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Date: 10 October 2014

Dear Redacted

**APPLICATION FOR CONSENTS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF THE INCH CAPE OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, 15-22 KILOMETRES EAST OF THE ANGUS COASTLINE.**

**APPLICATIONS FOR TWO DECLARATIONS 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 Annexes 1 & 2 are contained in **Annex 3**.

The following applications have been made to the Scottish Ministers for:

- i.* Two consents under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) by Inch Cape Offshore Limited (“the Company”), Company Number SC373173 and having its registered office at 5<sup>th</sup> Floor, 40 Princes Street, Edinburgh, EH2 2BY for the Inch Cape Offshore Wind Farm generating station, East of the Angus Coast;
- ii.* Two declarations under section 36A of the Electricity Act by the Company to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area where structures forming part of the Inch Cape Offshore Wind Farm generating station are to be located and Offshore Transmission Works;
- iii.* Two marine licences to be considered under the Marine (Scotland) Act 2010 (“the 2010 Act”) by the Company to deposit any substance or object and to construct, alter or improve any works in relation to the Inch Cape Offshore Wind Farm; and

*iv.* A marine licence to be considered under the 2010 Act by the Company to deposit any substance or object and to construct, alter or improve any works in relation to the Offshore Transmission Works (“OfTI”) within the Scottish marine area.

## **THE APPLICATION**

I refer to the application at *i* above made by the Company, received on 1<sup>st</sup> July 2013, for two consents under section 36 of the Electricity Act for the construction and operation of the Inch Cape Offshore Wind Farm (“the Development”) East of the Angus Coast (“the Application”) (Figure 1– Development location). The Application received consisted of an application letter, Environmental Statement (“ES”) and supporting marine licence application forms.

The Application was to construct and operate the Inch Cape Offshore Wind Farm generating station, comprising of up to 213 wind turbine generators (“WTGs”) with a combined maximum generating capacity of up to 1050 MW. The number of WTGs has since been reduced during the course of the consideration of the Application to address concerns expressed by consultees. Consent is now sought for an offshore generating station with a combined maximum generating capacity of up to 784 MW, comprising of up to 110 WTGs in total.

At this time, the Company also applied for two declarations 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 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.

Two section 36 consents and two section 36A declarations are sought as it is proposed by the Company that the Inch Cape Offshore Wind Farm generating station may be divided into two separate parts and constructed and/or operated by separate entities; the reason for the separate consents being sought is stated by the Company as allowing flexibility for the Development to be so sub-divided.

The Scottish Ministers grant a single consent for the Development in full rather than the two consents as sought by the Company. Under the terms of the consent the Company may seek the division of the Development to provide separate entities with rights and responsibilities under the consent by seeking an assignation, or a partial assignation, of the consent.

In this letter, “the Development” means the proposed ICOL development in its entirety, and the OfTI (applications *i* to *iv* above), for a maximum generating capacity of up to 784 MW.

## **STATUTORY AND REGULATORY FRAMEWORK**

**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 the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 MW requires consent under Section 36 of the Electricity Act.

A section 36 consent may include such conditions as appearing 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 an application, 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. The power to extinguish public rights of navigation extends only to generating stations in territorial waters.

A declaration made under section 36A is one declaring that the rights of navigation specified, or described in it, *i*) are extinguished, *ii*) are suspended for a period that is

specified in the declaration, *iii*) are suspended until such time as may be determined in accordance with a provision contained within the declaration, or *iv*) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration. The declaration has effect, from the time at which it comes into force, and, continues in force for such a period as may be specified in the declaration.

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 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 section 36 consent or 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), notice of applications for section 36 consent must be published by the applicant in one or more local newspapers and in the Edinburgh Gazette to allow objections to be made to the application. Under Schedule 8 to the Electricity Act the Scottish Ministers must serve notice of 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 section 36 consent and where they do not withdraw their objection then the Scottish Ministers must cause a public inquiry 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 public inquiry.

The location and extent of the proposed Development to which the Application relates being wholly offshore means that the Development is not within the area of any local Planning Authority. The Marine Scotland Licensing Operation Team (“MS-LOT”), on behalf of the Scottish Ministers, did however consult with the Planning Authorities most local to the Development. The Scottish Ministers are not, therefore, obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a public inquiry to be held. The nearest local Planning Authorities did not object to the Application. If they had objected to the Application, and even then if they did not withdraw their objections, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

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 public inquiry should be held in

respect of the application. Paragraph 3(2) of Schedule 8 provides that if the Scottish Ministers think it appropriate to do so, they shall cause a public inquiry 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 they have considered and applied all the necessary tests set out within the Electricity Act when assessing the Application. The Company, at the time of 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 Company obtained a generation licence during the period whilst the Scottish Ministers were determining the Application for consent. The Minister and his officials have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as apply to licence holders and the specified exemption holders should also be applied to the Company.

The approach taken has been endorsed by the Outer House of the Court of Session where Lord Doherty in *Trump International Golf Club Scotland Limited and The Trump Organization against The Scottish Ministers and Aberdeen Offshore Wind Farm Limited* [2014] CSOH 22 opines that the Electricity Act and regulations made under it contemplate and authorise consent being granted to persons who need not be licence holders or persons with the benefit of an exemption. Lord Docherty’s reasoning in that case was agreed by the Inner House of the Court of Session in the Opinion delivered by Lord Brodie in the reclaiming motion in the petition of *Sustainable Shetland v Scottish Ministers and Viking Energy Partnership* [2014] CSIH 60. The Company is, in any event, required to consider the protection of the environment under statutory regulations which are substantially similar to Schedule 9 to the Electricity Act, namely the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”), whether or not the Company is among the categories of persons described in Schedule 9, paragraph 3(1).

### **Marine (Scotland) Act 2010**

The Marine (Scotland) Act 2010 (“the 2010 Act”) regulates the territorial sea adjacent to Scotland in terms of marine environment issues. As this Application falls within the Scottish marine area (essentially the territorial sea adjacent to Scotland, which extends out to 12 nm from the shore), it falls to the 2010 Act to regulate marine environmental issues in this area. 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 the 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, must act in a way best calculated to mitigate, and adapt to, climate change.

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

## **Environmental Impact Assessment Directive; The Electricity (Applications for Consent) Regulations 1990 and the 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, which is targeted at projects which are likely to have significant effects on the environment, 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”).

The proposal for the Development has been publicised, to include making the ES available to the public, in terms of the 2000 and 2007 Regulations. The Scottish Ministers are satisfied that an ES has been produced and the applicable procedures regarding publicity and consultation all as laid down in the Electricity (Applications for Consent) Regulations 1990 (“the 1990 Regulations”), the 2000 Regulations and the 2007 Regulations (as amended) have been followed.

The Scottish Ministers have, in compliance with the 2000 and 2007 Regulations consulted with Scottish Natural Heritage (“SNH”), the Joint Nature Conservation Committee (“JNCC”), the Scottish Environment Protection Agency (“SEPA”), the Planning Authorities most local to the Development, 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 in accordance with the regulatory requirements. The Scottish Ministers have taken into consideration the environmental information, including the ES, and the representations received from the statutory consultative bodies and from all other persons.

The Scottish Ministers have, in compliance with the 2000 Regulations obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 20th August 2013. Under the 2007 Regulations the

Scottish Ministers must consult with “the consultation bodies”, as defined in regulation 2(1).

The Scottish Ministers have also consulted a wide range of relevant organisations including colleagues within the Scottish Government (“SG”) on the Application, and on the ES.

The Scottish Ministers are satisfied that the regulatory requirements have been met.

### **The Habitats Directive and the Wild Birds Directive**

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 (“SACs”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

The Wild 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 Wild 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.”

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 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.”

The Habitats Directive and the Wild Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (“the 1994 Regulations”) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (“the 2007 Regulations”). As the Development is to be sited in the Scottish Territorial Sea, it is the 1994 Regulations which are applicable in respect of this application for section 36 consent. The 2007 Regulations do, however, apply to those parts of the associated transmission works which lie inside the Scottish Offshore Region (i.e. in the region beyond 12 nm from the shore).

The 1994 and the 2007 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 of the implications for the site in view of the site’s conservation objectives” (hereafter an “AA”). Such authority is also obliged to consult SNH and, for the purpose of regulation 48 of the 1994 Regulations, to have regard to any representations made by SNH. The nature of the decision may be taken for present purposes from the provision in regulation 25(4) & (5) of the 2007 Regulations:

- “(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).
  
- (5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes 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 a Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages which are set out as follows:

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.

SNH and the JNCC were of the opinion that the Development is likely to have a significant effect on the qualifying interests of certain Special Protected Areas (“SPAs”) and SAC sites, therefore an AA was required. The AA which has been undertaken has considered the combined effects of the Development with other Forth and Tay Offshore wind farms, (the Neart na Gaoithe Offshore Wind Limited (“NNGOWL”) and Seagreen Wind Energy Limited (“SWEL”) applications). This is because the NNGOWL and SWEL, the applications for which were submitted to the Scottish Ministers in July 2012 and October 2012 respectively, are proposed to be sited close to the Development. The AA which has been undertaken concludes that the Development, the SAWEL and NNGOWL developments will not, on their own or in combination with each other (or where appropriate for consideration, other developments already licenced), subject to conditions, adversely affect site integrity of the Buchan Ness to Collieston Coast SPA, Fowlsheugh SPA, Forth Islands SPA, St Abb’s Head to Fast Castle SPA, Moray Firth SAC, Firth of Tay and Eden Estuary SAC,

Isle of May SAC, Berwickshire & North Northumberland Coast SAC, River South Esk SAC, River Tay SAC, River Dee SAC, River Teith SAC or River Tweed SAC. SNH and the JNCC are in agreement with the conclusions of the AA for the marine mammal and freshwater fish SACs, and in some instances, the SPAs. There is, however, disagreement on the conclusions concerning the impacts upon:

- Fowlsheugh SPA with respect to kittiwake
- Forth Islands SPA with respect to kittiwake, gannet, puffin and razorbill

This disagreement is regarding differences in assessment methods and the SNH and the JNCC view that the closer the levels of effect are to the thresholds the greater the risk of adverse effects. MS-LOT consider that the best available evidence has been used in the AA and that the assessment has been precautionary. A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in **ANNEX E – APPROPRIATE ASSESSMENT**.

The Scottish Ministers, as a competent authority, have complied with European Union (“EU”) obligations under the Habitats Directive and the Wild Birds Directive in relation to the Development. Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect the integrity of any of the identified European protected sites assessed to have connectivity with the Development, and have imposed conditions on the grant of this consent ensuring that this is the case. The test in the *Waddenzee* judgement formed the basis for the approach taken (CJEU Case C-127/02 [2004] ECR I-7405), and the Scottish Ministers are certain that site integrity will not be adversely affected and that no reasonable scientific doubt remains as to the absence of such effects. The Scottish Ministers also consider that the best available evidence has been used in reaching conclusions. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

## **APPLICABLE POLICIES AND GUIDANCE**

### **Marine area**

#### **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 2009 Act requires that when the Scottish Ministers take authorisation decisions that affect, or might affect, the marine area they must do so in accordance with the Statement.

The Statement which was 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, namely– 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 3.3.6, 3.3.16 to 3.3.19 and 3.3.22 to 3.3.30 of the Statement are relevant and have been considered by the Scottish Ministers as part of the assessment of the Application.

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 UK Marine Policy Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. 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. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

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

#### Blue Seas-Green Energy: A Sectoral Plan for Offshore Wind Energy in Scottish Territorial Waters

The Scottish Ministers have used a marine planning approach to develop Blue Seas Green Energy – A Sectoral Marine Plan for Offshore Wind in Scottish Territorial Waters (“the Plan”).

The Plan represents the Scottish Minister’s vision for the delivery of energy from offshore wind resources within Scottish Territorial Waters (0 to 12 nautical miles). The Plan contains proposals for offshore wind development at the regional level up to 2020 and beyond. It seeks to maximise the benefits for Scotland, its communities and people and recognises the need for public acceptability in the development of offshore wind. It aims to strike a balance between economic, social and environmental needs and also recognises that there are national and regional challenges to overcome to facilitate development.

The draft Plan contained 10 short term (up to 2020) and 30 medium term (up to 2030) options including Inch Cape as a short term site in the North East region. The sites were selected by developers and The Crown Estate Commissioners (CEC) and awarded Exclusivity Agreements. This reduced to 9 as one site developer withdrew. Scottish Ministers decided that 6 short term sites and 25 medium term areas of search should be progressed within this Plan.

Scottish Ministers further decided that 3 short term sites in the West and South-West regions were unsuitable for the development of offshore wind and should not be progressed as part of the Plan. These short term sites were considered unsuitable because of the presence of a wide range of constraints on a number of receptors

(including Communities, Shipping, Fishing, Biodiversity, Recreation, Defence, Economic Impact, Cultural Heritage, Seascapes and Landscapes).

The main findings for the North East (Forth and Tay) Offshore Wind Plan region was that this region has favourable conditions and significant potential for the development of offshore wind both within Scottish Territorial Waters and beyond into Scottish Offshore Waters (12 to 200 nautical miles). The significant strategic issues to be resolved according to the Plan related to fishing and the environment, with potential adverse effects on bottlenose dolphins presented as a significant issue. Other key issues to be addressed for the region included Shipping and navigation, Biodiversity, Aviation and radar, Defence activities. Evidence at this stage suggested that issues could be addressed through appropriate mitigation measures at the project level.

The Inch Cape short term site within Scottish Territorial Waters was seen to be suitable for development by 2020. The accompanying Strategic Environmental Assessment concluded that the cumulative impacts of Inch Cape, in addition to the Neart na Gaoithe short term option, and the Firth of Forth DECC Round 3 Zone (Seagreen), would require further consideration at the project level assessment stage.

The Plan recommended that the Inch Cape short term option should be taken forward to the licensing stage. A key finding was that there is significant potential for this development in the short term and it appears to be publicly and environmentally acceptable. Another key finding was that the East region relates closely to areas where there is significant potential for economic investment and employment.

Overall the Plan seeks to deliver Scottish Ministers' policies for green energy, thereby helping to meet carbon reduction targets. The Plan underpins the promotion of economic development and competitiveness for Scotland and has been built using environmental and socio-economic assessments and consultation, both public and sectoral, as marine plan making tools.

The outcomes of Strategic Environmental Assessment ("SEA"), HRA, Socio-economic Assessment and Consultation Analysis informed the final Plan.

### Draft National Marine Plan

A draft National Marine Plan, developed under the 2010 Act and the 2009 Act was subject to consultation which closed in November 2013. Marine Scotland Planning & Policy are now considering the responses and undertaking a consultation analysis exercise. When formally adopted, the Scottish Ministers must take authorisation and enforcement decisions which affect the marine environment in accordance with the Plan.

The draft National Marine Plan sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. It also contains specific policies relating to the mitigation of impacts on habitats and species; and in relation to treatment of cables.

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

### Offshore Renewable Policy

Published in September 2010, Scotland's Offshore Wind Route Map sets out the opportunities, challenges and priority recommendations for action for the sector to realise Scotland's full potential for offshore wind. The refreshed version of this document, published in January 2013, highlighted the progress that has been made but pointed to the continuing challenges that need to be overcome. The Scottish Ministers remain fully committed to realising Scotland's offshore wind potential and to capture the biggest sustainable economic growth opportunity for a generation.

This Development, will contribute significantly 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.

### Terrestrial area

Existing terrestrial planning regimes generally extend to MLWS. The marine plan area boundaries extend up to the level of MHWS. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. 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. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application.

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

### Scottish Planning Policy

Scottish Planning Policy ("SPP") sets out the Scottish Government's planning policy on renewable energy development. 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 Application and within the responses received to the consultation by the closest onshore Planning Authorities, SEPA, the JNCC, SNH, and other relevant bodies.

### National Planning Framework 2

At the time of the Application to the Scottish Ministers, Scotland's National Planning Framework 2 ("NPF2") was of relevance. NPF2 sets out strategic development priorities to support the Scottish Government's central purpose, namely sustainable economic growth. Relevant paragraphs to the Application are paragraphs 65, 144, 145, 146, and 147. NPF2 provides strong support for the development of renewable energy projects to meet ambitious targets to generate the equivalent of 100% of our gross annual electricity consumption from renewable sources and to establish Scotland as a leading location for the development of the renewable offshore wind sector.

### National Planning Framework 3

During the determination of the Application, Scotland's National Planning Framework 3 ("NPF3") was published. NPF3 is the national spatial plan for delivering the Scottish Government's Economic Strategy. The Main Issues Report sets out the ambition for Scotland to be a low carbon country, and emphasises the role of planning in enabling development of renewable energy onshore and offshore. National Development 4 'High Voltage Electricity Transmission Network' is designed to facilitate electricity grid enhancements needed to support the increasing renewable energy generation, both on and offshore. NPF3 also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

The Main Issues Report was published for consultation in April 2013 and the Proposed NPF3 was laid in the Scottish Parliament on 14th January 2014. This was subject, by statute, to sixty (60) day Parliamentary consideration ending on 22nd March 2014. The Scottish Government published the finalised NPF3 on 23rd June 2014.

NPF3 sets the context for development planning in Scotland and 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. It also identifies national developments which support the development strategy. Paragraphs relevant to the Application are 3.4, 3.6, 3.8, 3.9, 3.12, 3.14, 3.25, 3.32, 3.33, 3.34 and 3.41.

NPF3 sets out the ambition for Scotland to move towards a low carbon country placing emphasis on the development of onshore and offshore renewable energy. NPF3 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. NPF3 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. NPF3 notes the Firth Coast from Cockenzie to Torness is a 'potentially important energy hub'. It notes that there are significant plans for offshore wind to the east of the Firths of Forth and Tay and states; 'Proposals for grid connections for these projects are now emerging, requiring undersea cabling connecting with converter stations and substations. We want developers to work together to minimise the number and impacts of these developments by combining infrastructure where possible'. NPF3 also recognises Cockenzie as a site with potentially significant opportunities for renewable energy related investment.

### Fife Development Plan

Fife Council ("FC") advised that due to the scale of the Development, in terms of turbine height and numbers, it requires to be assessed against the Fife Development Plan. This Plan comprises of the TAYplan Strategic Development Plan 2012-2032 and the Adopted St. Andrews and East Fife Local Plan 2012.

### TAYplan Strategic Development Plan 2012-2032

The TAYplan Strategic Development Plan ("TAYplan SDP") sets out a spatial strategy which says where development should and should not go. It is designed to deliver the location related components of sustainable economic development, good quality places and effective resource management.

The Scottish Ministers consider that the TAYplan SDP is broadly supportive of the Development

### Adopted St. Andrews and East Fife Local Plan 2012

The Adopted St. Andrews and East Fife Local Plan 2012 implements the strategic vision set out in the Fife Structure Plan as it applies to the St Andrews and East Fife area. It contains proposals to guide the area's development over the period until 2022.

The relevant policies in this Plan are E3, E8, E11, E12, E20, E21, E22, E23 and I1. The Scottish Ministers consider that the St Andrews and East Fife Local Plan is broadly supportive of the Development.

### Fife Council's Supplementary Planning Guidance (SPG) on Wind Energy 2011

This supplementary Planning Guidance, whilst carrying less weight as a consideration than the TAYplan SDP, supplements the local plan policies. It indicates that proposals for wind farms/turbines will be assessed against the following constraints, any positive or adverse effects on them, and how any adverse effects can be overcome or minimised: Historic environment; areas designated for

their regional and local natural heritage value; tourism and recreational interests; communities; buffer zones; aviation and defence interests; broad casting installations.

The Scottish Ministers consider that the Development has been assessed against these constraints and addressed in **Annex 2**.

#### East Lothian Local Plan 2008

East Lothian Council have advised that the policies of the East Lothian Local Plan do not apply to the offshore works as the plan only covers land to the Low Water Mark therefore the only aspect of the Development that this plan relates to is the inter-tidal works.

Where the cable makes landfall at Cockenzie, a planning application will be made to East Lothian Council. The area concerned is covered by East Lothian Local Plan Policy DC1: Development in the Countryside and Undeveloped Coast; Policy C3: Protection of Open Space; NH4: Areas of Great Landscape Value and Policy NRG2: Torness Consultation Zone.

#### Angus Local Plan Review (Adopted 2009)

The Angus Local Plan Review sets out the land use planning response and policy framework which will contribute to ensuring that the physical, social and economic needs of all communities in Angus are provided for in a sustainable manner. Angus Council ("AC") have advised that the Angus Local Plan Review is not a relevant consideration as the Development is out with the area covered.

#### Summary

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

## **CONSULTATION**

In accordance with the statutory requirements of the 1990 Regulations and the 2000 Regulations and the 2007 Regulations, notices of the Application had to be placed in the local press, national press and the Edinburgh Gazette to notify any interested parties. The Scottish Ministers note that these requirements have been met. Notice of the Application for section 36 consent is required to be served on any relevant Planning Authority under Schedule 8 to the Electricity Act.

Notifications were therefore sent to AC, as the onshore Planning Authority where the transmission infrastructure export cable comes ashore (at Cockenzie), as well as to Dundee City Council, East Lothian Council, Fife Council, and Scottish Borders Council, as well as to SNH, the JNCC and SEPA.

A formal public consultation process was undertaken by the Scottish Ministers, which related to the Application for section 36 consent, section 36A consent, the marine licence applications (applications *i*, *ii*, *iii* and *iv*) and the ES, was commenced on 1<sup>st</sup> July 2013.

### **Representations and objections**

A total of one (1) valid representation was received by the Scottish Ministers during the course of the public consultation exercise, from a member of the public objecting to the Development.

The member of the public who objected to the Development stated concerns including, but not limited to, effects on fish from noise, birds and bats suffering from collision and associated injuries/death, impacts on tourism from visual impacts and livelihoods. Other concerns raised included issues such as wind being an unreliable and expensive form of energy, visual impacts of the development, detrimental effects to humans, livestock and other life forms and the failure to meet the requirements of the Aarhus convention.

The public representation made concerning the Application was not received from an elected representative.

Objections were received from, amongst others, the Royal Society for the Protection of Birds Scotland (“RSPB Scotland”), Arbroath and Montrose Static Gear Association (“AMSGA”), The Association of Salmon and Fishery Boards (“ASFB”), Scottish Wild Salmon Company (Usan), the Ministry of Defence (“MOD”), Scottish Fishermen’s Federation (“SFF”), and Whale and Dolphin Conservation (“WDC”).

Following further correspondence, the MOD and AMSGA removed their objection subject to conditions being applied to this consent. The Scottish Ministers consider that conditions applied regarding marine mammals address concerns raised by WDC (**Annex 2**). ASFB remain keen to work constructively with the Company and Marine Scotland to identify appropriate monitoring programmes.

Objections from the member of the public, the Scottish Wild Salmon Company (Usan), ASFB, RSPB Scotland, SFF, and WDC are being maintained. In light of

these concerns, the Company has reduced their Design Envelope from 213 WTGs to 110 WTGs and the Scottish Ministers have applied conditions for monitoring and mitigation to this consent (**Annex 2**).

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

### **Material considerations**

In light of all the representations, objections and outstanding objections received by the Scottish Ministers in connection with the Application, the Scottish Ministers have carefully considered the issues and material considerations, for the purposes of deciding whether it is appropriate to cause a public inquiry to be held or for making a decision on the Application for consent under section 36 of the Electricity Act.

The Scottish Ministers are content that the material considerations have been addressed in the Application and within the responses received to the consultations by the closest onshore Planning Authorities, SEPA, SNH, the JNCC, and other relevant bodies.

The Scottish Ministers consider that no further information is required before the Application may be determined.

### **Public Local Inquiry**

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 section 36 consent and where they do not withdraw their objection then the Scottish Ministers must cause a public inquiry 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 public inquiry.

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 Scottish Ministers are not, therefore, obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a public inquiry to be held. 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.

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 public inquiry should be held with respect to the Application. If the Scottish Ministers think it appropriate to do so, they shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the Application.

The Scottish Ministers have received objections to the Development as outlined above. In addition, a number of other matters were raised which constitute material considerations the context of considering whether they should decide to hold a public inquiry into this case. In summary, and in no particular order, these objections related to the following issues:

- the efficiency of wind energy and high subsidies;
- visual impacts of the Development;
- impact upon the tourism industry;
- impact upon marine life (including birds and marine mammals);
- impact on salmon and sea trout;
- impacts on bats;
- failure to meet the requirements of the Aarhus Convention; and
- impact on commercial fisheries.

#### *The efficiency of wind energy and high subsidies*

Within the public representation to the Application there were comments relating to the efficiency of wind energy. The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

With regard to high subsidies, support schemes play an important role in the development of renewable electricity schemes, particularly for more immature technologies. Increased deployment of offshore wind turbines is anticipated to result in declining costs, as the industry learns more about the technical issues which arise in challenging conditions. Alongside this, a number of other factors will also impact the future costs, including steel prices, exchange rates, labour and vessel costs.

The challenge laid down to industry as part of the Offshore Wind Cost Reduction Task Force is to reduce the levelised cost of offshore wind to £100 per megawatt hour. This is clearly ambitious and will require developers to work in collaboration and consider innovative technology and working practices. Test and demonstration facilities will also continue to be crucial to the development of the industry and in particular in pursuing the cost reduction agenda.

The Scottish Ministers, therefore, consider that they have sufficient information available on the efficiency of wind energy to reach a conclusion on this matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

#### *Visual impacts of the Development*

Adverse visual impact of the Development in its proposed location was raised in the outstanding objections. The Company in its ES indicates that the Development would have visual impacts that range from negligible to major depending upon where the viewer is situated. SNH, the Scottish Ministers' statutory nature conservation

advisors who advise on, amongst other matters, visual impacts on designated landscape features, advised that key landscape, seascape and visual impacts of the Development would cause widespread and significant adverse landscape and visual impacts along the Scottish east coast from St Cyrus in Aberdeenshire, through Angus and Fife south to Dunbar in East Lothian. SNH suggested that the development would impact South Aberdeenshire/Angus and would form a visually prominent feature across the sea-horizon and cause a significant change to the open sea views experienced from Montrose, Arbroath and Carnoustie and from the A92, the East Coast railway, NCN Route 1 and the Angus Coastal Path. SNH also suggested that, the Development would have major effects on Montrose Bay and Lunan Bay and coast between Lang Craig and Deil's Heid north of Arbroath.

SNH stated that the Development, along with NNGOWL, would be seen from Tentsmuir coast, the coast between St Andrews and Fife Ness and the Isle of May. Both wind farms are likely to affect the landscape setting of St Andrews and appreciation of its historic skyline. In their opinion, the Development and NNGOWL would also significantly affect views from beaches, golf courses and from the Fife Coastal Path between Crail and Tentsmuir. In addition, the wind farms would change the night-time character of the sea.

SNH recommended that the Company should employ at least one qualified and experienced landscape architect to be involved in the post-consent design process and to 'sign off' the final wind farm design alongside project engineers. The Scottish Ministers agree that an experienced landscape architect could help to reduce these impacts by setting out the design principles for the scheme and would be a necessary mitigation to be included within any consent.

SNH recommended that the cumulative effects of the Forth and Tay wind farms – should more than one be consented – be assessed, particularly where visual impacts are assessed, as major. They also recommended that visualisations be provided post-consent to illustrate the finalised wind farm from key representative viewpoints. These would be for public information only. A condition requiring the submission of a Design Statement forms part of this consent at **Annex 2**.

East Lothian Council's response recommended there would be some visual impacts, whilst Angus Council considered the seascape and visual impact of the Development to be significant and were concerned with regard to the location of the turbines in relation to Bell Rock lighthouse and the presence of lighting for aviation purposes. Angus Council felt that the visual impacts on the night seascape could be significant. Neither Planning Authority objected to the Development on visual grounds.

The Company's ES includes a number of visual photomontages that give an indication of the likely visual impacts. Although these are not definitive, the visualisation material acts as a tool to help inform the decision-making process. Marine Scotland officials have undertaken a site visit of a selection of viewpoints provided in the Company's Application. During these visits, officials were able to compare the views from those viewpoints using the visual photomontages in the Company's ES.

The Company has also reduced the original number of wind turbines from 213 to 110 which will also help to contribute to the likely visual impacts of the Development.

The Scottish Ministers, therefore, consider that they have sufficient information available on the potential visual impacts to make a decision on this matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate these impacts.

#### Impact upon the tourism industry

Concerns have been raised by respondents to the Application regarding the Development's potential impact upon tourism, particularly visually, environmentally and economically.

In this respect, MS-LOT notes that attitudes of tourists towards wind farms have been assessed in many studies. The results of stated preference studies have found that generally the majority of tourists were positive towards wind farms. Omnibus Research, commissioned by Visit Scotland in 2011, found that 80% of the survey respondents stated that a wind farm would not affect their decision to visit an area. The attitudes of recreational users have been researched to a lesser extent. Landry, Allen, Cherry & Whitehead's 2012 study into the impact of wind farms on coastal recreational demand found that offshore wind farms overall had little impact on recreational visits by residents. However, there are individual differences within the data which, averaged out, show an overall limited impact. Whilst some residents said they would take fewer trips to the beach if there was a wind farm within view, others indicated that they would actually take more trips.

The Scottish Ministers, therefore, consider that they have sufficient information available on the potential impacts on tourism to reach a conclusion on this matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

#### Impact on marine wildlife (including seabirds and marine mammals)

The impact on marine mammals, birds and other marine life was raised in the outstanding objections to the Development. The Company in its ES assessed the potential impact of the Development on fauna and the Scottish Ministers consulted various nature conservation bodies including SNH, the JNCC, the RSPB Scotland and WDC on these documents.

The RSPB Scotland and WDC have maintained their objection. Neither SNH nor the JNCC provided a position statement, however, in the event that consent is granted, have provided suggested conditions. Such conditions have been included in this consent to ensure that impacts on wildlife are acceptable (**Annex 2**). MSS have reviewed the ES and the conditions, and consider that the conditions attached to the consent will only allow impacts on marine wildlife which are within acceptable limits, such that the integrity of the sites which are protected sites under the Habitats and Wild Birds Directives, and relevant domestic implementing legislation, will not be adversely affected.

The Scottish Ministers recognise that there is an outstanding objection from RSPB Scotland due to the potential impacts on several seabird species (most notably kittiwake, gannet and puffin). The Scottish Ministers also recognise that there is an outstanding objection from WDC due to potential impacts on marine mammals (most notably bottlenose dolphins and harbour seals). Having carried out the AA (considering all the advice received from SNH, the JNCC and MSS) it can be ascertained with confidence that the Development, subject to appropriate conditions being included within the consent (**Annex 2**), will not adversely affect site integrity of any of the identified SPAs and SACs assessed to have connectivity with the Development. SNH and the JNCC are in agreement with the AA conclusions for the marine mammal and freshwater fish SACs and in some instances the SPAs. There is, however, disagreement on the conclusions concerning the impacts upon:

- Fowlsheugh SPA with respect to kittiwake; and
- Forth Islands SPA with respect to kittiwake, gannet, puffin and razorbill.

This disagreement is regarding differences in assessment methods and the JNCC and SNH view that the closer the effects are to thresholds the greater the risk of adverse effects. The Scottish Ministers consider that the best available evidence has been used in the AA and that the assessment has been precautionary. A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in the **APPROPRIATE ASSESSMENT**.

One representation stated that the noise and vibrations of the construction process will significantly disturb fish and sea mammals. Further modelling was commissioned by Marine Scotland and was undertaken by Prof Paul Thompson (University of Aberdeen and Marine Scotland Science Advisory Board). This work looked at the cumulative impacts of pile driving at the Forth and Tay wind farms together with the recently consented Moray Firth wind farms and concluded that there would be no long-term effects from underwater noise disturbance on the bottlenose dolphin population of the Moray Firth SAC.

Impacts on other cetacean species, including harbour porpoise, minke whale and white beaked dolphin, were also considered by the Company in their ES. SNH and the JNCC advised that disturbance to these species will not be detrimental to the maintenance of these populations at a favourable conservation status in their natural range. A European Protected Species (“EPS”) licence must be obtained by the Company prior to construction. Furthermore, a Marine Mammal Monitoring Programme (“MMMP”) is required as part of the Project Environmental Monitoring Programme (“PEMP”) condition of this consent (**Annex 2**).

The AA concluded that the site integrity of any of the SACs designated for marine mammals would not be adversely affected, subject to appropriate conditions being included in any consent. These conditions are detailed in Annex 2. Further details of the assessments are provided in the AA. SNH and the JNCC agreed with all the conclusions reached in the AA with respect to marine mammals. MSS have reviewed the ES, the AA and the conditions and consider that the conditions attached to the consent will allow impacts on marine wildlife to be within acceptable limits, such that the integrity of the designated SACs would not be adversely affected. As above, the

conditions to mitigate and monitor the effects on marine wildlife are reflected in Annex 2.

SNH and the JNCC have previously advised that it has not been established whether there is a link between the use of ducted propellers and the corkscrew injuries which have been recorded in seal species over the last couple of years. Research in this regard has been commissioned by Marine Scotland and SNH, and is currently being undertaken by the Sea Mammal Research Unit (“SMRU”). The Scottish Ministers have imposed a condition in the consent for the Company to produce a Vessel Management Plan (“VMP”). This plan will detail the mitigation measures proposed by the Company to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with the Development. The Scottish Ministers will consult with SNH and the JNCC with regards to the content of this plan.

A European Protected Species (“EPS”) licence will be required by the Company prior to construction and a MMMP is required as part of the Project Environmental Monitoring Programme (“PEMP”) condition of this consent.

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 which would require consent to be withheld.

The Scottish Ministers, therefore, consider that they have sufficient information available on the potential impacts on wildlife to reach a conclusion on this matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

#### *Impact on salmon and sea trout*

Objections relating to potential effects on fish were raised during the public consultation exercise. Usan Salmon Fisheries Ltd maintained their objections relating to the impact on salmon and sea trout. The Company, in the ES recognised the uncertainties around the assessments of these species. The ASFB also recognise these uncertainties and believe that they can only be overcome through strategic research. A National Research and Monitoring Strategy for Diadromous Fish (“the Strategy”) has been developed by Marine Scotland Science to address monitoring requirements for Atlantic salmon and sea trout at a national level. The Company has engaged with MSS, the ASFB, SFF and MS-LOT to address this issue. A condition requiring the Company to engage at a local level (the Forth and Tay) in the Strategy is contained within this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that sufficient steps, including the development of national strategic monitoring, have been taken to address the uncertainties regarding the potential effects on Atlantic salmon and sea trout from the Development, and can therefore reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

### Impact on bats

One (1) objection was raised in relation to bats through the public consultation process. The statutory nature conservation bodies, SNH and the JNCC, were consulted on the Application and did not raise any concerns in relation to potential impacts on this species.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential impacts of the Development on bats, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

### Failure to meet the requirements of the Aarhus Convention

A member of the public raised that in August 2013, the United Nations Economic Commission for Europe (“UNECE”) declared that the UK Government's National Renewable Energy Action Plan (“NREAP”) violated the laws that transpose the Aarhus Convention into the UK legal framework. In particular, the public had not been given full access to information on the impacts on people and the environment, nor had been given decision-making powers over their approval.

The Aarhus Convention is an international convention which protects the rights of individuals in relation to environmental matters in gaining access to information, public participation in decision-making, and access to justice. The UK is a signatory to the Convention, as is the EU.

On the single accusation relating to the UK Government – public participation in the Renewables Roadmap – the UK Government was found to be in breach of the Convention, as it had not conducted a SEA or other public consultation. However, on the four accusations for which the Scottish Government had lead responsibility, including public participation in the preparation of plans, programmes and policies in Scotland, and public participation in relation to the section 36 consent of a wind farm proposal, the Scottish Government’s position was upheld. The ruling confirmed that Scotland is in compliance with this international obligation.

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

### Impact on commercial fishing

The Scottish Fisherman’s Federation (“SFF”), FMA and Arbroath and Montrose Static Gear Association (“AMSGA”) had concerns over impacts on fishing. The Company in its ES assessed the loss of fishing grounds as minor to moderate within the wind farm area.

The Company have engaged with the SFF, FMA and AMSGA, and in conjunction with neighbouring wind farm developers, has formed the FTOWDG-CFWG. The FTOWDG-CFWG has been established to facilitate on-going dialogue throughout the pre-construction, construction and operational phases of the Development. The FTOWDG-CFWG should have representation for all commercial fishing interests in the area and will provide a forum to discuss any issues and potential mitigation in relation to the wind farm developments. Conditions for the Company to continue in this group and mitigate hazards to fishing are contained in this consent (**Annex 2**). Notices to Mariners and notices placed through the Kingfisher Fortnightly Bulletins is to be considered as a condition as part of the marine licence, the application for which will be determined in due course.

Since November 2012, there have been a number of meetings of the FTOWDG-CFWG which have provided an effective forum for discussion between the commercial fishing industry and the offshore wind industry in the Forth and Tay. On the 12 August 2014, the Company, along with neighbouring wind farm developers, forwarded to the Scottish Ministers a Shared Position Statement to confirm the areas of agreement that have been achieved so far within the FTOWDG-CFWG. This Shared Position Statement seeks to provide the basis for moving the discussions forward and rightly states it is desirable that consistent approaches in relation to the interactions with commercial fishing activities are agreed through by FTOWDG-CFWG, and adopted by the Company as far as possible.

The matters raised in the Shared Position Statement are addressed in the consent conditions, Annex 2 or in the appropriate marine licence.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the impacts on commercial fisheries, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

## **Summary**

In addition to the issues raised by the 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 AA and in the consultation responses received from the closest onshore Planning Authorities, SEPA, the JNCC, SNH and other relevant bodies, together with all other objections and representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

## **DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD**

In the circumstances, the Scottish Ministers are satisfied that-

1. they possess sufficient information upon which to determine the Application;
2. 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;
3. they have had regard to the various material considerations relevant to the Application; and
4. the objectors have been afforded every opportunity to provide information and to make representations.

Accordingly, having regard to all material considerations in this Application and the nature of the outstanding objections, the Scottish Ministers have decided that it is not appropriate to cause a public inquiry to be held.

### **THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

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

The Scottish Ministers have taken into consideration the environmental information, including the ES, the AA and the representations received from the consultative bodies, including SNH, the JNCC, SEPA, and from Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council.

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 Company obtained a generation licence during the period whilst the Scottish Ministers were determining the application for consent. 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, and regulation 22 of the 2007 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 and regulation 12 of the 2007 Regulations.

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

When considering an application for section 36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether the Development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the Development is likely to have a significant effect

on the site. Under the Habitats Regulations, if it is considered that the Development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

With regard to the Development, SNH and the JNCC advised that the Development is likely to have a significant effect upon the qualifying interests of a number of sites, both SACs and SPAs. 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 advice received from SNH, the JNCC and MSS) it can be ascertained with confidence that the Development, subject to appropriate conditions being included within the consent, will not adversely affect site integrity of any of the identified SPAs and SACs assessed to have connectivity with the Development. SNH and the JNCC are in agreement with the conclusions for the marine mammal and freshwater fish SACs and in some instances the SPAs. There is, however, disagreement on the conclusions concerning the impacts upon:

- Fowlsheugh SPA with respect to kittiwake; and
- Forth Islands SPA with respect to kittiwake, gannet, puffin and razorbill.

This disagreement is regarding differences in assessment methods and the SNH and the JNCC view that the closer the levels of effect are to the thresholds the greater the risk of adverse effects. MS-LOT consider that the best available evidence has been used in the AA and that the assessment has been precautionary. A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in **ANNEX E – APPROPRIATE ASSESSMENT**

SNH, the JNCC and MSS recommended that certain conditions be included on any consent which would allow this Development to be implemented. These conditions have been included within this consent (**Annex 2**).

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 satisfied 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, by the attachment of conditions to the consent, the Development will not adversely affect site integrity of the European protected sites included within the AA. The Scottish Ministers are satisfied 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.

A recent announcement by the Scottish Government has highlighted the Outer Firth of Forth and Tay Complex as a draft marine SPA as it meets the SNH and the JNCC

selection guidelines. A formal consultation will be undertaken towards the end of 2014 / beginning of 2015. Following consultation it is possible that this area could become a designated marine SPA towards the end of 2015. At this stage a further AA may be required if Likely Significant Effects (“LSE”) on the qualifying features is identified from the Development. Under the Habitats regulations this must be carried out as soon as is reasonably practicable following designation.

## **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 satisfied that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of any European protected site.

### **The impacts on fish and shellfish**

The consultation responses from the ASFB and USAN Fisheries confirmed objections to the Development. Both organisations raised concerns regarding the uncertainty over the potential impacts on migratory fish. A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish.

The key issues included subsea noise during construction and operation, EMF’s arising from cabling and operation of the devices, disturbance or degradation of the benthic environment and aggregation effects.

A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish which the Company will contribute to at a local level. SNH identified several river SACs where the Development is likely to have a significant effect on the qualifying interests. This required MS-LOT, on behalf of the Scottish Ministers, to undertake an AA in view of the conservation objectives for each SAC. The AA concluded that subject to certain conditions, including appropriate mitigation and monitoring, the Development could be implemented without adversely affecting site integrity. Such conditions have been included by the Scottish Ministers within this consent (**Annex 2**). The Scottish Ministers are satisfied that the Development will not have an adverse effect on any SAC for salmon as shown in the AA. Should Usan feel their commercial interests are being affected by the Development, then it is a matter for Usan and the Company to come to a suitable agreement.

A key concern of SNH and the JNCC in respect of marine fish, relates to underwater noise impacts from pile-driving of the Wind Turbine Generator (“WTG”) foundations during construction on cod and herring. Noise impacts that interrupt or adversely affect spawning activity could be expected to result in an impact to the cohort for that year. Pile-driving activities in successive years may, therefore, result in a series of weakened cohorts within a population. Conditions to mitigate these impacts including

the requirement for soft start piling, piling schedules and construction programmes are included in this consent (**Annex 2**). Post consent sandeel surveys were also recommended by SNH and the JNCC in order to better inform sandeel distribution with the Forth and Tay wind farm sites, again this requirement is included in the conditions.

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 and shellfish which would require consent to be withheld.

### *The impacts on birds*

SNH, the JNCC and the RSPB Scotland expressed concerns about the potential impact of the Development in combination with the SAWEL, SBWEL and NNGOWL developments on several bird species using the Firth of Forth. Advice from SNH and the JNCC on the 7<sup>th</sup> March 2014 was that they could not conclude with reasonable certainty that the Forth and Tay wind farms would not adversely affect the site integrity of Forth Islands or Fowlsheugh Special Protection Areas ("SPA"). RSPB object to the Forth and Tay wind farms, due to, in their view, the unacceptable harm to seabird species. The species highlighted by SNH, the JNCC, and RSPB to be of most concern due to the cumulative impacts of the Forth and Tay wind farms were kittiwake, gannet and puffin. Concerns over gannet were mainly in relation to collision risk with the WTGs during operation, whereas concerns over puffin were in relation to displacement of these species from the wind farm sites. Kittiwake were affected by displacement, barrier effects and collision.

These species along with guillemot, razorbill, herring gull, lesser black-backed gull, fulmar and common and Arctic tern were considered in the AA. When considering whether impacts are acceptable, an estimation of the level of predicted impact and the level of acceptable change that a population can withstand are required in order to make decisions on site integrity for an SPA. The levels of effect were detailed by the Company and further refined during meetings with MSS, SNH and the JNCC. Several methods were used by SNH, the JNCC and MSS to determine levels of acceptable change. The AA concluded that the proposed NNGOWL, ICOL, SAWEL and SBWEL developments will not, on their own or in combination with each other (or where appropriate for consideration, other developments already licenced), subject to conditions, adversely affect site integrity of the Buchan Ness to Collieston Coast SPA, Fowlsheugh SPA, Forth Islands SPA or St Abb's Head to Fast Castle SPA.

SNH and the JNCC disagreed with some of the conclusions of the AA and advised that it could not be concluded that:

- Fowlsheugh SPA with respect to kittiwake; and
- Forth Islands SPA with respect to kittiwake, gannet, puffin and razorbill,

would not be adversely affected.

This is mainly to do with differences in assessment methods, SNH and the JNCC view that the closer effects are to the thresholds the greater the risk of adverse effects. Full details are provided in the **APPROPRIATE ASSESSMENT**.

SNH and the JNCC also highlighted that effects on species not covered under Habitat Regulations Appraisal (“HRA”) also require consideration (i.e. individuals breeding out with SPAs and non-breeding individuals). For some species, e.g. kittiwake, a considerable number of smaller colonies exist outside of the SPA boundaries. Whilst it is possible for effects to be attributed to these colonies, the setting of thresholds in the same manner as with the SPA populations becomes problematic due to the paucity of data from the colonies, their small size, and the questionable value of any population models that could therefore be produced. Assessments therefore focused upon the SPA populations as these were identified in advice from SNH and the JNCC as being of greatest concern.

Following a meeting held on 7<sup>th</sup> July 2014 between Marine Scotland and SNH, SNH followed up with a letter of 11<sup>th</sup> July which stated that they had the opportunity to review and discuss aspects of their advice where conclusions reached by SNH & JNCC on Special Protection Areas are at variance from those reached by Marine Scotland Science. This was done in an effort to understand the nature and origin of the differences, and the extent to which they were germane to the decisions facing the Scottish Ministers with regards to this Application and the other applications for wind farms in the Forth and Tay.

In the letter, SNH noted that there was agreement between their advisors on the vast majority of the issues raised by the Forth and Tay proposals in terms of their effects on the natural heritage and in particular on protected species of seabird. SNH also noted that there were precautionary elements in the approaches taken and the models recommended by SNH & JNCC and by Marine Scotland Science.

SNH stated that the level of precaution which is appropriate is not a matter which can be determined precisely and that judgements have to be made. They went on to say that this is a new and fast developing area of scientific study and that approaches are continually developing and being tested. Many of the methods underpinning assessment (such as collision risk modelling) are based on assumptions for which it may take a long time to get field data to provide verification. So again, judgments had to be made where empirical analysis is unable to provide certainty.

SNH outlined several areas of ornithology monitoring which they recommended should be included in any consent granted. These are:

- the avoidance behaviour of breeding seabirds around turbines;
- flight height distributions of seabirds at wind farm sites;
- displacement of kittiwake, puffin and other auks from wind farm sites; and
- effects on survival and productivity at relevant breeding colonies.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, the AA completed, and having regard to the mitigation measures and conditions proposed,

there are no outstanding concerns in relation to the Development's impact on birds which would require consent to be withheld.

### Impacts on marine mammals

The Scottish Ministers note that techniques used in the construction of most offshore renewable energy installations have the potential to impact on marine mammals.

SNH and the JNCC concluded that, subject to conditions, there would be no long-term effects from underwater noise disturbance on the bottlenose dolphin population from the Moray Firth SAC or the harbour seal population from the Firth of Tay & Eden Estuary SAC. It was also concluded that there would be no long-term effects from underwater noise disturbance on the grey seal population from the Isle of May or Berwickshire & Northumberland Coast SACs and, thus, site integrity would not be adversely affected. SNH and the JNCC agreed with all the conclusions reached in the AA with respect to marine mammals.

Impacts on other cetacean species including harbour porpoise, minke whale and white beaked dolphin were also considered by SNH and the JNCC who advised that the temporary disturbance/ displacement caused by the Development and the other proposed Forth and Tay wind farms has the potential to affect the animals energy budget. However these species are wide-ranging, and the spatial scale and temporary nature of the disturbance from wind farm piling and other construction activity is very small when compared to the range and movements of these species. SNH and the JNCC advised that disturbance to these species will not be detrimental to the maintenance of these populations at a favourable conservation status in their natural range.

Concerns were raised regarding potential corkscrew injuries to harbour seals. Discussions are on-going between MSS and SNH over the cause and effect of corkscrew injuries to seals but there is not sufficient evidence at this time to attribute this type of injury to one particular source. A potential source may be a ducted propeller, such as a Kort nozzle or some types of Azimuth thrusters. Such systems are common to a wide range of ships including tugs, self-propelled barges and rigs, various types of offshore support vessels and research boats.

SNH and the JNCC have previously advised that it has not been established whether there is a link between the use of ducted propellers and the corkscrew injuries which have been recorded in seal species over the last couple of years. Research in this regard has been commissioned by Marine Scotland and SNH, and is currently being undertaken by the Sea Mammal Research Unit ("SMRU"). SNH and the JNCC will be consulted on the Vessel Management Plan ("VMP") which is a condition of this consent, as will such other advisors and organisations as may be required at the discretion of the Scottish Ministers. This plan will detail the mitigation measures proposed by the Company to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with the Development. Scottish Ministers are satisfied that the mitigation and monitoring included in the conditions attached to this consent (**Annex 2**) will suffice.

An EPS licence will be required by the Company prior to construction and a MMMP is required as part of the PEMP condition of this consent (**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 which would require consent to be withheld.

#### *The impacts on commercial fishing activity*

Regarding commercial fishing activity, the SFF, AMSGA, and the Fishermen's Mutual Association (Pittenweem) Ltd ("FMA") raised concerns on restricted access or total loss of traditional fishing grounds.

The Scottish Ministers are aware that there may be temporary displacement of those fishing in the Development area during construction, however the Company has agreed that all efforts will be made to minimise any displacement.

A 'Forth and Tay Offshore Wind Developers Group – Commercial Fisheries Working Group' ("FTOWDG-CFWG") has been established to facilitate on-going dialogue throughout all phases of the Development. This group represents all commercial fishing interests in the area, including the SFF. The continued participation in this group, and also the appointment of a Fisheries Liaison Officer ("FLO") are reflected in conditions of this consent (**Annex 2**). The Company have stressed that they remain committed to the FTOWDG-CFWG and highlight that the terms of reference were agreed alongside the Company and fishing industry representatives.

The SFF have made particular reference to scallop fishing in the Development area. They have stated that proper siting of structures forming the Development is important, and that the structures need to be located in a manner to allow the scallop fishing to continue. A condition in this consent (**Annex 2**) ensures that the SFF are consultees on the Development Specification and Layout Plan ("DSLPL").

The Scottish Ministers consider that, having taken account of the information provided by the Company and the responses of the consultative bodies, the impact on commercial fishing activity though significant, in light of the mitigation measures proposed, there are no outstanding issues which would require consent to be withheld.

#### *The impacts on shipping and navigational safety*

The Chamber of shipping ("CoS") were concerned over the potential cumulative impacts on navigation resulting from the construction of all the Forth and Tay proposals with the increase in vessel traffic risking shipping routes.

The CoS feel that mitigation measures should be applied to ensure a safely navigable corridor is maintained between the Development site and SAWEL and SBWEL projects.

The CoS wish for the cables to be buried and the Company notes that where suitable the cables will be buried, or protected where burial is not suitable. A Cable Plan (“CaP”) will be implemented by the Company which will require approval of the Scottish Ministers prior to construction.

The Northern Lighthouse Board (“NLB”) did not object to the Development but highlighted lighting and marking requirements. The NLB also requested that the nature and timescale of the works are to be placed in Notice(s) to Mariners, Radio Navigation Warnings and in appropriate bulletins. The Lighting and Marking requirements will form part of the DSLP once submitted by the Company. Submission of a DSLP is a condition of this consent (**Annex 2**) Notice(s) to Mariners will be a condition contained within the Marine Licence.

Neither the Marine Coastguard Agency, or the Royal Yachting Association had any concerns regarding navigational issues, provided the Development is suitably lit and marked.

The Scottish Ministers are satisfied that there are no concerns about navigational safety which would require consent to be withheld.

#### *The impacts on aviation*

National Air Traffic Services did not object to the Development.

The MOD initially objected to the Development citing concerns with the Air Traffic Control (“ATC”) radar at Leuchars and the Air Defence (“AD”) radar at Remote Radar Head (“RRH”) Buchan. Following discussions with the MOD, the Company have submitted a technical proposal to mitigate the effects of the Development on the ATC radar at RAF Leuchars subject to conditions being attached on any consent (**Annex 2**). A condition has also been agreed that no turbine with a tip height greater than 186m above Mean Sea Level shall be erected in any part of the Development Area which is in line of sight coverage to the AD radar at RRH Buchan, unless a mitigation plan has been submitted to and agreed by the Scottish Ministers.

The Civil Aviation Authority (“CAA”) did not object to the Development but stressed the need to inform the Defence Geographic Centre of the locations, heights and lighting status of the turbines and meteorological masts, the dates of construction and the maximum height of any construction equipment to be used prior to construction to allow the inclusion on Aviation Charts. A condition capturing this requirement is reflected in this consent (**Annex 2**).

The Scottish Ministers are satisfied that there are no concerns about aviation safety that would require consent to be withheld

#### *The impacts on recreation and tourism*

Concerns have been raised by consultees and the public to the Application regarding the Development’s potential impact upon tourism, particularly relating to the visual aspect and the effect this will have on livelihoods associated with tourism.

In this respect, the Scottish Ministers note that attitudes of tourists towards wind farms have been assessed in many studies. The results of stated preference studies have found that generally the majority of tourists were positive towards wind farms. Omnibus Research, commissioned by Visit Scotland in 2011, found that 80% of the survey respondents stated that a wind farm would not affect their decision to visit an area. The attitudes of recreational users have been researched to a lesser extent. Landry, Allen, Cherry & Whitehead's 2012 study into the impact of wind farms on coastal recreational demand found that offshore wind farms overall had little impact on recreational visits by residents. However, there are individual differences within the data which, averaged out, show an overall limited impact. Whilst some residents said they would take fewer trips to the beach if there was a wind farm within view, others indicated that they would actually take more trips.

Concerns were also raised by Surfers Against Sewage that the Development could impact surfing locations due to a reduction in wave resources. Modelling in the Application has suggested this to be unlikely and MSS made no comment on reduction in wave resources as a concern.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential impacts of the Development upon recreation and tourism, and are of the opinion that there are no considerations with regards to this issue that would require consent to be withheld.

#### Visual impacts of the Development

SNH stated that the proposed Forth and Tay wind farms (the Development, Seagreen and Neart na Gaoithe) would cause widespread and significant adverse landscape and visual impacts along the Scottish east coast from St Cyrus in Aberdeenshire, through Angus and Fife south to Dunbar in East Lothian.

The Development would impact South Aberdeenshire/Angus and would form a visually prominent feature across the sea-horizon and cause a significant change to the open sea views.

It was also noted that the Forth and Tay wind farms – particularly Neart na Gaoithe and the Development – would change the night-time character of the sea.

SNH recommended that the Company should employ at least one qualified and experienced landscape architect to be involved in the post-consent design process and to 'sign off' the final Development design alongside project engineers.

SNH recommended that the cumulative effects of the Forth and Tay wind farms – should more than one be consented – should be assessed, particularly where visual impacts are assessed as major. They also recommended that visualisations be provided post-consent to illustrate the finalised wind farm from key representative viewpoints. These would be for public information only.

Conditions requiring the submission of a Development Specification and Layout Plan, Design Statement, and a Lighting and Marking Plan have been included in this decision letter and consent (**Annex 2**).

As the design envelope of the Development has been reduced from 213 to 110 WTG, this will help mitigate the overall visual impact of the Development.

The Scottish Ministers recognise that the Forth and Tay developments will be a prominent new feature on the seascape, however they are satisfied that this impact would not require consent for the Development to be withheld.

### Cumulative impacts of the Development

The close proximity of the Development to the proposed adjacent Seagreen and Neart na Gaoithe wind farms has meant that cumulative impacts have raised concerns. The issue of potential cumulative impact on landscape and visual amenity was considered by SNH and the JNCC to be significant, however SNH and the JNCC did not object regarding cumulative visual impact with other onshore and offshore developments.

Cumulative impacts on marine wildlife was raised by several organisations including SNH, the JNCC, RSPB Scotland, WDC, and the ASFB. Cumulative impacts on benthic ecology, birds, marine mammals and fish interests have been fully considered in this consent and conditions put in place to minimise the impacts and ensure that residual impacts are within acceptable limits (**Annex 2**).

The cumulative impacts on any protected species or habitats have also been considered in the AA, undertaken by MS-LOT, on behalf of the Scottish Ministers.

Cumulative impacts on commercial fisheries were also raised by the SFF, however the Commercial Fisheries Working Group has been established in order to discuss and address such issues. A condition to ensure the Company continues its membership of the Working Group and its commitment to create a mitigation strategy forms part of this consent (**Annex 2**).

Concerns were also raised on the cumulative impacts on navigation by the CoS. A condition ensuring that consultation with the CoS on a Navigational Safety Plan what has to be approved by the Scottish Ministers prior to Commencement of the Development forms part of this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the cumulative impact of this Development with others in the Forth and Tay, and are of the opinion that there are no considerations with regards to this issue that would require consent to be withheld.

### The efficiency of wind energy

No form of electricity generation is 100% efficient and wind farms, in comparison with other generators, are relatively efficient. Less than half of the energy of the fuel going into a conventional thermal power station is transformed into useful electricity – much of it ends up as ash or air pollution harmful to health as well as carbon dioxide. Also, unlike conventional electricity power stations the fuel for a wind farm does not need to be mined, refined or shipped and transported from other countries.

The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

The Scottish Ministers, therefore, consider that they have sufficient information available on the efficiency of wind energy to reach a conclusion on this matter and are of the opinion that there are no considerations with regards to this issue that would require consent to be withheld.

#### *The development of renewable energy*

The Scottish Ministers must ensure that the development of the offshore wind sector is achieved in a sustainable manner in the seas around Scotland. This Development forms part of the Scottish Territorial Waters Round of offshore wind farm sites to be consented in Scotland and, as such, will raise confidence within the offshore wind industry that Scotland is delivering on its commitment to maximise offshore wind potential. This Development will also benefit the national and local supply chains. 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, and to provide significant export opportunities.

This 784 MW Development has the potential to annually generate renewable electricity equivalent to the demand from approximately 501,770 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020. Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of renewables generation, a balanced electricity mix is required to support the security of supply requirements. This does not mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the development of renewable energy that would require consent to be withheld.

#### *Proposed location of the Development*

The Scottish Ministers consider that the Company has carefully considered the location of the Development and selected the Forth and Tay due to its many advantages. In June 2011 The Crown Estate ("TCE") announced an Exclusivity Agreement with The Company. The suitability of the site was further affirmed in May 2010 with the Scottish Government's publication of the SEA in the Draft Plan for Offshore Wind Energy in Scotland which confirmed that six Scottish Territorial Waters 2009 lease round sites could be developed between 2010 and 2020 if

“appropriate mitigation is implemented to avoid, minimise and offset significant environmental impacts”. The Marine Renewable Energy and the Natural Heritage: an Overview and Policy Statement (SNH, 2004) and Matching Renewable Electricity Generation and Demand (Scottish Government, 2006) indicated the Firth of Forth Area was favoured for development of large scale offshore wind farms. There are a number of reasons for the site being suitable:

- it has an excellent wind resource with the mean wind speed at a height of 90metres estimated at 9.51 metres/second;
- at the closest point, the Development Area is approximately 15 km from the shore which will help minimise its visibility and potential conflicts with inshore uses;
- water depths and ground conditions are suitable for a variety of foundation types;
- there is already electrical infrastructure near the coastline to enable an efficient connection to the National Grid;
- there is good access to suitable ports and local supply chain for construction and operations. There are also nearby facilities for fabrication, assembly and maintenance support. The distance to these facilities will be important during operation as they will enable shorter response times for servicing thus improving operational availability and economic feasibility of the Inch Cape Offshore Wind Farm;
- there are no known Annex I habitats in the Development Area and it falls outside any designated conservation area; and
- there are no known active oil, gas or aggregate interests in the Development Area.

In March 2011 Blue Seas – Green Energy, A Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters was published by Marine Scotland. Of the original ten sites proposed by TCE in Scottish Territorial Waters, the ‘Blue Seas – Green Energy’ publication endorsed six of the original ten proposals as suitable sites for development. The six selected sites included the Development’s site as a short-term site (for development by 2020). The Plan recommended the Development option should be taken forward to the licensing stage. A key finding of the Plan was that there is significant potential for this Development in the short term and it appears to be publically and environmentally acceptable. Another key finding was that the east area relates closely to areas where there is significant potential for economic investment and employment.

The Scottish Ministers accept that the location of the Development was fully considered both prior to, and during, the application process and have undertaken a full and thorough consultation with relevant stakeholders and members of the public and are of the opinion that there are no considerations with regards to the proposed location of the Development 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.

The Company provided economic benefit estimates for up to a 50 year lifespan of the Development and a 25 year lifespan. As this consent is based based on an assumed 25 year lifespan, the following figures are based on 25 years.

The Company estimate that in Scotland the expenditure made by the Development (and Offshore Transmission Works) could generate Gross Value Added ("GVA") of between £115 million and £378 million in the construction phase, and between £12.5 million per annum and £17.9 million per annum in the operation and maintenance phase.

The Company estimate that the Development would support 369 – 1,216 jobs in Scotland, on average, per annum, during the construction phase. During the operations phase, this would fall to 94 - 135 FTE jobs on average per annum. It is estimated 150 FTE jobs would be created during the decommissioning phase.

The above estimates are based on 2 construction scenarios:

- Low case - where around 21 % of total expenditures are supplied from within Scotland and a further 17 % within the UK.
- High case - the majority of equipment and services would be procured from within the UK, around 47 % of total expenditures supplied from within Scotland and a further 25 % within the UK.

The proportions of expenditure, particularly under the high case, are subject to a high degree of uncertainty. However, the Company have assessed the low case and the high case as the realistic parameters within which the value of contracts will fall. At this stage, many development and procurement decisions are still to be made. Changes in the anticipated expenditure or procurement patterns from those anticipated during the assessment will change the associated estimates of employment and GVA. The effect on employment through the supply chain depends critically on the design, construction and operation decisions that are yet to be taken, and on the extent to which Scottish companies are able to secure contracts. The figures also assume that a proposal of 784 MW is developed.

The Company undertook consultation with local authorities in the study area; AC, DCC, FC, SBC and ELC and other organisations such as Scottish Enterprise and Visit Scotland in order to inform the assessment of the potential socioeconomic impacts of the Development.

## **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 Application and the consultation process has 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 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 Secretary of State 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, all relevant responses from consultees, and the one (1) public representation received; and
- 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 SAWEL, SBWEL, NNGOWL and all other relevant developments, and in light of mitigating measures and conditions proposed) will not adversely affect site integrity of any European protected sites, in view of such sites' conservation objectives.

Regarding the Company's application for a declarations under section 36A of the Electricity Act to extinguish public rights of navigation in so far as they pass through places in territorial waters adjacent to Scotland where the structures of the Development are to be located, there were no objections received by the Scottish Ministers during the consultation to the making of such a declaration. The Scottish Ministers, therefore, consider that there are no reasons as to why a declaration under section 36A should not be made.

## **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 for the construction and operation of the Development, with a permitted capacity of up to **784 MW** (as described in **Annex 1**).

Deemed planning for the onshore ancillary development was not applied for by the Company.

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 as described in **Annex 1**.

The Scottish Ministers grant a single consent for the Development in full rather than the two consents as sought by the Company. Under the terms of the consent the Company may seek the division of the Development to provide separate entities with rights and responsibilities under the consent by seeking an assignation, or a partial assignation, of the consent.

The Scottish Ministers MAKE A DECLARATION under Section 36A of the Electricity Act to extinguish public rights of navigation in so far as they pass through places within territorial waters where the structures forming part of the Development are located (**Annex 4**). One declaration is made rather than the requested two. The declaration may be modified by the Scottish Ministers under section 36A(5)(c) of the Electricity Act at the time of any assignation of the section 36 consent, if so required.

In accordance with section 36A(6)(b) of the Electricity Act, the Scottish Ministers request that the Company publicise the Declaration, as soon as reasonably practicable, to bring it to the attention of persons likely to be affected by it.

Copies of this letter and the consent have been sent to Angus Council, Dundee Council, East Lothian Council, Fife Council, and Scottish Borders Council. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website:

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

The Scottish Ministers' decision is final, 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 consent. The rules relating to applications for judicial review can be

found at Chapter 58 of the Court of Session rules on the website of the Scottish Courts:

<http://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

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

Yours sincerely,

Redacted  
Leader, Marine Scotland Licensing Operations Team  
A member of the staff of the Scottish Ministers  
10<sup>th</sup> October 2014

## ANNEX 1

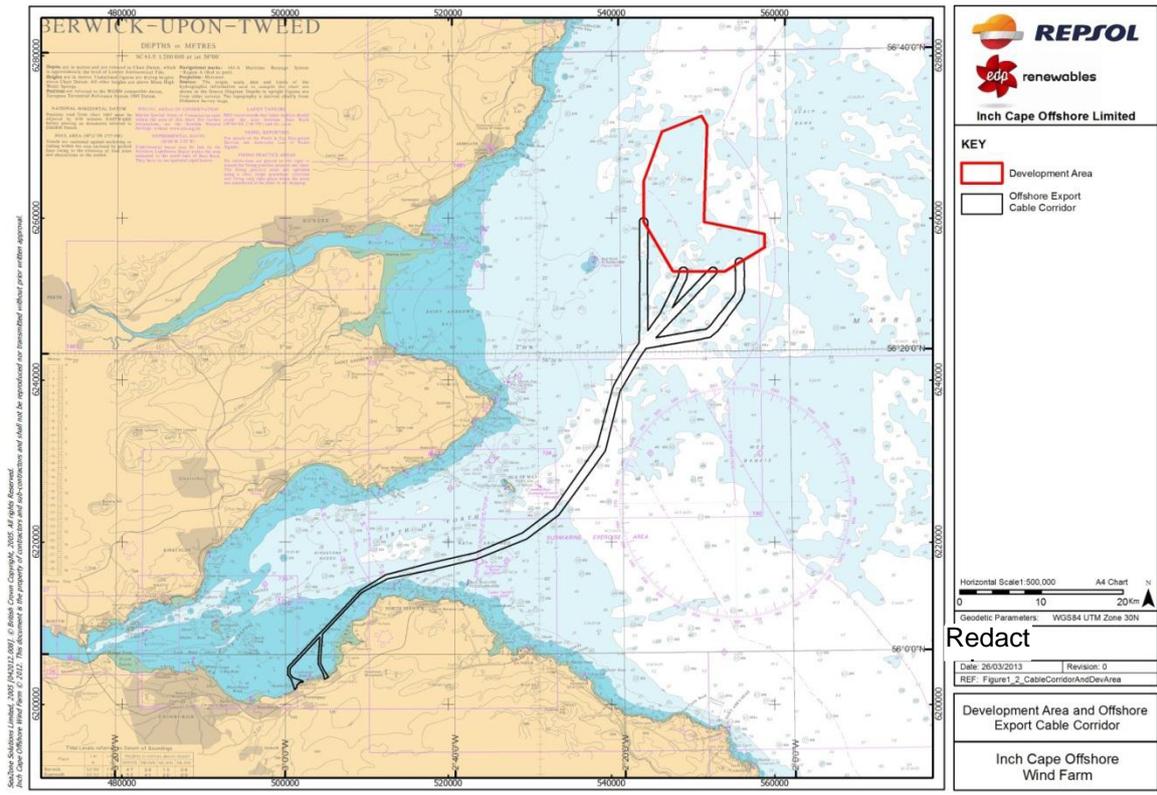
### Description Of The Development

An offshore wind turbine generating station located as shown in Figure 1 **DEVELOPMENT LOCATION** to this consent, with a gross electrical output capacity of up to 784 MW comprising:

1. not more than 110 three-bladed horizontal axis wind turbines each with:
  - a) a maximum blade tip height of up to 215 metres (measured from Lowest Astronomical Tide ("LAT"))
  - b) a minimum blade clearance of 22 metres above Highest Astronomical Tide ("HAT");
  - c) a maximum rotor diameter of 172 metres; and
  - d) minimum spacing (averaging crosswind and downwind) of 1000 metres. Each WTG always being subject to micro-siting of +/- 50m;
2. all associated foundations, substructures, fixtures, fittings;
3. for each WTG a transition piece (including access ladders /fences and landing platforms), turbine tower, rotors and nacelle; and
4. inter array cabling to the connection point on the offshore sub-station platforms including protections and cable crossings,

and, except to the extent modified by the foregoing, all as specified in the Application Letter and the project description contained in the accompanying Environmental Statement (Chapter 7) but subject always to the conditions specified in **Annex 2** of this consent.

Figure 1. Development location and export cable corridor



## ANNEX 2

### **CONDITIONS OF THE SECTION 36 CONSENT**

The consent granted in accordance with section 36 of the Electricity Act 1989 is subject to the following conditions:

1. The consent is for a period from the date this consent is granted until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, the Planning Authority, the Joint Nature Conservation Agency (“JNCC”) and Scottish Natural Heritage (“SNH”) no later than one calendar month after the Final Commissioning of the Development. Where the Scottish Ministers deem the Development to be complete on a date prior to the date when all wind turbine generators forming the Development have supplied electricity on a commercial basis to the National Grid then, the Scottish Ministers will provide written confirmation of the date of the Final Commissioning of the Development to the Company, the Planning Authority, JNCC and SNH no later than one calendar month after the date on which the Scottish Ministers deem the Development to be complete.

**Reason: To define the duration of the consent.**

2. The Commencement of the Development must be a date no later than 5 years from the date the consent is granted, or such other date from the date of the granting of this consent as the Scottish Ministers may hereafter direct in writing.

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

3. Where the Secretary of State has, following consultation with the Scottish Ministers, given notice requiring the Company to submit to the Secretary of State a Decommissioning Programme, 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 Secretary of State a Decommissioning Programme in compliance with that notice.

**Reason: To ensure that a decommissioning programme is submitted to the Secretary of State where the Secretary of State has, following consultation with the Scottish Ministers, so required before any construction commences.**

4. The Company is not permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant (with or without conditions) or refuse such authorisation as they may, in their own discretion, see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

5. In the event that for a continuous period of 12 months or more any Wind Turbine Generator (“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 must be decommissioned and the area of the Site containing that WTG must be reinstated by the Company in accordance with the procedures laid out within the Company’s Decommissioning Programme, within the period of 24 months from the date of the deeming decision by the Scottish Ministers.

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

6. If any serious health and safety incident occurs on the Site requiring the Company to report it to the Health and Safety Executive, then the Company must also notify the Scottish Ministers of the incident within 24 hours of the Company becoming aware of the incident occurring.

**Reason:** *To inform the Scottish Ministers of any serious health and safety incident occurring on the Site.*

7. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying Environmental Statement (“ES”), and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.

**Reason:** *To ensure that the Development is carried out in accordance with the Application documentation.*

8. 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 inspection.*

9. The Company must, no later than 6 months prior to the Commencement of the Development, 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 SNH, the JNCC, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved CoP (as updated and amended from time to time by the Company). Any updates or amendments made to the CoP by the Company

must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CoP must set out:

- 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.

**Reason: To confirm the timing and programming of construction.**

10. The Company must, no later than 6 months prior to the Commencement of the Development 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, the JNCC, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CMS must set out the construction procedures and good working practices for installing the Development. The CMS must also include 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. The CMS must be in accordance with the construction methods assessed in the ES and must include details of how the construction related mitigation steps proposed in the ES are to be delivered. The Development must, at all times, be constructed in accordance with the approved CMS (as updated and amended from time to time by the Company). Any updates or amendments made to the CMS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CMS must, 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 Piling Strategy (“PS”), 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. In the event that pile foundations are to be used, the Company must, no later than 6 months prior to the Commencement of the Development, submit a Piling Strategy (“PS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Development must, at all times,

be constructed in accordance with the approved PS (as updated and amended from time to time by the Company). Any updates or amendments made to the PS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The PS must include:

- a. Full details of the proposed method and anticipated duration of pile-driving at all locations;
- b. Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- c. Details of any mitigation and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the Application and must reflect any surveys carried out after submission of the Application. The PS must demonstrate how the exposure to and / or the effects of underwater noise have been mitigated in respect of the following species: bottlenose dolphin; harbour seal; grey seal; Atlantic salmon; cod; and herring.

The PS must, so far as is reasonably practicable, be consistent with the EMP, the Project Environmental Monitoring Programme (“PEMP”) and the CMS.

**Reason: To mitigate the underwater noise impacts arising from piling activity**

12. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Development 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 the MCA, NLB, CoS, SNH, the JNCC, SFF, CAA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved DSLPL (as updated and amended from time to time by the Company). Any updates or amendments made to the DSLPL by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. A plan showing the proposed location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, location of the substation platforms, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the Site;
- b. A list of latitude and longitude co-ordinates accurate to three decimal places of minutes of arc for each WTG, this should also be provided as a GIS shape file using WGS84 format;
- c. 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 HAT to the centreline of the generator shaft), rotor diameter and maximum rotation speed;
- d. The generating capacity of each WTG used on the Site and a confirmed generating capacity for the Site overall;
  - e. The finishes for each WTG (see condition 19 on WTG lighting and marking); and
  - f. The length and proposed arrangements on the seabed of all inter-array cables.

**Reason:** *To confirm the final Development specification and layout.*

13. The Company must, prior to the Commencement of the Development, submit a Design Statement ("DS"), in writing, to the Scottish Ministers that includes representative wind farm visualisations from key viewpoints as agreed with the Scottish Ministers, based upon the agreed final DSLP as approved by the Scottish Ministers (as updated and amended from time to time by the Company). The DS must be provided, for information only, to the Planning Authority, SNH, the JNCC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The DS must be prepared and signed off by at least one qualified landscape architect, instructed by the Company prior to submission to the Scottish Ministers.

**Reason:** *To inform interested parties of the final wind farm scheme proposed to be built.*

14. The Company must, no later than 6 months prior to the Commencement of the Development, 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 the JNCC, SNH, SEPA, RSPB Scotland, WDC, ASFB and any such other advisors 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 EMP (as updated and amended from time to time by the Company). Any updates or amendments made to the EMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The EMP must provide the over-arching framework for on-site environmental management during the phases of development as follows:

- a. all construction as required to be undertaken before the Final Commissioning of the Development; and
- b. 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 for by condition 3).

The EMP must be in accordance with the ES 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 pre-consent and pre-construction surveys, and include the relevant parts of the CMS (refer to condition 10);
- b. Pollution prevention measures and contingency plans;
- c. Management measures to prevent the introduction of invasive non-native marine species;
- d. Measures to minimise, recycle, reuse and dispose of waste streams; and
- e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, the JNCC, SNH, SEPA, RSPB Scotland, 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, submit an updated EMP, in writing, to cover the operation and maintenance activities for the Development to the Scottish Ministers for their written approval. Such approval may be given only following consultation with SNH, the JNCC, SEPA, RSPB Scotland 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 FTRAG (referred to in condition 25) over the lifespan of the Development, and be kept up to date (in relation to the likes of construction methods and operations of the Development in terms of up to date working practices and best practice) by the Company in consultation with the FTRAG.

The EMP must be informed, so far as is reasonably practicable, by the baseline surveys undertaken as part of the Application and the PEMP.

**Reason: To mitigate the impacts on the environmental interests during construction and operation.**

15. The Company must, no later than 6 months prior to the Commencement of the Development, 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, the JNCC, WDC and any such other advisors or organisations 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 VMP, (as updated and amended from time to time by the Company). Any updates or amendments made to the VMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval:

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

- a. The number, types and specification of vessels required;

- b. Working practices to minimise use of ducted propellers;
- c. How vessel management will be coordinated, particularly during construction but also during operation; and
- d. 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.

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, 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 the disturbance to marine mammals and birds.**

16. The Company must, no later than 3 months prior to the Commissioning of the first WTG, submit an Operations 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors as or organisations 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.

Operation and maintenance of the Development must, at all times, proceed in accordance with the approved OMP (as updated and amended from time to time by the Company). Any updates or amendments made to the OMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

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

17. The Company must, no later than 6 months prior to the Commencement of the Development, 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 and any other navigational advisors or organisations as may be required at the discretion of

the Scottish Ministers. The NSP must include, but is not 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 for the construction, operation and decommissioning phases of the Development; 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 371, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said Guidance prior to the approval of the NSP. The Development must, at all times, be constructed and operated in accordance with the approved NSP (as updated and amended from time to time by the Company). Any updates or amendments made to the NSP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

18. The Company must, no later than 6 months prior to the Commencement of the Development, 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 the JNCC, SNH, MCA, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CaP must be in accordance with the ES. The Development must, at all times, be constructed and operated in accordance with the approved CaP (as updated and amended from time to time by the Company). Any updates or amendments made to the CaP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CaP must include the following:

- a. Details of the location and cable laying techniques for the inter array cables;
- b. The results of survey work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing;
- c. Technical specification of inter array 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 (e.g. over trawl) surveys of the inter array cables through the operational life of the Development where mechanical protection of cables laid on the sea bed is deployed; and
- f. Methodologies for inter array cable inspection with measures to address and report to the Scottish Ministers any exposure of inter array cables.

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

19. The Company must, no later than 6 months prior to the Commencement of the Development, 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 MCA, NLB, CAA, MOD 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 current CAA and MOD Aviation lighting Policy and also 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 prior to approval of the LMP.

The Company must provide the LMP, for information only, to the Planning Authorities, SNH, the JNCC and any other bodies 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 LMP (as updated and amended from time to time by the Company). Any updates or amendments made to the LMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

20. The Company must, prior to the erection of any WTGs on the Site, submit an Air Traffic Control Radar Mitigation Scheme (“ATC Scheme”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MOD.

The ATC Scheme is a scheme designed to mitigate the impact of the Development upon the operation of the Primary Surveillance Radar at RAF Leuchars (“the Radar”) and the air traffic control operations of the Ministry of Defence which is reliant upon the Radar. The ATC Scheme must set out the appropriate measures to be implemented to mitigate the impact of the Development on the Radar and shall be in place for the operational life of the Development provided the Radar remains in operation.

No turbines shall become operational unless, and until, all those measures required by the approved ATC Scheme to be implemented prior to the operation of the turbines have been implemented and the Scottish Ministers have confirmed this in writing. The Development shall thereafter be operated fully in accordance with the approved ATC Scheme.

**Reason: To mitigate the adverse impacts of the Development on the air traffic control radar at RAF Leuchars and the operations of the MOD.**

21. The Company must ensure that no turbine with a blade tip height greater than 186 metres above Mean Sea Level (Newlyn) shall be erected in any part of the Site which is within radar line of sight coverage to the Air Defence radar at Remote Radar Head (RRH) Buchan unless, and until, a technical mitigation proposal to address the Ministry of Defence's concerns has been submitted to and accepted in writing by the Scottish Ministers, in consultation with the MOD.

**Reason: To mitigate the adverse impact of the Development on RRH Buchan.**

22. The Company must, prior to the Commencement of the Development, and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition 12), provide the positions and maximum heights of the WTGs, construction equipment over 150m in height (measured above LAT) and any Offshore Sub-Station Platforms to the United Kingdom Hydrographic Office ("UKHO") for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide 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.**

23. The Company must, at least 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan ("TTP") in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Transport Scotland and any such other advisors as may be required at the discretion of the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must be constructed and operated in accordance with the approved TTP (as updated and amended from time to time, following written approval from the Scottish Ministers)

**Reason: To maintain the free flow and safety of the Trunk Road network.**

24. The Company must, no later than 6 months prior to the Commencement of the Development, 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, the JNCC, RSPB Scotland, WDC, ASFB and any other ecological advisors or organisations as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the ES 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.

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

The Scottish Ministers may agree that monitoring may be reduced or ceased before the end of the lifespan of the Development.

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

- a. Pre-construction, construction (if appropriate by the Scottish Ministers) and post-construction monitoring surveys for:
  1. Birds;
  2. Sandeels;
  3. Marine fish;
  4. Diadromous fish;
  5. Benthic communities; and
  6. Seabed scour and local sediment deposition.
- b. The participation by the Company in surveys to be carried out in relation to marine mammals as set out in a Marine Mammal Monitoring Programme (“MMMP”); and
- c. The participation by the Company in a National Strategic Bird Monitoring Framework (“NSBMF”) and surveys to be carried out in relation to regional and / or strategic bird monitoring including but not necessarily limited to:
  1. the avoidance behaviour of breeding seabirds around turbines;
  2. flight height distributions of seabirds at wind farm sites;
  3. displacement of kittiwake, puffin and other auks from wind farm sites; and
  4. effects on survival and productivity at relevant breeding colonies.

All initial methodologies for the above monitoring must be approved, in writing, by the Scottish Ministers and, where appropriate, in consultation with the Forth and Tay Regional Advisory Group (“FTRAG”) referred to in condition 25 of this consent. Any pre-consent surveys carried out by the Company to address any of the above species may be used in part to discharge this condition subject to the written approval by the Scottish Ministers.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by the Scottish Ministers, in

consultation with the FTRAG to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the FTRAG, 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 with FTRAG and any other ecological, or such other advisors as may be required at the discretion of the Scottish Ministers. The PEMP, as amended from time to time, must be fully implemented by the Company at all times.

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

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

25. The Company must participate in any Forth and Tay Regional Advisory Group (“FTRAG”) 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, diadromous fish, marine mammals and commercial fish. Should a SSMEG be established (refer to condition 26), the responsibilities and obligations being delivered by the FTRAG will be subsumed by the SSMEG at a timescale to be determined by the Scottish Ministers.

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

26. 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.**

27. 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 the JNCC and SNH, appoint an Ecological Clerk of Works (“ECoW”). The ECoW must be appointed in time to review and approve the final draft version of the first plan or programme submitted under this consent to the Scottish Ministers for approval, until the Final Commissioning of the Development.

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

- a. Quality assurance of final draft version of all plans and programmes required under this consent;
- b. Provide advice to the Company on compliance with consent conditions, including the conditions relating to the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- c. Monitor compliance with the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- d. Provide reports on point c) above to the Scottish Ministers at timescales to be determined by the Scottish Ministers; and
- e. Inducting site personnel on site / works environmental policy and procedures.

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

- 28.** The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the 'National Research and Monitoring Strategy for Diadromous Fish' so far as they apply at a local level. The extent and nature of the Company's participation is to be agreed by the Scottish Ministers in consultation with the FTRAG.

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

- 29.** The Company must, no later than 6 months prior to the Commencement of the Development, submit a Commercial Fisheries Mitigation Strategy ("CFMS"), in writing, to the Scottish Ministers for their written approval.

The Company must remain a member of the Forth and Tay Offshore Wind Developers Group-Commercial Fisheries Working Group or any successor group formed to facilitate commercial fisheries dialogue in the Forth and Tay region.

The Company must include in the CFMS a mitigation strategy for each commercial fishery that Ministers are reasonably satisfied would be adversely affected by the Development. The CFMS must, in particular, include mitigation measures for lobster stock enhancement if the Scottish Ministers are satisfied that such mitigation measures are reasonably necessary. Within such a time period as required by the Scottish Ministers, the Company must undertake a feasibility study specifically to assess the use of alternate scallop gear within the Development area. The scope of the feasibility study must be agreed in writing, by the Scottish Ministers, and must include how scallop gear may be redesigned to coexist with the Development infrastructure.

The Company must implement all mitigation measures committed to be carried out by the Company in terms of the CFMS. The Company must require all of its contractors, and sub-contractors, to co-operate with the fishing industry to ensure the effective implementation of the CFMS.

**Reason:** *To minimise the impact on commercial fishermen.*

29. Prior to the Commencement of the Development, a Fisheries Liaison Officer (“FLO”), approved in writing by Scottish Ministers, in consultation with the FTOWDG-CFWG, must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The Company must notify the Scottish Ministers of the identity and credentials of the FLO before any construction work commences by including such details in the EMP (referred to in condition 14). The FLO must establish and maintain effective communications between the Company, 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, 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. Provision of information relating to the safety of persons engaged in fishing operations on the site of the Development; and
- c. Ensuring that information is made available and circulated in a timely manner to minimise interference with fishing operations and other users of the sea.

**Reason: To mitigate the impact on commercial fishermen.**

30. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Marine Archaeology Reporting Protocol 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 any such advisors as may be required at the discretion of the Scottish Ministers. The Reporting Protocol must be implemented in full, at all times, by the Company.

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

## **Annex 3**

### **DEFINITIONS AND GLOSSARY OF TERMS**

In this decision letter and in Annex 1 and 2:

“the Applicant” means Inch Cape Offshore Limited (“ICOL”) (Company Number SC373173)

“the Application” includes the Application letter and Environmental statement and marine license applications submitted to the Scottish Ministers by Inch Cape Offshore Limited on 1<sup>st</sup> July 2013.

“AA” means Appropriate Assessment.

“ABC” means the Acceptable Biological Change tool.

“CEH” means Centre for Hydrology.

“Commencement of the Development” means the date on which Construction begins on the site of the Development in accordance with this consent.

“Commissioning of the First WTG” means the date on which the first wind turbine generator forming the Development has supplied electricity on a commercial basis to the National Grid.

“Construction” means as defined at section 64(1) of the Electricity Act 1989, read with section 104 of the Energy Act 2004

“Decommissioning Programme” means the programme for decommissioning the relevant object, to be submitted by the Company to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended).

“Design Envelope” also referred to as Rochdale Envelope, is an approach to consenting and environmental impact, named after a UK planning law case, which allows a project description to be broadly defined, within a number of agreed parameters, for the purposes of a consent application.

“ECoW” means Ecological Clerk of Works.

“EIA” means Environmental Impact Assessment.

“EMF” means electromagnetic fields.

“EPS” means European Protected Species.

“ERCoP” means Emergency Response & Cooperation Plan.

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Inch Cape Offshore Limited on 1<sup>st</sup> July 2013 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.

“FLO” means a Fisheries Liaison Officer.

“GBS” means Gravity Base Structure

“GIS” means Geographic Information System

“GVA” means Gross Value Added and represents a measure of the contribution to the economy of each individual producer, industry or sector in the United Kingdom.

“GW” means gigawatt.

“HAT” means Highest Astronomical Tide - the highest level of water which can be predicted to occur under any combination of astronomical conditions.

“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.

“MGN371” means Marine Guidance Note 371 and refers to the Maritime and Coastguard Agency Marine Guidance Note 371 Offshore Renewable Energy installations (OREI’s) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

“MHWS” means Mean High Water Spring tides.

“MPA” means Marine Protected Area

“MW” means megawatt.

“nm” means nautical miles.

“NSBMF” means National Strategic Bird Monitoring Framework

“OfTI” means the Offshore Transmission Infrastructure.

“PBR” means Potential Biological Removal.

“the Planning Authority” means East Lothian Council (“ELC”)

“the Planning Authorities” mean Angus Council (“AC”), East Lothian Council (“ELC”), Dundee City Council (“DCC”), Scottish Borders Council (“SBC”) and Fife Council (“FC”)

“PMF” means Priority Marine Feature

“PVA” means Population Viability Analysis.

“ruABC” reduced uncertainty method of Acceptable Biological Change

“SAC” means Special Area of Conservation

“Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010.

“Scottish offshore region” has the meaning given in section 322 of the Marine and Coastal Access Act 2009 (as amended).

“SEA” means Strategic Environmental Assessment.

“Soft start piling” means the gradual increase of piling power, incrementally over a set time period, until full operational power is achieved.

“SPA” means Special Protection Area.

“SSMEG” means Scottish Strategic Marine Environment Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a National scale, set up by the Scottish Ministers

“the Application letter” means the Application letter and Environmental Statement submitted to the Scottish Ministers by the Company on 1<sup>st</sup> July 2013.

“the Company” means Inch Cape Offshore Limited, Company Registration Number: SC373173; and having its registered office at Repsol, 5<sup>th</sup> Floor, 40 Princess Street, Edinburgh, EH2 2BY.

“the Development” means the Inch Cape Offshore Limited electricity generating station East of the Angus Coastline.

“the Proposal” means the proposed Inch Cape Offshore wind farm.

“the Radar” means Primary Surveillance Radar at RAF Leuchars.

“the Site” means the area shaded in red in Figure 1, attached to this consent at Annex 1.

“UK” means United Kingdom

“WTG” means wind turbine generator.

“WGS84” means the World Geodetic System 1984.

“MMOs” means marine mammal observers

### **Organisations**

“AC” means Angus Council.

“AMSGA” means Arbroath and Montrose Static Gear Association.

“ASFB” means The Association of Salmon Fishery Boards.

“CAA” means The Civil Aviation Authority.

“CFWG” means Commercial Fisheries Working Group a Working group part of FTOWDG.

“CoS” means The Chamber of Shipping.

“FC” means Fife Council.

“FMA” means the Fishermen’s Mutual Association (Pittenweem) Ltd.

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

“FTRAG” means Forth and Tay Regional Advisory Group.

“IALA” means International Association of Marine Aids to Navigation and Lighthouse Authorities.

“ICOL” means Inch Cape Offshore Limited.

“JNCC” means The Joint Nature Conservation Committee.

“MCA” means The Maritime and Coastguard Agency.

“MOD” means Ministry of Defence.

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

“MSS” means Marine Scotland Science.

“NATS” means National Air Traffic Service.

“NLB” means The Northern Lighthouse Board.

“NNGOWL” means Neart na Gaoithe Offshore Wind Limited.

“Repsol” means Repsol Nuevas Energias UK Limited.

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

“RYA Scotland” means Royal Yachting Association Scotland.

“SAS” means Surfers Against Sewage.

“SA” means the Scallop Association.

“SNH” means Scottish Natural Heritage.

“SAWEL” means Seagreen Alpha Wind Energy Limited.

“SBWEL” means Seagreen Bravo Wind Energy Limited.

“SCA” means Scottish Canoe Association.

“SWEL” means Seagreen Wind Energy Limited.

“SEPA” means the Scottish Environment Protection Agency.

“SFF” means The Scottish Fisherman’s Federation.

“SG” means The Scottish Government.

“SMRU” means Sea Mammal Research Unit.

“TCE” means The Crown Estate.

“TS” means Transport Scotland.

“UKHO” means United Kingdom Hydrographic Office.

“VHF” means Very High Frequency radio.

“WDC” means Whale and Dolphin Conservation.

#### Plans, Programmes and Statements

“ADRM scheme” means Air Defence Radar Mitigation Scheme.

“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme. A detailed scheme to mitigate the adverse impacts of the Development on the air traffic control radar at RAF Leuchars and the air surveillance and control operations of the Ministry of Defence. The scheme will set out the appropriate measures to be implemented to that end.

“CaP” means Cable Plan.

“CoP” means Construction Programme.

“CFMS” means Commercial Fisheries Mitigation Strategy - the final document produced from consultation between Seagreen Wind Energy Limited and the Forth & Tay Offshore Wind Developers Group - Commercial Fisheries Working Group (“FTOWDG-CFWG”).

“CMS” means Construction Method Statement.

“DS” means Design Statement.

“DSL P” means Development Specification and Layout Plan.

“EMP” means Environmental Management Plan.

“LMP” means Lighting and Marking Plan.

“MMMP” means Marine Mammal Monitoring Programme which is a programme to be put in place by the licensee to monitor the effects of the Inch Cape Offshore wind Limited wind farm on marine mammals in co-ordination (through the Forth and Tay Regional Advisory Group (“FTRAG”)) with other MMMPs to be developed by other Forth and Tay projects, as required by the Licensing Authority.

“NPF2” means Scotland’s National Planning Framework 2.

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

“NREAP” means UK Government's National Renewable Energy Action Plan.

“NSP” means Navigational Safety Plan.

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy.

“RRH” means Remote Radar Head.

“the Strategy” means “*National Research and Monitoring Strategy for Diadromous Fish*” and refers to a strategy that will be formulated from the Marine Scotland Science Report 05/13 – “The Scope of Research Requirements for Atlantic Salmon, Sea Trout and European Eel in the Context of Offshore Renewables” to monitor migratory fish at a strategic level.

“TTP” means Traffic and Transportation Plan.

“VMP” means Vessel Management Plan.

### Legislation

“Wild Birds Directive” means Council Directive 79/409/EEC of 2<sup>nd</sup> 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 30<sup>th</sup> November 2009.

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

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

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

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

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

“the 2009 Act” means Marine and Coastal Access Act 2009 (as amended).

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

“SPG” means the Fife Council’s Supplementary Planning Guidance (SPG) on Wind Energy 2011 which supplements the local plan policies.

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

“TAYplan SDP” means the TAYplan Strategic Development Plan.

## **ANNEX 4**

### **SECTION 36A DECLARATION**

#### **DECLARATION UNDER SECTION 36A OF THE ELECTRICITY ACT 1989 RELATING TO PUBLIC RIGHTS OF NAVIGATION SO FAR AS THEY PASS THROUGH THE LOCATIONS IN THE SEA WHERE THOSE STRUCTURES FORMING PART OF THE INCH CAPE OFFSHORE WIND FARM GENERATING STATION ARE TO BE PLACED**

The Scottish Ministers, in exercise of the powers conferred on them by section 36A of the Electricity Act 1989 (“the Electricity Act”) and all other powers enabling them to do so, make the following declaration.

In accordance with section 36A (1) and 36A (2) of the Electricity Act, the application for this declaration was made to the Scottish Ministers at the same time as an application was made to them by Inch Cape Offshore Limited (“the Company”) under section 36 of the Electricity Act for the construction and operation of the Inch Cape Offshore Wind Farm generating station, which is to comprise of renewable energy installations. This declaration is made at the same time as consent is granted under section 36 of the Electricity Act for the construction and operation of the Inch Cape Offshore Wind Farm generating station.

In this declaration the “plan folio” means the plan folio number int0049\_5\_R1, entitled “Inch Cape 1 Indicative Turbine Layout”, and signed with reference to this declaration and attached hereto. The Inch Cape Offshore Wind Farm generating station is to be constructed within the area delineated on the plan folio by a solid red line, as more specifically described by a line joining the co-ordinates listed at lines 1 – 10 in table 1 attached to this declaration (the “Area”).

Consent under section 36 of the Electricity Act is granted by the Scottish Ministers for the construction and operation of the Inch Cape Offshore Wind Farm generating station in the Area, subject to the following parameters:

- a) the total number of turbines shall be up to 110;
- b) the total number of sub-stations shall be up to 3;
- c) the total number of meteorological masts shall be up to 3; and
- d) the distance between turbines shall be not less than 1000 metres.

The wind turbines, sub-stations and meteorological masts to be constructed in accordance with the consent are identified, for the purposes of section 36A (5) (a) of the Electricity Act, as the proposed renewable energy installations by reference to which this declaration is made (the “Renewable Energy Installations”).

The Scottish Ministers declare that, in accordance with section 36A(3) of the Electricity Act, the public rights of navigation in the Area in so far as they pass through the locations where the Renewable Energy Installations are to be situated, are extinguished.

It is a requirement of the consent (conditions 9 and 12 at **DECISION LETTER AND CONDITIONS, Annex 2**) that the Company must submit to the Scottish Ministers, for their approval, a Construction Programme which must set out, amongst other matters, the proposed date for the commencement of the construction of the generating station and a Development Specification and Layout Plan for the Renewable Energy Installations (“the Plan”), both no later than 6 months prior to the commencement of the construction of the generating station. In accordance with section 36A(5)(b) of the Electricity Act this declaration shall come into force on a date to be publicised by the Company, the publication of which must be as soon as reasonably practicable following the approval by the Scottish Ministers of the Plan.

Subscribed by [ ]  
being an officer of the Scottish Ministers at Aberdeen on the [10 ] day of [October]  
2014

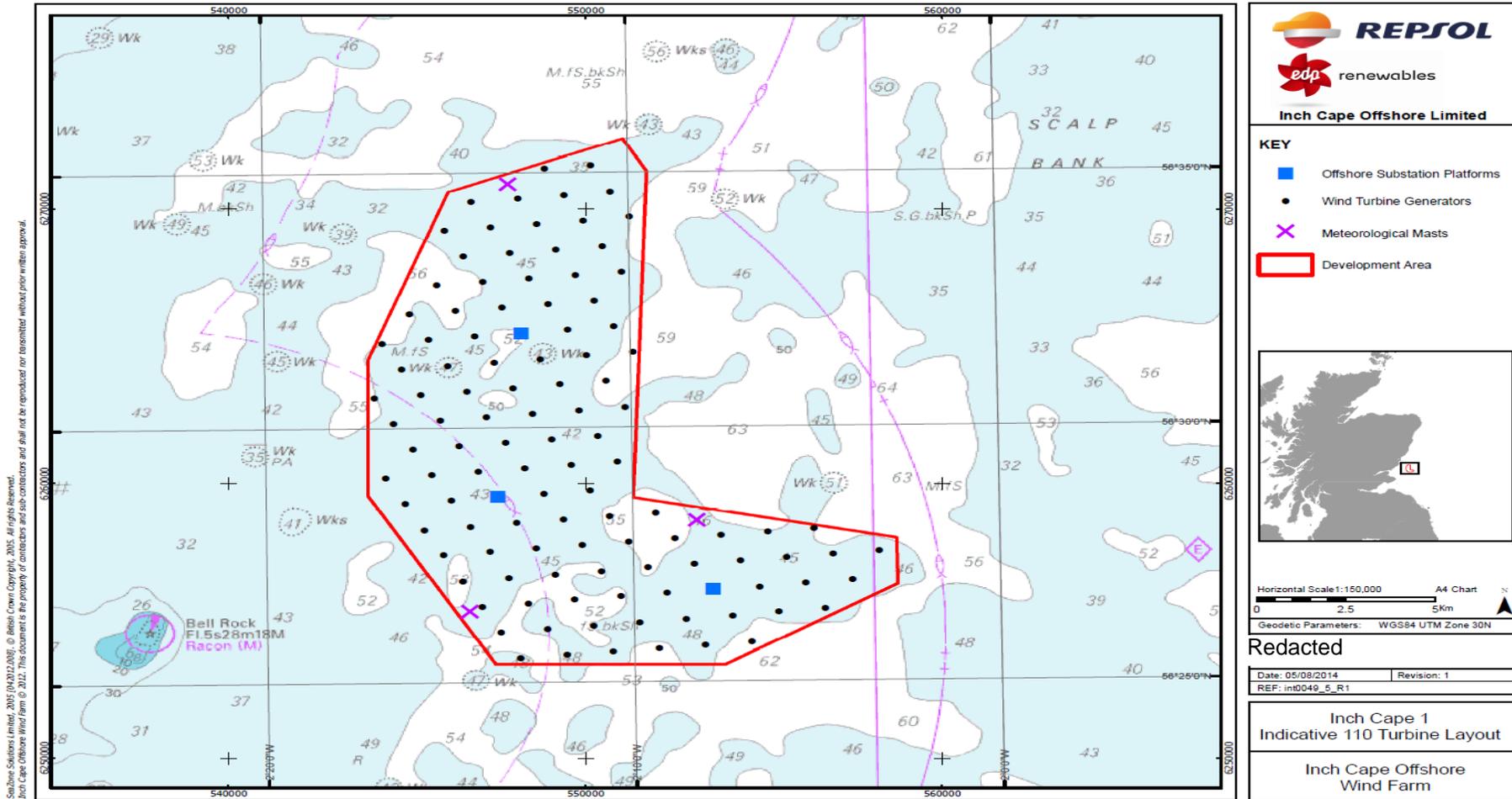
before this witness [ ] in Aberdeen

**TABLE 1: CO-ORDINATES OF THE OUTER BOUNDARY OF THE INCH CAPE OFFSHORE WIND FARM GENERATING STATION**

Coordinates supplied in World Geodetic System 1984, latest revision.

ID	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)	Latitude (Degrees / Decimal Minutes)	Longitude (Degrees / Decimal Minutes)	X Coordinate (UTM z30N - Meters)	Y Coordinate (UTM z30N - Meters)
1	56.46329889	-2.047320000	56° 27.798' N	002° 02.839' W	558702.7645	6258052.255
2	56.47720134	-2.166704268	56° 28.632' N	002° 10.002' W	551327.9337	6259504.044
3	56.58397748	-2.158371804	56° 35.039' N	002° 09.502' W	551695.5330	6271394.716
4	56.59463227	-2.168960085	56° 35.678' N	002° 10.138' W	551030.8251	6272572.707
5	56.57766741	-2.248811704	56° 34.660' N	002° 14.929' W	546148.2398	6270627.926
6	56.52304353	-2.286298855	56° 31.383' N	002° 17.178' W	543908.5081	6264523.505
7	56.47825442	-2.287140250	56° 28.695' N	002° 17.228' W	543908.4687	6259537.805
8	56.42300907	-2.230137690	56° 25.381' N	002° 13.808' W	547488.3128	6253426.787
9	56.42231929	-2.125964644	56° 25.339' N	002° 07.558' W	553914.9341	6253426.819
10	56.44819556	-2.046898049	56° 26.892' N	002° 02.814' W	558752.0717	6256371.621

PLAN FOLIO NUMBER: int0049\_5\_R1



Signed by [ ] being an officer of the Scottish Ministers at Aberdeen on the [10] day of [October] 2014

