following factors:
- The lack of bottlenose observations recorded during digital aerial site characterisations surveys;
 - Population data for bottlenose dolphin within the SAC and the wider east coast of Scotland area;
 - The low risk of entanglement for bottlenose dolphin during the operational phase. This could be managed with appropriate mitigation so that any entanglement risk is minimised;

- The wind farm proposal area is far enough away from SAC for there to be no direct impacts, or disturbance, to bottlenose dolphins while they are within the SAC;
- The small development footprint relative to the large extent of alternative foraging habitat / prey available to bottlenose dolphins, should localised displacement occur due to disturbance as a result of works during construction;
- Most work associated with the proposal is of short duration, notably during the construction phase and could be managed with appropriate mitigation so that any disturbance is limited and minimises displacement of bottlenose dolphin on a long-term basis.

9.7 SNH advised no LSE for the Atlantic salmon and freshwater pearl mussel qualifying interests of the River Dee, River South Esk and River Spey SACs due to the fact that the proposal is located at a considerable distance from any of these SACs.

9.8 MS-LOT agree with the SNH advice provided in relation to marine mammals, Atlantic salmon and freshwater pearl mussel, therefore none of the SACs detailed in table 1 are considered further in this assessment.

10 Appropriate Assessment of the implications for the site in view of the site's conservation objectives.

10.1 Of the conservation objectives ("COs") relevant to the SPAs in table 4, MS-LOT consider, based on SNH advice, that the CO relating to the population of the species as a viable component of the site is the key objective. As the potential effects of the Kincardine project, occur outside the SPAs being considered, any disturbance to the qualifying interests is only considered to be significant in terms of the relevant conservation objective if it could undermine the conservation objectives relating to population viability. The Kincardine project will not affect the distribution of species within the SPAs, the distribution and extent of habitats supporting the species or the structure, function and supporting processes of habitats supporting the species.

10.2 The following assessment is based upon the information provided in the Kincardine HRA report and the advice received from SNH. MSS have considered the advice provided by SNH and provided input into this assessment.

10.3 This assessment follows the same scope, methods and assumptions as used for the [Hywind appropriate assessment \(see pages 10-14\)](#). The impacts of the Kincardine project are based on the project description and wind turbine parameters provided by the developer in the ES and Addendum.

10.4 The cumulative in-combination assessments are also based on the same list of projects considered on pages 10 & 11 of the Hywind appropriate assessment as well as Aberdeen Harbour re-development. From these projects, the combined quantified effects that are used in the assessment are taken from: KOWL, Hywind, EOWDC and the four consented projects in

the Forth & Tay area (Inch Cape, Seagreen Alpha & Bravo, and Neart na Gaoithe).

- 10.5 The Aberdeen Harbour re-development is a new harbour facility at Nigg Bay, Aberdeen, approximately 0.8km south of the existing harbour in Aberdeen City centre. The proposal includes construction of two breakwaters, quaysides and associated infrastructure as well as a large-scale capital dredge and sea disposal operation. Works are currently scheduled to take place over a 3-year period commencing in early 2017.
- 10.6 SNH consider that a qualitative assessment is suitable to use for assessing the non-breeding season impacts on seabird species. This is consistent with the assessments undertaken recently for the Hywind offshore wind farm project in Scottish waters (see pages 17 for gannet, 22 for kittiwake, 23 for gulliemot, 24 for razorbill, and 25 for puffin in the Hywind appropriate assessment), and is due to the lack of an agreed quantitative method to assess non breeding season impacts. During the non-breeding season, seabirds are no longer central place foragers, tied to their breeding colony. They are therefore less susceptible to any barrier effects from wind farms, and have greater flexibility in terms of location of foraging area. Effects from offshore wind farms during the non-breeding season would therefore be expected to be less significant than during the breeding season. Consequently, the agreed scope of the quantitative assessment that follows includes the effects of the offshore wind farm projects during the breeding season on the breeding populations.

11 **Black-legged kittiwake (breeding)**

Fowlsheugh SPA

- 11.1 The Kincardine HRA report estimated that that there would be an additional annual mortality of 8 kittiwake from Fowlsheugh SPA due to collision. SNH in their advice noted an error in the apportioning method and advised that this figure should be 16 individuals. The HRA report made precautionary assumptions regarding displacement. It was assumed that 30% of kittiwake would be displaced from the wind farm area with a 1km buffer. The breeding failure was assumed to be 100% with 50% adult mortality, resulting in a displacement mortality of 10 kittiwake apportioned to Fowlsheugh. SNH noted in their advice of 18 May 2016 that the assumptions used in the displacement assessment are highly precautionary and advised that "*Modelling conducted by CEH for the Forth and Tay wind farms indicates mortality rates are considered much more likely to be within single percentage figures*". SNH advised that apportioned breeding season adult mortality effects of 16 collisions plus displacement mortality of 10 (total 26 adults during the breeding season) to the Fowlsheugh population of 19,310 birds indicates that after 25 years the population will be approximately 700 birds (350 pairs) smaller than without the predicted impacts of the Kincardine development. The counterfactual of mean population size is 0.9817 (98.17%).
- 11.2 Based on the outputs of population modelling undertaken by CEH, in the absence of any wind farm effects, the Fowlsheugh kittiwake population is

forecast to decline by 85% over the 25 years period ([Freeman et al, 2014](#)). This annual growth rate of -3.4% does not change with the addition of the estimated Kincardine effects alone. SNH consider that despite the impact of a reduction of 700 birds over the 25 years, the conservation objectives of the site will be maintained and therefore no adverse impact on site integrity will be expected for kittiwakes for Fowlsheugh SPA based on an assessment of the effects of the KOWL project alone. In their initial advice SNH were unable to reach the same conclusion for the in-combination impacts, and this remained their position in their response of the 01 November 2016 to the HRA Addendum.

- 11.3 With the addition of the estimated Forth and Tay, EOWDC and Hywind wind farm effects, the annual growth rate for Fowlsheugh SPA declines for the 25 year period from -3.4% to between -3.5% and -3.6%. Using the results of PVA modelling undertaken by [Freeman et al \(2014\)](#), the counterfactual population size ("CPS") value decreases from the 0.9817 (98.17%) value specified by SNH, to between 0.62 and 0.82 (62% and 82%). Using the displacement rates provided in the Kincardine HRA report, the cumulative impact on adult survival rate is calculated as -1.31% which means the threshold of acceptable change of a reduction in the annual adult survival rate of -1.3% is exceeded, based on SNH's advice regarding the most appropriate avoidance rate ("AR") of 98.9% (which is more precautionary than the British Trust for Ornithology ("BTO") and MSS recommended avoidance rate of 99.2%). Due to the previous recognition from SNH (as detailed above) that the mortality rate due to displacement was likely to be in single figures, using the upper end of this advice and assuming 10% mortality from displacement, results in only 2 mortalities from displacement being apportioned to Fowlsheugh, giving a cumulative impact of -1.27% which is under the threshold of -1.3%. The productivity effect is -2.27%, which is also below the threshold of -2.3% (see table 6 below). The thresholds of acceptable change identified are based on the same approaches used by the Forth and Tay regional assessment ([see Forth and Tay AA](#)). MS-LOT sought advice from SNH regarding the use of this reduced mortality rate due to displacement and in relation to the cumulative effects considered against the previously agreed threshold. On 12 January 2017 SNH advised that they were content with the assumption of 10% mortality from displacement being used for the KOWL project and with this assessment's consideration of winter mortality. SNH noted that there is precaution built into a number of the assessment methodologies which help to inform the final impact on kittiwakes from each of the East Coast wind farms both individually and in combination with each other. SNH concluded that there will be no adverse effect on site integrity for kittiwake at Fowlsheugh SPA from KOWL alone or in combination with the other East coast wind farms.
- 11.4 The [AA](#) completed for the Aberdeen Harbour re-development identified the potential for disturbance for kittiwake from Fowlsheugh SPA on page 27. The assessment however noted that most of the kittiwake forage outwith the development area. Partial construction of the breakwaters is being provided, prior to blasting or piling taking place, to mitigate the impacts of underwater noise on cetaceans, and this will also provide mitigation of potential

disturbance to kittiwake during construction as noted on page 31. In addition post- construction the breakwaters will provide roosting habitat.

Table 6 Estimated effects on kittiwake at Fowlsheugh SPA from KOWL alone and in combination with other east coast wind farms

Fowlsheugh : Kittiwake				
SPA population (Inds):	19310			
	Kincardine		F&T + Hywind + EOWDC +Kincardine	
	% SPA Population	Individuals	% SPA Population	Individuals
Displacement effects				
Adult survival rate	-0.01	-2	-0.38	-71
Chick survival rate	0.00	0	-1.67	-156
Collision Effects (Band CRM)				
Reduction in adult survival - Option 2 CRM*, 98.9% AR** (SNCB advice)	-0.08	-16	-0.89	-170
Reduction in adult survival - Option 2 CRM, 99.2% AR (BTO recommendation)	-0.06	-12	-0.64	-124
Total Effects (collision + displacement)				
Reduction in adult survival (SNCB advised assessment, Option 2 CRM, 98.9% AR)	-0.09	-18	-1.27	-241
Reduction in adult survival (BTO recommended assessment, Option 2 CRM, 99.2% AR***)	-0.07	-14	-1.03	-195
Productivity effect assumed (including reduction due to collision of adults)	-0.01	-12	-2.27	-430

* Option

2 of the Band Collision Risk Model

**Avoidance Rate of 98.9% recommended by the SNCBs for kittiwake following consideration of the BTO Avoidance Rate Review

***Avoidance Rate of 99.2% recommended for kittiwake by the [BTO Avoidance Rate Review](#) (page 135)

11.5 Following the breeding season, a high proportion of kittiwake breeding in eastern Scotland have been found to rapidly migrate to the NW Atlantic where they spend the non-breeding season ([Frederiksen et al 2012](#)). Individuals from more northerly breeding colonies migrated into the North Sea during this period, indicating that the already limited estimated non-breeding season effects would be apportioned across a population that included a high proportion of non-SPA birds.

11.6 SNH agreed with the information contained within the [HRA Variation](#) provided on 24 November 2017 although they noted some rounding errors.

These errors did not affect their advice which was they had no reason to change their previous advice of no adverse effect on the site integrity for Kittiwake at Fowlsheugh SPA.

- 11.7 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Fowlsheugh SPA with respect to black-legged kittiwake alone, or in combination with the Forth and Tay offshore wind farms, Hywind, EOWDC and the Aberdeen Harbour re-development.
- 11.8 Having considered all the information provided in the HRA Variation and the advice received from SNH, MS-LOT have no reason to change this conclusion.

Buchan Ness to Collieston Coast SPA

- 11.9 SNH advised on 18 May 2016 for Buchan Ness to Collieston Coast SPA, that apportioned impacts indicate that after 25 years, the population will be approximately 115 birds (63 pairs) smaller than without the predicted impacts of the Kincardine development. The counterfactual of mean population size is 0.9975 (99.75%). Based on the CEH population modelling, the forecast annual growth rate over a 25 year period of -1.6% remains unchanged with the addition of the estimated Kincardine effects alone. The conservation objectives of the site will be maintained and therefore no adverse impact on site integrity will be expected for kittiwakes for Buchan Ness to Collieston Coast SPA.
- 11.10 SNH considered that the in-combination impacts were assessed to be sufficiently small for them to advise that there would be no adverse effect on site integrity. Based on the CEH population modelling, the forecast annual growth rate over a 25 year period of -1.6% reduces to approximately -1.8% with the addition of the estimated Forth and Tay and Hywind wind farm effects, whilst the CPS value would be 0.98 (98%).

Table 7 Estimated effects on kittiwake at Buchan Ness SPA from KOWL alone and in combination with other projects and plans

Buchan Ness : Kittiwake				
SPA population (Inds):	18674			
	Kincardine		F&T + Hywind + EOWDC +Kincardine	
	% SPA	Inds	% SPA	Inds
Displacement effects				
Adult survival	0.00	0	-0.05	-10
Chick survival	0.00	0	0.00	0
Collision Effects (Band CRM)				
Reduction in adult survival - Option 2 CRM, 98.9% AR (SNCB advice)	0.00	-5	-0.07	-32
Reduction in adult survival - Option 2 CRM, 99.2% AR (BTO recommendation)	0.00	-4	-0.05	-23
Total Effects				
Reduction in adult survival (SNCB advised assessment, Option 2 CRM, 98.9% AR)	0.00	-5	-0.12	-42
Reduction in adult survival (BTO recommended assessment, Option 2 CRM, 99.2% AR)	0.00	-4	-0.10	-33
Productivity effect assumed (including reduction due to collision of adults)	0.00	-4	-0.10	-23

11.11 The estimated total effects of -0.12% reduction in adult survival are well below the threshold of -1.6% advised by the SNCBs in relation to the Forth and Tay AA, the productivity effect of -0.10% reduction is also well below the productivity threshold of -3.2%

11.12 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Buchan Ness to Collieston Coast SPA with respect to black-legged kittiwake either alone or in-combination with other offshore wind farm developments.

Troup, Pennan and Lions Head SPA

11.13 SNH advised on 18 May 2016 that only 1 collision per breeding season is attributed to Troup, Pennan and Lion's Heads SPA, therefore predicted impacts on kittiwakes from this SPA are lower than for the other 2 SPAs considered above. The conservation objectives of the site will be maintained and therefore no adverse effect on site integrity will be expected for kittiwakes for Troup, Pennan and Lion's Heads SPA.

11.14 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Troup, Pennan and Lion's Heads SPA with respect to black-

legged kittiwake either alone or in-combination with other offshore wind farm developments.

12 Atlantic puffin (breeding)

Forth Islands SPA

- 12.1 SNH advised on 18 May 2016 that displacement is the key impact for Atlantic puffins with no puffin deaths predicted to result from collisions for this development. The HRA report estimates that only a small number of Atlantic puffins, totalling 5 birds, are predicted to die due to displacement. Three of these birds are apportioned to Forth Islands SPA. Owing to their concerns regarding the in-combination impacts of other consented offshore wind farms SNH advised that they were unable to conclude that there would be no adverse effect on site integrity. Their advice of 01 November 2016 in response to the HRA Addendum re-iterated this position.
- 12.2 The in-combination impacts on Atlantic puffin Forth Islands SPA are presented below. SNH advise that the mortality rates are considered much more likely to be within single percentage figures (rather than the 50% they advise is appropriate to assume in the assessment) and therefore these values should be treated as highly precautionary. In relation to kittiwake SNH advised that 10% mortality from displacement was an appropriate figure to use for the KOWL project.

Table 8 Estimated effects on puffin at Forth Islands SPA from KOWL alone and in combination with other projects and plans

Puffin- Forth Islands SPA	SPA Population (Inds):			100564	
	Kincardine			F&T + Hywind + Kincardine	
	Proportion	Inds	% SPA	Inds	% SPA
Site Population Estimate		19	0.02%		
Displaced	0.6	11	0.01%	-	-
From SPA	1.0	11	0.01%		
Breeding adults	0.6	7	0.01%		
Assuming adult mortality: the proportion that die	0.5	3	0.00%	2027	2.02%

- 12.3 SNH provided further advice in relation to the [HRA Variation](#) and agreed that no further impact assessment is required for Atlantic puffin interests of Forth Islands SPA. This is because the number of turbines will be reduced from 8 to 7 or 6, which will reduce the barrier effect for this species and further reduce the impacts assessed within this AA. SNH concluded there would be no adverse impact on site integrity for Atlantic puffin at Forth Islands SPA from KOWL alone or in combination with the other East coast wind farms.
- 12.4 The KOWL project is adding only a very small additional effect to that already predicted from the Forth and Tay wind farms (see pages 36-40 of the [Forth and Tay AA](#) for the detailed assessment methodology, how conclusions on site integrity were reached and reasons for diverging from SNH advice). Having considered SNH's position alongside previous

assessments for the Forth and Tay wind farms and Hywind, MS-LOT conclude that the KOWL proposal will not adversely affect the site integrity of the Forth Islands SPA with respect to Atlantic puffin, either alone or in-combination.

- 12.5 Having considered all the information in the HRA Variation and the advice provided by SNH, MS-LOT have no reason to change this conclusion.

13 Common guillemot (breeding)

- 13.1 In their advice of 18 May 2016 SNH advised that the number of collisions predicted for guillemots as a result of the Kincardine project is low.

Fowlsheugh SPA

- 13.2 In the Kincardine HRA report displacement rates and mortality rates of 50% for auks, including guillemots, are used. These were considered by SNH to be highly precautionary. This figure results in 158 guillemots being displaced from the development area and 65 guillemot deaths apportioned to Fowlsheugh SPA.

- 13.3 The estimated effects from the [Forth and Tay wind farms](#) (page 41) upon guillemot at Fowlsheugh SPA and those from [Hywind](#) (page 23) were small both alone and in combination.

- 13.4 SNH advised that the in-combination impacts would not give rise to an adverse effect on site integrity.

- 13.5 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Fowlsheugh SPA with respect to common guillemot either alone or in-combination with other offshore wind farm developments.

Buchan Ness to Collieston Coast SPA

- 13.6 In their advice of 18 May 2016 SNH advised that the impacts to common guillemot at Buchan Ness to Collieston Coast SPA were not considered significant.

- 13.7 The estimated effects from the Forth and Tay wind farms upon guillemot at Buchan Ness and those from Hywind were very small both alone and in combination with other offshore wind farm developments.

- 13.8 SNH advised that the in-combination impacts would not give rise to an adverse effect on site integrity.

- 13.9 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Buchan Ness to Collieston Coast SPA with respect to common guillemot either alone or in-combination with other offshore wind farm developments.

Troup, Pennan and Lions Heads SPA

- 13.9.1 In their advice of 18 May 2016 SNH stated that the impacts to common guillemot at Troup, Pennan and Lions Heads SPA were not considered significant.
- 13.9.2 The estimated effects from the Forth and Tay wind farms upon guillemot at Troup, Pennan and Lions Head and those from Hywind were very small both alone and in combination.
- 13.10 SNH advised that the in-combination impacts would not give rise to an adverse effect on site integrity.
- 13.11 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Troup, Pennan and Lions Heads SPA with respect to common guillemot either alone or in-combination with other offshore wind farm developments.

14 Herring gull (breeding)

Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, and Troup, Pennan and Lions Heads SPA

- 14.1 In their advice of 18 May 2016 SNH consider that key impacts for this interest are collision risk and displacement. The results of the collision risk modelling predict a low total annual mortality of 1 herring gull per year through collisions with turbine blades. Displacement impacts are not significant. The development would result in a loss of 0.1% of the foraging area for herring gull originating from Fowlsheugh SPA.
- 14.2 The estimated effects from the Forth and Tay wind farms upon herring gull at Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, and Troup, Pennan and Lions Heads SPA and those from Hywind were small both alone and in combination.
- 14.3 SNH advised that, in their view, the proposal will have no adverse effects on site integrity on the herring gull qualifying interests for Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA and Troup, Pennan and Lion's Heads SPA, alone or in combination with other developments.
- 14.4 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, and Troup, Pennan and Lions Heads SPA with respect to herring gull either alone or in-combination with other offshore wind farm developments.

15 Northern Fulmar (breeding)

Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Troup, Pennan and Lions Heads SPA, and Forth islands SPA

- 15.1 In their advice of 18 May 2016 SNH consider key impacts for this interest are collision risk and displacement. Collision risk modelling predicts that no fulmar will be lost through collisions with turbine blades. They state that fulmar foraging ranges are extensive and any displacement impacts for this species are considered to be insignificant.

- 15.2 SNH advised that, in their view, the proposal will have no adverse effects on site integrity on the fulmar qualifying interests for relevant SPAs either alone or in combination with other developments.
- 15.3 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Troup, Pennan and Lions Heads SPA, and Forth Islands SPA with respect to fulmar either alone or in-combination with other offshore wind farm developments.

16 Northern gannet (breeding)

Forth islands SPA

- 16.1 The Kincardine HRA report estimated collision mortality of 6 adult gannets is per breeding season. The HRA report uses a highly precautionary 75% displacement rate for gannet, along with a 50% mortality rate from displacement resulting in a prediction of 12 deaths due to displacement. Taking these figures in combination with the Forth and Tay, and Hywind consented wind farms, result in a total of 1027 adult breeding gannet deaths per season. A positive annual growth forecast for this population remains when the estimated in combination effects are taken into consideration. SNH advised that the cumulative effect is below the re-calculated threshold for gannets from the Forth Islands SPA (Bass Rock colony) of 1300 as used most recently in the appropriate assessment for Hywind. Using the outputs of population modelling undertaken by Macarthur Green to inform the Forth & Tay wind farm assessments, the in-combination effects CPS value remains at 0.82 (82%).

Table 9 Estimated effects on gannet at Forth Islands SPA from KOWL alone and in combination with other projects and plans

Gannet	Forth Islands	
SPA population (individuals)	150518	
CRM Model	Option 2	
Avoidance Rate	98.9%	
	No. Inds	% SPA
Kincardine Effect	18	-0.01
F&T + Hywind + Kincardine Cumulative Effect	1027	-0.68

- 16.2 SNH advised that, in their view, the proposal will have no adverse effect on site integrity for the gannet qualifying interests for Forth Islands SPA, alone or in combination with other developments.
- 16.3 The cumulative total of collisions for gannet using the basic Band model are presented in the appropriate assessments for Blyth Offshore Wind Demonstrator undertaken by the Marine Management Organisation ("MMO") in 2013, for Blyth Offshore Demonstration project combined with the existing offshore turbines at Blyth and the Teesside project. The annual predicted mortality is 30, with the assessment recording that breeding birds would be most likely to be from Bass Rock which is within the Forth Islands SPA. The EOWDC appropriate assessment records up to 17 collisions per year for the Aberdeen Offshore Wind Farm using the basic Band model, and indicates that the majority of these birds are likely to be from Troup Head on the

Moray coast. SNH have advised the Planning Inspectorate that the magnitude of effects to Forth Islands SPA from the Dogger Bank Teeside A & B projects during the breeding season is in the order of 1% of the effects associated with the Forth and Tay projects, which is approximately 14 collisions per year. Having considered these additional predicted effects, the total effects are still below the threshold.

- 16.4 Following the breeding season, a high proportion of gannet breeding in the Forth Islands SPA migrate south as far as off West Africa, with relatively few remaining in the North Sea ([Furness, 2015](#)). At the same time, large numbers of gannet from more northerly areas e.g. Norway move into the North Sea, indicating that the already limited estimated non-breeding season collision effects would be apportioned across a population that included a high proportion of non-SPA birds.
- 16.5 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Forth Islands SPA with respect to gannet either alone or in combination with other offshore wind farm developments.

17 **Razorbill (breeding)**

Fowlsheugh

- 17.1 In the Kincardine HRA report precautionary assumptions are made for displacement of razorbills with 50% displaced from the project area and 1km buffer. The breeding failure of displaced birds in the HRA report was assumed to be 100%, and it was estimated that 8 adult breeding razorbills from Fowlsheugh SPA will be displaced by the development. This figure equates to 0.15% of the population of Fowlsheugh SPA. The number of chicks per pair per year for this SPA is estimated to be 0.60. If 8 individual adult breeding birds are assumed to be displaced, 5 chicks should assume to be lost from the SPA population as a result. This figure equates to a very small predicted reduction in breeding success of - 0.16%.
- 17.2 SNH advise that, in their view, the proposal will have no adverse effects on site integrity on the razorbill qualifying interests of Fowlsheugh SPA either alone or in combination with other developments.
- 17.3 MS-LOT concludes that the KOWL project will not adversely affect the site integrity of Fowlsheugh SPA with respect to razorbill either alone or in combination with other offshore wind farm developments.
- 18 Ythan Estuary, Sands of Forvie and Meikle Loch pSPA and Outer Firth of Forth and St. Andrews Bay Complex pSPA
- 18.1 No LSE was identified on the closest pSPAs (Ythan Estuary, Sands of Forvie and Meikle Loch pSPA and Outer Firth of Forth and St. Andrews Bay Complex pSPA). However, as detailed at paragraph 4.3, as the sites are not yet designated, they also fall within the regime governed by the first sentence of Article 4(4) of the Birds Directive as follows:

“In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any

disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

18.2 MS-LOT consider that the Outer Firth of Forth and St. Andrews Bay Complex pSPA, and Ythan Estuary, Sands of Forvie and Meikle Loch pSPA are sufficiently far from the area of proposed works that there will be no risk of pollution, deterioration of habitats or disturbance of the qualifying interests from the Kincardine project.

SECTION 4: CONCLUSION

19 MS-LOT conclusion

In the assessments above MS-LOT have considered the conservation objective of “maintaining the population of the species as a viable component of the site” on the individual qualifying features of the SPAs. As the effects of KOWL project, alone and in combination with other offshore wind farms, on the populations were found to be within acceptable thresholds for all the species being considered in this assessment MS-LOT concluded that the KOWL project will not adversely affect the integrity of the SPAs with respect to the individual qualifying features.

Having determined that the KOWL project will not have a negative effect on the constitutive elements of the sites concerned, on having regard to the reasons for which the sites were designated and their associated conservation objectives, MS-LOT concludes that the proposed KOWL project will not, on its own or in combination with other offshore wind farms and Aberdeen Harbour re-development adversely affect the integrity of the Buchan Ness to Collieston Coast SPA, the Fowlsheugh SPA, the Forth Islands SPA or the Troup, Pennan and Lion’s Heads SPA.

Having considered all the information in the HRA Variation and the advice from SNH, MS-LOT have no reason to change this conclusion.

No conditions are relied upon in reaching a conclusion of no adverse effect on site integrity. Several conditions will be included in any Section 36/ marine licence if granted which serve to mitigate further any impacts.

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