

SCOTTISH MINISTERS' CONSIDERATION OF THE CASE FOR A  
DEROGATION UNDER THE CONSERVATION (NATURAL HABITATS,  
&C.) REGULATIONS 1994 AND THE CONSERVATION OF OFFSHORE  
MARINE HABITATS AND SPECIES REGULATIONS 2017

APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT  
1989, AND FOR MARINE LICENCES UNDER THE MARINE (SCOTLAND) ACT  
2010 AND THE MARINE AND COASTAL ACCESS ACT 2009 FOR THE  
CONSTRUCTION AND OPERATION OF GREEN VOLT OFFSHORE WIND FARM  
AND ASSOCIATED TRANSMISSION INFRASTRUCTURE.

SITE DETAILS: GREEN VOLT OFFSHORE WIND FARM, APPROXIMATELY 80  
KILOMETRES OFF ABERDEENSHIRE COAST.

<b>Name</b>	<b>Date</b>
Amy Alexander	18 April 2024
Kerry Bell	18 April 2024
Louise Msika	18 April 2024

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## SECTION 1: INTRODUCTION

### 1 Requirement for Derogation

- 1.1 The Green Volt offshore wind farm (“the Project”) is a floating offshore wind farm located approximately 80 kilometres (“km”) off the coast of Aberdeenshire, and will have a generating capacity of up to 560 Megawatts (“MW”) produced by up to 35 offshore Wind Turbine Generators (“WTGs”). There will be up to 35 inter-array cables totalling a maximum of 134km and up to four High Voltage Alternating Current (“HVAC”) export cables. Two of the HVAC export cables are proposed to run from the wind farm array area to the Buzzard oil and gas platform complex for electrification purposes (60 km total of cable). The remaining two export cables are proposed to run to landfall near Peterhead (240 km total of cable).
- 1.2 Green Volt Offshore Windfarm Limited (“the Company”) was granted a lease option under the Crown Estate Scotland Innovation and Targeted Oil and Gas (“INTOG”) leasing round and is a Targeted Oil and Gas project which proposes to provide electricity to the Buzzard oil and gas platform complex, with any excess electricity generated exported to the national grid. The application has been made prior to the sectoral marine plan for the INTOG leasing round concluding.
- 1.3 The Appropriate Assessment (“AA”) for the Project was unable to conclude beyond reasonable scientific doubt that there would be no adverse effect on the following features of the following designated sites in combination with other projects:
- Kittiwake at Buchan Ness to Collieston Coast SPA;
  - Kittiwake, razorbill and guillemot at East Caithness Cliffs SPA;
  - Gannet at Forth Islands SPA;
  - Kittiwake at Fowlsheugh SPA; and
  - Kittiwake at Troup, Pennan and Lion’s Heads SPA.
  - Guillemot at Fowlsheugh SPA; and
  - Puffin at Forth Islands SPA.
- 1.4 A copy of the AA can be found in Annex B: Appropriate Assessment.
- 1.5 Given that the AA identified adverse effects at the sites listed above, the Scottish Ministers, as the competent authority, can only agree to the Project if the requirements of the derogation provisions in the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regs”) and Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the 2017 Regs”) (together, “the Habitats Regulations”) are met. These provisions are set out at Regulations 49 and 53 of the 1994 Regs and Regulations 29 and 36 of the 2017 Regs, and the Scottish Ministers have considered

the Project against the requirements of these provisions to determine whether the Project can be consented.

- 1.6 Regulation 49 of the 1994 Regs and Regulation 29 of the 2017 Regs state that the competent authority may agree to a project if: firstly, it is satisfied that there are no alternative solutions; secondly, the project must be carried out for imperative reasons of overriding public interest (“IROPI”), notwithstanding a negative assessment of the implications for a European site. Thirdly, sections 53 of the 1994 Regs and 36 of the 2017 Regs further require that where a project is agreed to in accordance with regulation 49 of the 1994 Regs and regulation 29 of the 2017 Regs, notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of the UK site network is protected. These three derogation tests must be considered by the Scottish Ministers sequentially and each one must be satisfied before consent can be granted on the basis of these provisions.
- 1.7 The following sections document the Scottish Ministers’ considerations in respect of each of these tests, which have been assessed in the following sequential order:
- alternative solutions to the Project have been considered;
  - consideration has been given to whether there are IROPI justifying the Project proceeding; and
  - compensatory measures put forward by the Developer to ensure the protection of the overall coherence of the network have been considered.
- 1.8 The Company submitted a Without Prejudice Derogation Case (“Derogation Case”) and Offshore Ornithology Compensation Report (“Compensation Report”) to the Scottish Ministers on 20 October 2023. NatureScot was consulted on these documents and provided extensive comments. Following further discussions with NatureScot and Scottish Ministers, the Company submitted further details in a Without Prejudice Derogation Case Appendix (“Derogation Case Appendix”) and Outline Seabird Compensation Plan (“Outline Plan”) dated 16 April 2024. NatureScot was consulted on the Outline Plan and provided a response on 17 April 2024.

## **SECTION 2: CONSIDERATION OF ALTERNATIVE SOLUTIONS**

### **2 Project Objectives**

- 2.1 This section of the HRA determines whether there are no alternative solutions to the Project.
- 2.2 The Company has outlined at section 4.2.1 of its Derogation Case a series of objectives for the Project as follows:

- Cut emissions from Oil and Gas (“O&G”) production operations in Scottish waters to support the North Sea Transition Deal (“NSTD”) decarbonisation targets and the Scottish Government’s INTOG Sectoral Marine Plan (and the associated Crown Estate Scotland INTOG leasing round).
- Deliver a sustainable contribution of new low carbon electricity to the Scottish North Sea Oil & Gas sector before 2030.
- Contribute to Scotland’s commitments to address global climate change and achieve net zero by 2045.
- Lead the scaling up of the floating offshore wind supply chain in Scotland in the 2020s, ahead of ScotWind developments in the 2030s, with the associated economic development benefits for Scotland.
- Make efficient use of and optimise generation capacity within the constraints of a site in reasonable proximity to the Buzzard oil and gas platform complex.

2.3 The Company has further provided an explanation of the rationale for each objective, which is based on the identified need to deploy offshore wind at scale and contribute to the decarbonisation of energy production, outlined in section 3 of its Derogation Case. The Scottish Ministers consider that whilst these may be valid objectives for the Company to help frame the development of the Project, they are not all essential for the consideration of the alternative solutions.

2.4 Having regard to the objectives identified by the Company, the Scottish Ministers have considered these in the context of Scottish and UK policy frameworks, including the Scottish Government’s legislative commitments and policy framework, which set out key national ambitions for Scotland’s energy future to achieve net zero emissions by 2045 to mitigate the effects of climate change. The development of offshore wind is driven by the need to limit the magnitude and impacts of climate change and the earlier that steps towards decarbonisation are introduced the greater their contribution to limiting climate change will be. Furthermore, the timeframe available for securing the benefits from decarbonising the operation of O&G platforms is limited and reducing due to the diminishing life remaining for the extraction of O&G from Scottish waters. The Scottish Ministers consider therefore that a key objective of the Project is to be operational at the earliest date possible in terms of decarbonising O&G infrastructure and the Scottish electricity supply.

2.5 The Scottish Ministers have considered the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, the Scottish Government’s draft Energy Strategy and Just Transition Plan (“ESJTP”) (2023), the Scottish Government’s Offshore Wind Policy Statement (2020) and the Initial Plan Framework for the development of a Sectoral Marine Plan for INTOG Decarbonisation (2022), whilst noting that an updated Sectoral Marine Plan incorporating the INTOG programme is not yet in place.

- 2.6 In addition, the Scottish Ministers have considered the UK Government’s North Sea Transition Deal (2021) which aims to support the O&G sector in its transition to a net zero economy by setting decarbonisation targets in offshore production emissions. The Scottish Ministers have also had due regard to the UK Government’s Overarching National Policy Statement for energy (EN-1), published in January 2024, and its National Policy Statement for renewable energy infrastructure (EN-3), published in November 2023. These policies provide a framework for delivering the UK’s international commitments on climate change. The Scottish Ministers have taken particular account of EN-1’s identification of nationally significant low carbon infrastructure (which includes offshore wind) as a critical national priority (“CNP”) such that when considering derogations under the Habitat Regulations the starting point for CNP infrastructure should be the overarching need for energy security and decarbonising the power sector to combat climate change.
- 2.7 The Scottish Ministers are aware that some of the Company’s objectives for the Project are set within the mechanisms for promoting the development of offshore wind and INTOG projects, notably Crown Estate Scotland’s exclusivity agreements in relation to the areas of the seabed to be developed. The Scottish Ministers note the Company’s reference to the Buzzard oil and gas platform complex but have not constrained themselves to solely assessing those alternatives that could be delivered by the Company. The Scottish Ministers however note that any alternative must be economically feasible for the Company (although it is acknowledged that higher cost alternatives to the Project can be considered) and allow it to fulfil the terms of its exclusivity agreement with Crown Estate Scotland.
- 2.8 The Scottish Ministers consider the following to be the appropriate and primary objectives of the Project and consider that the benefits from the Project to Scotland and/or the Company could alternatively be provided by any projects with these same objectives:
- i. To generate low carbon electricity from offshore wind farms in support of the decarbonisation of the Scottish electricity supply;
  - ii. To export electricity to the Scottish electricity grid to support Scottish commitments for offshore wind generation and security of supply;
  - iii. To contribute to the delivery of a significant volume of offshore wind in Scottish waters in the 2020s;
  - iv. To generate and deliver low carbon electricity from offshore wind farms in support of the decarbonisation of O&G infrastructure operations in Scottish waters;
  - v. To optimise generation and export capacity within the constraints of available Scottish sites and onshore transmission infrastructure.

### **3 Identification of Alternative Solutions**

- 3.1 The Company has identified and assessed at section 4.4 of its Derogation Case, several alternatives to the Project and has provided further commentary and an updated assessment at section 2 of its Derogation Case Appendix.
- 3.2 The Scottish Ministers do not consider alternative forms of renewable technologies or onshore wind farms to be “alternatives” to offshore wind given the policy objectives identified for the Project. It follows that identification of reasonable alternative solutions will consist of either a ‘Do Nothing’ approach, or consideration of an alternative project location, scale or design. Any alternative identified must be capable of meeting the identified policy objectives, be legally, technically and financially feasible, and have a lower impact on the designated sites.
- 3.3 The Scottish Ministers have also taken into consideration the policy on alternatives contained in the UK’s EN-1, which provides that the need for energy security and decarbonisation of the power sector to combat climate change requires a significant number of deliverable locations for CNP Infrastructure, across the UK, and for each location to maximise its capacity. On this basis, EN-1 notes that “other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution” and “...the existence of another way of developing the proposed project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution” (para 4.2.21).
- 3.4 Alternative types of wind farm projects considered are:
- a) Offshore wind farms not in UK Exclusive Economic Zone (“EEZ”)
  - b) Offshore wind farms in the UK EEZ but not in Scottish waters;
  - c) Offshore wind farms within Scottish waters, including:
    - i) within the exclusivity area in which the Project is located;
    - ii) at other locations available to the Company;
    - iii) within other areas for which Crown Estate Scotland have granted INTOG exclusivity agreements to other developers; and
    - iv) within other leasing areas let from Crown Estate Scotland including Scotwind and any future leasing rounds that may emerge.

### **4 Consideration of Alternative Solutions**

#### **4.1 Do Nothing**

- 4.1.1 The Company considers a ‘Do Nothing’ scenario at section 4.4.1 of its Derogation Case and provides that not proceeding with the Project would result in a failure to meet renewable energy generation and decarbonisation of O&G targets.



- 4.1.2 The Scottish Ministers consider that not proceeding with the Project would remove the risk of impacts to the qualifying features of the designated sites detailed in section 1.3 of this HRA, however it would fail to meet the identified Project objectives and would hinder the need to deploy offshore wind generation at scale in the 2020s and would not be consistent with the emissions reductions requirements of the Climate Change (Scotland) Act 2009 to mitigate the effects of climate change. In addition, the Scottish Ministers consider that taking a ‘do nothing’ approach would hinder meeting the ambitions set out in the British Energy Security Strategy. The Scottish Ministers do not consider the ‘do nothing approach’ to be a feasible alternative solution.
- 4.2 Offshore Wind Farms not in Scottish waters
- 4.2.1 The Scottish Ministers consider that offshore wind farm projects located either outside Scottish territorial waters, i.e., within UK territorial waters, or in other countries, are not an alternative to the Project since this would not meet the identified objectives which are specific to Scottish waters with a view to achieving Scotland’s offshore wind and net zero ambitions and decarbonising Scottish O&G platforms.
- 4.3 Offshore Wind Farms in Scottish waters
- 4.3.1 Alternative locations within the Project’s exclusivity agreement area
- 4.3.1.1 The Company’s Derogation Case at section 4.4.3.3 provides detailed information on the site selection process for the Project demonstrating the need for its location close to the Buzzard oil and gas platform complex (consisting of four O&G platforms) which has significant power requirements, a long-term operational span and sufficient proximity to land allowing for electrical connection to the UK grid network.
- 4.3.1.2 The Scottish Ministers are of the view that there are no alternative viable projects located within this INTOG area that could meet the identified Project objectives, specifically the decarbonisation of O&G infrastructure (objective iv), the decarbonisation of the Scottish electricity supply (objective i) or the development of a significant volume of offshore wind in Scottish waters in the 2020s (objective iii) above within the Project’s operational timescales. The Scottish Ministers have also considered the policy contained in EN-1 that projects for CNP infrastructure deliverable in alternative locations are unlikely to be suitable alternatives.
- 4.3.2 Alternative scale or design
- 4.3.2.1 The Company’s Derogation Case explores alternative scales and design iterations of the Project at section 4.4.4 and provides a summary of possible and practical changes to the Project design parameters at Table 4.7, which includes an assessment of



alterations to WTG heights, numbers, capacities, changes to operational protocols and a reduction in the wind farm array area. The range of WTGs proposed by the Company is based on current technological solutions given the operational timescale for the Project and its objective to deliver low carbon electricity by 2030.

- 4.3.2.2 In its assessment of alternative scales and designs, the Company concludes that no option would be viable as it would either fail to meet its identified objectives or not have a lower impact on the designated sites. In their consideration of alternative scale or design parameters for the Project, the Scottish Ministers consider that whilst a reduction in the overall WTG numbers could still generate enough capacity to decarbonise the O&G infrastructure (objective iv) it would fail to meet the remaining objectives and therefore does not present a viable alternative. Furthermore, the Scottish Ministers have considered the policy contained in EN-1 that the existence of another way of developing the proposed project which results in a significantly lower generation capacity is unlikely to be treated as an alternative solution
- 4.3.2.3 The Company further considers the use of a direct cable from shore with associated substation facilities as a viable alternative to the Project at section 2.3 of its Derogation Case Appendix. However, this is considered not to be a viable alternative due to its failure to meet the Project objectives. The Company identifies a lack of available grid connections and landing points for O&G infrastructure, indicating the earliest date for electrification would be after 2031. The Company also highlights within the Derogation Case Appendix, that Heads of Terms have been secured by the Company with the relevant O&G operators for the Buzzard oil and gas platform complex and within these the Project is identified as the operators preferred route to decarbonisation over alternative electricity supply options.
- 4.3.2.4 The Scottish Ministers do not consider the use of a direct cable from shore to be a feasible alternative, as this option would fail to meet the Project objectives which are limited to offshore wind. In addition, Scottish Ministers note that this option would not provide additional low carbon electricity to support the decarbonisation of the Scottish electricity supply and contribute towards the security of supply, nor would it utilise existing onshore transmission infrastructure.
- 4.3.3 INTOG projects at other locations available to the Company
- 4.3.3.1 The Company is involved in another INTOG development for which they have an exclusivity agreement with Crown Estate Scotland. This offshore wind farm project, CENOS, is located 185km east of Aberdeen in the Central North Sea however construction is not anticipated to commence until 2029 with first power in 2030. The project timelines for CENOS will not meet the timelines for objective iii. In addition, the Scottish Ministers consider that all of the INTOG projects would be required to meet objectives i) and ii) of the Project. The Scottish Ministers have also considered

the policy contained in EN-1 that projects for CNP infrastructure deliverable in alternative locations are unlikely to be suitable alternatives.

#### 4.3.4 INTOG projects within other areas with exclusivity agreements for other developers

4.3.4.1 The Company considers other INTOG projects within its Derogation Case Appendix however notes that whilst other projects will be developed in the future they cannot be developed by 2030 and are not alternatives to the Project.

4.3.4.2 The Scottish Ministers do not consider that alternative INTOG projects are feasible alternatives to the Project objectives noting that the timeline for most of these projects are unlikely to be able to meet Project objective iii). In addition, the Scottish Ministers consider that all of the INTOG projects would be required to meet the objectives i) and ii). The Scottish Ministers have also considered the policy contained in EN-1 that projects for CNP infrastructure deliverable in alternative locations are unlikely to be suitable alternatives.

#### 4.3.5 Offshore wind farms within other leasing areas let from Crown Estate Scotland including Scotwind and any future leasing rounds that may emerge

4.3.5.1 The Company provides that there is no foreseeable INTOG leasing round in coming years that would sufficiently meet the Project objectives. In respect of ScotWind, the leasing round is based on the Sectoral Marine Plan for Offshore Wind Energy (“SMP-OWE”) which excluded development areas in proximity to O&G platforms.

4.3.5.2 The Company gives due consideration of Berwick Bank offshore wind farm in terms of its assessment of alternative offshore wind farms at the same stage of development of the Project. Noting that Berwick Bank does not form part of the Scotwind leasing round, but rather forms part of the Crown Estate Round 3 offshore wind zones, the Scottish Ministers agree with the Company’s conclusion that it would not be a feasible alternative as it does not target the decarbonisation of O&G infrastructure and would therefore fail to satisfy objective iv) of the Project

4.3.5.3 Taking account of the identified Project objectives, in particular the need to generate low carbon electricity from offshore wind farms in support of decarbonisation of O&G infrastructure in Scottish waters the Scottish Ministers do not consider that there are any alternative locations or sites within other leasing areas, including Scotwind, which meet this objective and present a feasible alternative solution. In addition, the Project will have a generating output of approximately 490 to 560 MW and will be operational by 2027, therefore contributing toward the identified objective of delivering a significant volume of offshore wind in Scottish waters in the 2020s. In this regard, the Scottish Ministers do not consider any Scotwind site to be an alternative to the Project given that all Scotwind and INTOG sites will be required to meet the objectives i) and ii) of

the Project. In addition, the Scottish Ministers do not consider Scotwind projects to be a feasible alternative to objective iv) of the Project, as the projects will not be delivered in time to make commercial sense for the decarbonisation of O&G platforms, given the limited shelf life of those platforms. The Scottish Ministers have also considered the policy contained in EN-1 that projects for CNP infrastructure deliverable in alternative locations are unlikely to be suitable alternatives.

#### 4.4 Conclusion on Alternative Solutions

4.4.1 The Scottish Ministers have considered the information on alternatives submitted by the Company in the context of the appropriate and primary objectives of the Project identified at section 2.8 of this HRA and are of the view that there are no less damaging alternatives to the Project that would satisfy the objectives and be technically, legally and financially viable. The Scottish Ministers therefore conclude that alternative solutions are not available and IROPI must be considered.

## SECTION 3: IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST

### 5 Imperative Reasons of Overriding Public Interest

5.1 This section of the HRA determines whether compensatory measures can be secured which will ensure the protection of the overall coherence of the network.

5.2 The parameters of IROPI are explored in guidance provided by Defra and the European Commission, which identify the following principles:

- **Imperative** – Urgency and importance: There would usually be urgency to the objective(s) and it must be considered “indispensable” or “essential” (i.e., imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following:
  - i) Actions or policies aiming to protect fundamental values for citizens’ life (health, safety, environment);
  - ii) Fundamental policies for the State and the Society; or
  - iii) Activities of an economic or social nature, fulfilling specific obligations of public service.
- **Public interest:** The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objective);
- **Long-term:** The interest would generally be long-term; short-term interests are unlikely to be regarded as overriding because the conservation objectives of protected sites are long term interests.
- **Overriding:** The public interest of development must be greater than the public interest of conservation of the relevant protected site(s).

5.3 The IROPI test under the Habitat Regulations identifies certain grounds for IROPI that may be advanced in favour of such a project. When the designated site hosts a priority natural habitat or species, grounds for IROPI should include human health, public safety or beneficial consequences of primary importance to the environment, or any other IROPI, but otherwise may also be of a social or economic nature. As outlined at section 1.3 the affected features of the Buchan Ness to Collieston Coast SPA, East Caithness Cliffs SPA, Forth Islands SPA, Fowlsheugh SPA and Troup, Pennan and Lion's Heads SPA from the Project are not priority species. Therefore, the Company's IROPI submission within its Derogation Case pertains to consideration of economic and social benefits and recognises that the project aims to deliver:

- Reliable renewable electricity to oil and gas platforms in the Outer Moray Firth, allowing full retirement of existing gas fired or diesel generators;
- Low carbon energy, which is of benefit to the environment;
- Supply chain benefits for the offshore wind industry as it progresses into commercial floating wind technology in order to meet net zero targets;
- Consistent and reliable energy supply, which helps maintain a good standard of human health and public safety

5.4 In demonstrating the IROPI test, the Scottish Ministers must firstly be satisfied that the Project serves a public interest, and if so, the Scottish Ministers are required to weigh that public interest against the conservation interest which will be put at risk by the Project, therefore deciding whether the public interest overrides the potential harm to the integrity of the designated sites.

## **6 Description of public interest**

6.1 The Scottish Ministers consider that the appropriate and primary objectives of the Project (paragraph 2.8) are relevant to assessing and weighing IROPI for the Project.

6.2 In 2019 the Scottish Government declared a climate emergency, recognising the global and unprecedented impacts from this and the urgent response required to this. The principal and essential benefit of the Project is the quick and significant contribution it will provide to limiting the extent of climate change in accordance with the objectives of the Paris Agreement. The consequences of not achieving those objectives would be severely deleterious to societies across the globe, including Scotland and the rest of the UK, to human health, to social and economic interests and to the environment.

6.3 The need to address climate change is the principal precept behind the Climate Change (Scotland) Act 2009. This legislation legally binds the Scottish Government to reach Net Zero Scotland by 2045. In addition, at a UK level the UK Climate Change Act binds the UK to achieving 100% reduction in greenhouse gas emissions by 2050

compared to 1990 levels. In this regard, the Scottish Ministers consider that the Project will make an important material contribution to delivering on these statutory duties and thereby mitigating the effects of climate change. The Scottish Government's programme for offshore wind is set out across a number of policy documents and establishes the critical role for offshore wind in the delivery of Scottish and UK net zero targets.

#### 6.4 The Scottish Government's Offshore Wind Policy Statement (2020)

6.4.1 The statement includes an ambition to achieve up to 8-11GW of offshore wind in Scottish waters by 2030. This is the basis for the planning assumptions for the existing Sectoral Marine Plan for Offshore Wind Energy, which set out a spatial footprint for a maximum potential capacity of up to 10GW. However, the Offshore Wind Policy Statement also highlights the Committee on Climate Change report, published in May 2019, which includes a scenario requiring at least 75GW of offshore wind in UK waters by 2050 in order to achieve net zero.

#### 6.5 The Scottish Government's draft Energy Strategy and Just Transition Plan

6.5.1 Following publication of a draft Energy Strategy and Just Transition Plan last year the Scottish Ministers have consulted on setting further offshore wind deployment ambitions out to 2045 (by which point the Government is committed to achieving net zero). The Scottish Government's finalised Energy Strategy and Just Transition Plan will be published this summer and will make clear its commitment to maximising the delivery of clean energy generation under the ScotWind and INTOG leasing rounds, not only to achieve Scotland's net zero ambitions but also to fulfil its role in meeting broader UK, European and worldwide offshore wind targets required to tackle the climate crisis

#### 6.6 INTOG Initial Plan Framework (2022) in support of the INTOG Sectoral Marine Plan

6.6.1 A core objective of the framework is to deliver sustainable offshore wind projects providing power directly through electrification to O&G assets. An upper level of development of 4GW is the proposed cap for the purpose of identifying 'TOG' projects (accounting for variances in efficiency and possible attrition) based on the estimated generation required for current and future oil and gas demand and the overall objective to minimise negative impacts. Targeted Oil and Gas Decarbonisation projects must be identified in the areas identified in the framework and deliver electricity to O&G assets. Projects may pursue alternative uses for excess generated energy, including supply to the grid but these must be additional to electricity required for O&G assets.

## 6.7 UK Government Policy

6.7.1 The global climate emergency and energy pressure, ensures that UK-wide energy security and energy policy, although a reserved matter, is a crucial consideration for Scottish Ministers.

## 6.8 UK Government's Overarching National Policy Statement for Energy (known as EN-1) and UK Government's National Policy Statement for Renewable Energy Infrastructure (known as EN-3)

6.8.1 As mentioned above, EN-1 came into force on 17 January 2024, and sets out UKG policy on delivering major energy infrastructure. While a UK Government policy, it is a relevant consideration for Scottish Ministers when they are exercising their functions on licensing and consenting of offshore wind projects as energy policy is generally a matter reserved to UK Ministers. EN-1 notes that the provision of nationally significant low carbon infrastructure, which includes offshore wind, is a critical national priority ("CNP") for the UK Government and further that energy security and decarbonising the power sector to combat climate change are "...capable of amounting to IROPI for HRAs [habitats regulations assessments]...for CNP Infrastructure" (EN-1 para 4.2.21).

6.8.2 EN-3 sets out that applications for offshore wind above 100MW in England will be considered as nationally significant infrastructure projects ("NSIPs") and that because energy policy is generally a matter reserved to UK Ministers, this policy may be a relevant consideration in planning decisions in Wales and Scotland (section 1.4.5). EN-1 further notes that in recognition of the level and urgency of need for NSIPs that the Secretary of State will start with a presumption in favour of granting consent to these projects (section 4.1.3).

## 6.9 British Energy Security Strategy

6.9.1 This strategy was published in April 2022 and sets out an ambition for the delivery of up to 50GW of offshore wind by 2030. Given the current pipeline of possible offshore wind development across the UK it is clear that Scottish projects will be required to make a significant contribution to this ambition.

## 6.10 The UK Government's North Sea Transition Deal (2021)

6.10.1 This sector deal between the UK Government and offshore oil and gas industry ensures a just transition of the energy sector. It seeks to support the transition of the O&G industry to a net zero economy with targets for the sector to decarbonise its operations rapidly including ambition for early reductions in offshore production emissions of 10% by 2025; 25% by 2027; and 50% by 2030, against a 2018 baseline, to meet the sector's aim of creating a net zero basin by 2050.



## 7 The Overriding Test

- 7.1 The AA completed for the Project was unable to conclude beyond reasonable scientific doubt that there would be no adverse effect on the qualifying features of the designated sites identified at section 1.3 in combination with other projects. In demonstrating IROPI the public interest of the Project must therefore be weighed against these qualifying interests of the designated sites, which are protected by the Habitat Regulations.
- 7.2 The Company's submission on IROPI acknowledges the in combination adverse effects of the Project with other North Sea wind farms, however, it provides that the level of predicted effects from the Project alone is *de minimis*. In this regard, the conclusions from the AA agree that the Project will have relatively small magnitudes of effects at individual SPAs.
- 7.3 In its consideration of the 'overriding test,' the Company considers that the overriding nature of the public interest and benefits which the Project will deliver through decarbonisation of the O&G sector and the reduction of carbon emissions relates to core IROPI reasoning of 'human health, public safety and beneficial consequences of primary importance for the environment.' Given that the Project does not impact upon priority features, the Company has overdelivered on what is required in demonstrating that the Project meets this IROPI reasoning, as opposed to the lower standard of demonstrating IROPI of a social or economic nature where non-priority features are concerned. The Company further identifies that climate change is anticipated to deteriorate conditions for breeding and survival of bird species and therefore it considers that there will be long term environmental benefits to the individual bird species within the designated sites as a result of the Project and its contribution to decarbonisation.
- 7.4 In light of the Scottish and UK legislative commitments and policy frameworks outlined above and the acute urgency to maintain and quicken the pace of delivery in tackling the climate crisis (most recently articulated by the Climate Change Committee in relation to Scotland's near-term climate objectives), the Scottish Ministers consider that the Project will make an important contribution to serving the national public interest, reflecting the clear and urgent need for reducing carbon emissions as swiftly as possible, the imperative to decarbonise fossil fuel production, the requirement to develop the renewable energy infrastructure to deliver on both of those key objectives (in particular via the floating offshore wind technology to be deployed by the Project) and the current lack of alternatives. The Scottish Ministers are therefore of the view that there is an imperative reason which justifies the need for the Project and as such overrides the Adverse Effect on the Integrity of the designated Sites ("AEOSI") and the conservation objectives at risk. Scottish Ministers also note that the public interest inherent in tackling the climate crisis is also served by the fact that mitigation of the



climate crisis will in turn alleviate the nature crisis, given that many of the pressures exerted by the nature crisis emanate from the climate crisis.

7.5 On this basis, and given the established lack of alternative solutions, the Scottish Ministers consider that the Project will serve the national public interest through its contribution of generating and delivering low carbon electricity in support of decarbonisation of the Scottish electricity supply and O&G infrastructure operations in Scotland. The Scottish Ministers are therefore of the view that there is an imperative reason justifying the need for the Project, which overrides the AEOSI and the conservation objectives at risk.

## **8 Conclusion of Overriding Public Interest**

8.1 The Scottish Ministers are satisfied that there are IROPI for the Project to proceed subject to adequate compensatory measures being implemented. In arriving at their decision, the Scottish Ministers have considered how the Project provides a public benefit which is essential and urgent which has been assessed to outweigh the harm to the integrity of the designated sites.

## **SECTION 4: COMPENSATORY MEASURES**

### **9 Aims of Compensatory Measures**

9.1 This section of the HRA determines whether there are IROPI for the Project to proceed subject to adequate compensatory measures being implemented.

9.2 The AA completed for the Project, concluded that the Project, in-combination with other North Sea wind farms would have an AEOSI of the following species and sites:

- Kittiwake at Buchan Ness to Collieston Coast SPA;
- Kittiwake, razorbill and guillemot at East Caithness Cliffs SPA;
- Gannet at Forth Islands SPA;
- Kittiwake at Fowlsheugh SPA; and
- Kittiwake at Troup, Pennan and Lion's Heads SPA.

9.3 Further, the AA was unable to conclude that there would be no AEOSI of:

- Guillemot at Fowlsheugh SPA; and
- Puffin at Forth Islands SPA.

9.4 The pathways of effect for the above seabird species were identified as displacement and/or collision risk which could impact the conservation objective to maintain the population of the species as a viable component of the site. Full details of the impacts which require to be compensated for are included in Table 1 below:

**Table 1: Mortality summary for species and sites where AEOSI was concluded, or Scottish Ministers were unable to conclude no AEOSI. CPS=Counterfactual of Population Size.**

Species	SPA	AA Conclusion	CPS (upper value)	Mortality 1 (birds per annum-upper value)	Mortality 2 (after 35 years)
Guillemot	Fowlsheugh	Unable to conclude no AEOSI	0.865	8.6	301
Guillemot	East Caithness Cliffs	AEOSI	0.795	60	2100
Razorbill	East Caithness Cliffs	AEOSI	0.794	4.2	147
Kittiwake	Buchan Ness to Collieston Coast	AEOSI	0.862	1.4	49
Kittiwake	Troup, Pennan and Lion's Heads	AEOSI	0.843	1.1	38.5
Kittiwake	Fowlsheugh	AEOSI	0.826	0.9	31.5
Kittiwake	East Caithness Cliffs	AEOSI	0.723	1.6	56
Puffin	Forth Islands	Unable to conclude no AEOSI	0.327	0.8	28
Gannet	Forth Islands	AEOSI	0.782	7.6	266

## 10 Details of Proposed Measures

### 10.1 Potential Measures Considered

10.2 In its Compensation Report, the Company presents a number of compensatory measure options, which are then given a suitability ranking. Of that long list of options considered, three are taken forward for further consideration in the Outline Plan including identification of possible locations where they could be implemented. The Company proposes that further details of the proposed measures will be included in a Detailed Seabird Compensation Plan (“the Detailed Plan”) which will require to be approved by Scottish Ministers prior to the implementation of any measures. The compensatory measures will require to be implemented, and shown to be effective, in accordance with the Detailed Plan prior to commencement of the Development of the Project and before any adverse effects occur to the sites, thus ensuring that the overall coherence of the UK site network is maintained in accordance with the requirements of the Habitats Regulations.

10.3 The Scottish Ministers have considered the approach proposed by the Company of delivering compensatory measures at a few sites, rather than at each of the individual SPAs that are affected and concluded that this is reasonable considering the relatively

small magnitudes of effects at individual SPAs e.g. 1.6, 0.9, 1.4 and 1.1 breeding adult kittiwake at East Caithness Cliffs SPA, Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, and Troup, Pennan and Lions Head SPA respectively. The focus on a small number of delivery sites will increase the potential for the compensatory measures to meaningfully deliver at the network scale and is likely to be a more effective and efficient approach than small, piecemeal actions at multiple locations.

## **11 Drainage management at Tod's Gote and Ashy Geo**

### **11.1 Details of Proposed Measure**

11.1.1 The Company proposes to implement drainage management at cliff edge locations to increase the availability of potential nesting habitat and quality of existing nesting habitat. Specific sites have been identified at Tod's Gote and Ashy Geo within the East Caithness Cliffs SPA. Although a site has been identified at Tod's Gote, detail has not been provided in the Outline Plan and it is not included in the predicted benefits.

11.1.2 Site investigations by the Company in February 2024 recorded water draining over the cliffs. This could impact the availability of nesting sites and potentially compromise breeding success at existing nesting sites. This water is identified as coming from an elevated peat area in the fields to the west of the site and this is being aggravated by an existing man-made field drainage network.

11.1.3 In the Outline Plan, the Company cites a significant increase in guillemot populations, in the area since 2015 although NatureScot advises some caution in these figures as the counts were undertaken prior to recent mortality events. The Company also notes that less than half of the cliff with available ledges is currently suitable for nesting due to run-off. In addition, evidence of the impacts of climate change suggests a shift to higher rainfall during the breeding season which may exacerbate the problem.

11.1.4 One option to prevent this run off over the cliff face is to install swales/ditches running parallel to the cliff. The Outline Plan provides an example of a typical swale with a grass vegetated drainage channel to intercept drainage flows and direct them to a discharge location further into the geo thus allowing a target area of cliff face, circa 2,250m<sup>2</sup>, to dry out. Earth or timber check dams could be added to control flow speed and volume.

### **11.2 Technical Feasibility**

11.2.1 The Company has proposed options for preventing run off through drainage management and presented evidence to show how this can be through one option (swales/ditches) but also stated that 'A number of standard technical solutions are available for drainage management'. The exact methodology for achieving the

drainage management objectives will be confirmed within the Detailed Plan as per conditions applied to the section 36 consent and marine licences.

11.2.2 The Scottish Ministers note the proximity of the proposed measures to the Craig Hammel to Sgaps Geo Site of Special Scientific Interest (“SSSI”) and East Caithness Cliffs Special Area of Conservation (“SAC”) however agree with NatureScot that any impacts to the SSSI and/or SAC can be assessed in the Detailed Plan.

11.2.3 The Scottish Ministers note that for the drainage management to have the effect on seabirds set out in the Outline Plan, the area of cliff would need to be colonised and the resultant fledglings reach breeding age. Data from the Company assumes a first breeding age of six years for guillemot. This means that it may take a number of years for the measure to deliver the required level of compensation.

11.2.4 Based upon the information provided Scottish Ministers are content that a technically feasible drainage option is available.

### 11.3 Financial Feasibility

11.3.1 The Company has stated that it ‘fully commits to funding completion’ of the drainage compensation measures and that the ‘outline costs estimate for these works is equivalent to approximately 0.01% of the wind farm costs and has been deemed financially feasible’. Scottish Ministers note that Thrumster Estate, where the proposed works will occur, has noted that ‘commercial terms’ will need to be agreed with the Company which may have further financial implications however we assume these have been considered by the Company as part of the outline costs.

11.3.2 All costs for compensation measures will be borne by the Company and should the Company later decide this compensation measure is not financially feasible, when considered by the Detailed Plan, the Project will be unable to proceed as per conditions applied to the section 36 consent and marine licences. Scottish Ministers are content that this is a financially feasible option.

### 11.4 Legal Feasibility

11.4.1 There are two aspects to the legal feasibility of the drainage compensation measure proposed by the Company – land owner permission and any land based permits required to undertake the proposed works.

11.4.2 In terms of land owner permission, the Company has provided a signed letter from the Director of Thrumster Estate Ltd., where the proposed drainage works would occur, confirming that Thrumster Estate is content in principle, ‘subject to having obtained all required permission and consents, and on having agreed commercial terms’ to

facilitate work by the Company to ‘improve land drainage and lessen run-off falling over cliffs at Ashy Geo... to enhance habitat for nesting birds on the cliffs below’.

11.4.3 In terms of land based permits, the Company has stated that ‘All necessary consents will be obtained as required, including planning permission, once the Detailed Seabird Compensation Plan is approved and prior to any works’. The Company’s preferred option for the planned drainage works is outwith any protected site and the Company has stated that there is ‘No impediment identified to obtaining necessary planning permission / other consents – it is expected that the SSSI / SAC can be avoided, but full assessment of any impacts of the measure would be part of the consent process’.

11.4.4 Scottish Ministers are content that the onshore permitting requirements related to the proposed drainage compensation measures will be considered during the Detailed Plan stage and, if it is not possible to obtain the necessary permits, the Project will be unable to proceed as per conditions applied to the section 36 consent and marine licences. Scottish Ministers are therefore content that the Company has provided sufficient evidence to demonstrate the drainage compensation measures are legally feasible.

11.5 Consideration of sufficiency

11.5.1 The Scottish Ministers are satisfied that the proposed drainage management is additional to routine and ongoing management at the SPA.

11.5.2 The Company has estimated that drying the proposed area of cliff (circa 2,250 m<sup>2</sup>) would be expected to accommodate additional nesting sites of equivalent number and of a similar species composition to those already on the adjacent dry cliff. On this basis, the 2,250m<sup>2</sup> area has the potential to accommodate additional sites for approximately 700 guillemot, 100 razorbill and 200 kittiwake breeding pairs.

11.5.3 The number of additional birds estimated by the Company to be delivered by this compensatory measure is provided in Table 2 below.

**Table 2: Level of compensation expected from drainage management measure.**

<b>Demographic parameter</b>	<b>Guillemot</b>	<b>Razorbill</b>	<b>Kittiwake</b>
Potential increase in nesting capacity (breeding pairs)	700	100	200
Productivity*	0.66	0.57	0.82
Average breeding age (years)*	6	5	4
Survival to breeding age*	0.34	0.29	0.45
Number of additional fledglings (increase in breeding pairs x productivity)	462	57	164

<b>Number of additional breeding adults (fledglings x survival to breeding age)</b>	<b>157</b>	<b>17</b>	<b>74</b>
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Table note \*demographic parameters derived from Horswill, C., & Robinson, R.A. (2015) Review of Seabird Demographic Rates and Density Dependence. JNCC Report no. 552

- 11.5.4 NatureScot notes that this is a novel compensation measure for improving the quality of seabird breeding habitat. While impacts of storms on nest failures have been documented in cliff nesters (e.g. Newell et al. 2015) and extreme rainfall for burrow nesters (e.g. Thompson and Furness, 1991; Rodway et al., 1998) there is a paucity of examples where management techniques have mitigated these.
- 11.5.5 The Scottish Ministers note that the Company assumes that the cliff face targeted for drainage management would provide comparable nesting habitat to the sections of cliff currently occupied. Whilst there is limited evidence presented to support this assumption, there is nothing provided by the Company to suggest that this would not be the case. However, confidence in the proposed measure would be increased if some of the additional cliff sections mentioned by the Company as also suitable for this management measure were also included in the proposed measure.
- 11.5.6 No evidence is provided by the Company that suggests a lack of suitable nesting sites is a limiting factor for the seabird species targeted by this proposed measure. The Company does suggest that should the recent regional population increases in guillemot continue then increased suitable breeding sites might compensate for density dependent competition effects (though Scottish Ministers note that the most recent Seabird Count data indicates a 6% population decline at this site).
- 11.5.7 The Company’s suggestion that increased extreme rainfall events and storms during the breeding season due to climate change are likely to increase pressures on cliff nesting seabirds in coming years is reasonable and supported by climate change forecasts. This compensation measure, focused within a geo that might afford increased protection from extreme weather effects, therefore has the potential to increase resilience of the population.
- 11.5.8 The Company suggests that the drainage measure would deliver effective compensation before the adverse effect arises, but it is unclear how this conclusion was reached. Whilst the drainage improvements might be in place immediately following the installation of the swale drains, the compensation measure is only effective once seabird productivity or populations have responded to these habitat improvements.
- 11.5.9 NatureScot advised that although there are no data to directly support efficacy of this measure, it is logically assumed that reduction of the run-off will positively affect seabirds and their nesting habitat. The Scottish Ministers agree with NatureScot and

note that while there are several assumptions made by the Company that might mean the suggested level or speed of benefit from the proposed compensatory measures are overly optimistic, there is a reasonable likelihood that the proposed drainage management measures will deliver the required level of compensation.

## **12 Disturbance Reduction at Troup Head/Collie Head**

### **12.1 Details of Proposed Measure**

12.1.1 The Company proposes to realign a path and implement disturbance management at the Troup, Pennan and Lion's Heads SPA. A new path was installed in 2021 creating access to Collie Head and extending to the RSPB reserve at Troup Head however, there is currently no control of access and no suitable viewing location at Collie Head, resulting in visitors using informal paths along the cliff, with the potential to disturb cliff nesting colonies. In the Outline Plan, the Company cites evidence for reduced productivity attributed to human disturbance of nesting birds at the SPA previously. NatureScot agrees that it is likely that pressure of visitor numbers at the RSPB reserve at Troup Head may also affect Collie Head but notes that there is no direct evidence to demonstrate that disturbance is an issue.

12.1.2 The Company proposes that implementing path realignment will avoid informal paths being used. It also proposes to install visitor screens and signage to further reduce the impact of visitors on seabirds.

### **12.2 Technical Feasibility**

12.2.1 The Company states construction of the proposed footpath is a routine construction activity and that materials can easily be obtained and delivered to site with little or no disturbance to the surrounding area.

12.2.2 The Scottish Ministers note that should breeding birds be experiencing disturbance, their response to mitigation of these disturbance effects on productivity is likely to be rapid, with any benefits likely to result very shortly after path realignment. This assumes that the measures are effective in mitigating the mechanism of disturbance which will be addressed through the monitoring and if required, adaptive management provisions.

12.2.3 The Scottish Ministers note the comments from NatureScot regarding the need to further consider the detailed design of the path and any other infrastructure including what screening may be appropriate for the location. It also notes the need to consider the timing of the construction works to minimise disturbance to nesting birds. The Scottish Ministers agree with these considerations and that they should be addressed in the Detailed Plan. However, there is no evidence that a technically feasible solution cannot be agreed.



### 12.3 Financial Feasibility

12.3.1 The Company has stated that it 'fully commits to funding completion' of the Disturbance Reduction compensation measures and that the 'outline costs estimate for these works is equivalent to approximately 0.01% of the wind farm costs and has been deemed financially feasible'.

12.3.2 All costs for compensation measures will be borne by the Company and should the Company later decide this compensation measure is not financially feasible, when considered by the Detailed Plan, the Project will be unable to proceed as per conditions applied to the section 36 consent and marine licences. Scottish Ministers are content that this is a financially feasible option.

### 12.4 Legal Feasibility

12.4.1 There are two aspects to the legal feasibility of the Disturbance Reduction compensation measure proposed by the Company – land owner permission and any land based permits required to undertake the proposed works.

12.4.2 In terms of permitting for the Disturbance Reduction path works, planning permission is already in place for the creation of a footpath at Crovie (Aberdeenshire Council Planning Application Reference Number ([hyperlink: APP/2023/1010](#))). Although NatureScot notes that the planning application does not detail the infrastructure proposed at Collie Head and it is not clear how the Collie Head section will link up to the longer footpath which is the subject of the planning application.

12.4.3 In terms of land owner permission the Company has provided a signed letter from the owner of the land where the footpath works are proposed and the landowner has confirmed that the land is not currently leased to any other party for any other purposes so is therefore able to enter into an agreement with the Company. The land owner has stated that they 'want to progress the proposed works (as approved) but do not have the funding to undertake them and therefore I am agreeable to working with [the Company] to fund completion and maintenance of these works.'

12.4.4 Given that there is both a planning permission for the footpath works, and agreement from the land owner, Scottish Ministers are content that this is a legally feasible option.

### 12.5 Consideration of sufficiency

12.5.1 The Scottish Ministers are satisfied that the proposed disturbance reduction through path realignment is additional to routine and ongoing management at the SPA.

12.5.2 The Company has noted that disturbance reduction is widely understood to be an effective colony management measure. The Outline Plan states that evidence

suggests that the proposed works at Collie Head could feasibly increase mean productivity by 25% for guillemot, razorbill, gannet and kittiwake as demonstrated in previous studies (Beale & Monaghan, (2005); Allbrook & Quinn, (2020)). This measure is expected by the Company to provide a significant benefit to the colony, particularly as visitor numbers which are currently in their thousands at the RSPB reserve (Company pers comms), are expected to only further increase in future years – partly due to completion of new paths in 2021 in the adjacent area at Troup Head.

**Table 3: Level of compensation expected from disturbance reduction measures.**

<b>Demographic parameter</b>	<b>Guillemot</b>	<b>Razorbill</b>	<b>Gannet</b>	<b>Kittiwake</b>
Estimated population	1,239 pairs <sup>***</sup>	978 pairs <sup>***</sup>	1,245 pairs <sup>****</sup>	1,099 pairs <sup>***</sup>
Current Productivity*	0.66	0.57	0.70	1.06
Current Number of Yearly Fledglings	818	557	872	1,165
Predicted Productivity (25% increase)	0.825	0.713	0.875	1.325
Predicted Number of Yearly Fledglings	1,022	697	1,089	1,456
Average breeding age (years)**	6	5	5	4
Survival to breeding age**	0.34	0.29	0.26	0.45
<b>Additional Fledglings Surviving to Breeding Age per Annum</b>	<b>69</b>	<b>40</b>	<b>56</b>	<b>131</b>

Table Note: \*10-year average productivity Seabird Monitoring Programme (“SMP”) database for gannet, and Horswill and Robinson (2015) for guillemot, kittiwake and razorbill. \*\* derived from Horswill and Robinson (2015) \*\*\* Population is based on the last count in 2017 + the % increase numbers seen within the SPA from the RSPB counts in 2023 (SMP database, 2023) \*\*\*\* Based on the latest 2023 gannet colony count of 1,245 pairs confirmed by the RSPB at Collie Head (Company pers comms).

12.6 The Scottish Ministers note that there is a large body of evidence to suggest that disturbance can result in reduced breeding success in some species of seabirds, though the magnitude of the effects can be challenging to quantify. The Company, in its Outline Plan, appears to assume that the entire breeding populations of guillemot, razorbill, gannet and kittiwake present at Collie Head are currently impacted by disturbance, and that the whole colony would therefore increase productivity in response to the footpath realignment. It is not clear from the evidence provided by the

Company that this would be the case. However, even if a substantially more conservative approach were taken in terms of the proportion of the colony that would benefit from reduced disturbance, the levels of compensation achieved would still have the potential to deliver benefits of similar magnitudes to the predicted impacts for razorbill (4.2 breeding adults p.a.), gannet (7.6 breeding adults p.a.) and kittiwake (5 breeding adults p.a.). For guillemot, it is highly unlikely that the reduced disturbance would compensate for the magnitude of predicted effects (67 breeding adults p.a.). However, for guillemot, razorbill and kittiwake the main compensatory measure proposed by the Company is drainage management and so for these species the gains from disturbance reduction could be viewed as additional.

- 12.7 The Scottish Ministers consider that there is a reasonable likelihood that the disturbance reduction measures will deliver the required level of compensation, even if the levels of benefit presented by the Company are overestimates.

### **13 Tree mallow removal in puffin nesting habitat**

#### 13.1 Details of Proposed Measure

13.1.1 The Company notes that the rapid decline in puffin on the islands of the Firth of Forth is due to the rapid spread of a non-native plant, *Lavatera arborea*, commonly known as tree mallow, which grows over puffin burrows preventing access to the nests and causing soil erosion.

13.1.2 A project, SOS Puffin, has provided control of tree mallow which has been determined to be successful. The current position is that within five to ten years, the majority of the islands will be free of tree mallow and that low-level maintenance will suffice. However, this will require ongoing monitoring and continued yearly maintenance.

13.1.3 The Company is proposing to contribute to tree mallow removal through contribution to the volunteer led SOS Puffin project by the Scottish Seabird Centre which aims to bring the plant under control on the islands of Craigleith, Fidra and the Lamb. There is currently no committed funding for this work and fundraising continues. The compensatory measure will provide committed funding for an annual programme to ensure the necessary resources are in place to deliver suitable nesting habitat improvement for puffin on the islands of the Firth of Forth for the lifetime of the wind farm.

#### 13.2 Technical Feasibility

13.2.1 The SOS Puffin Project has been ongoing since the mid 2000's and has been determined to be successful in increasing the number of puffin burrows. The Scottish Ministers are therefore content that the measure is technically feasible.

13.2.2 The Scottish Ministers acknowledge that there is a risk that the Scottish Seabird Centre will stop its project however, are satisfied that this could be addressed by an update to the Detailed Plan either to find an alternative means to continue the project or to develop an alternative compensation measure.

### 13.3 Financial Feasibility

13.3.1 The Company has stated that ‘The Project compensation measure will provide committed funding for an annual programme to ensure the necessary resources are in place to deliver suitable nesting habitat improvement for Puffin on the Islands of the Firth of Forth for the lifetime of the wind farm.’ No further details are provided as to the level of funding or financial implications and this would need to be considered and agreed as part of the Detailed Plan.

13.3.2 The Company has stated that ‘Funding contributions are currently being sought by the SOS Puffin project, operated by the Scottish Seabird Centre. This volunteer led project has been operating since 2007 and is dependent on funding donations to the Scottish Seabird Centre to organise visits to cut tree mallow (SSC, 2024). There is currently no committed funding for this work and fundraising for this scheme continues.’

13.3.3 Scottish Ministers are content that, although limited information is supplied on the financial costs of this work, it is financially feasible for the Company to provide funding for the lifetime of the Project and that exact details will be confirmed during the Detailed Plan stage. Given that the SOS Puffin project is currently seeking funding, it is likely that this commitment will be welcomed by all.

### 13.4 Legal Feasibility

13.4.1 Scottish Ministers are content that, given there is an existing project in place, and that it has been running since 2007, and received funding from a variety of sources, that there is unlikely to be any legal reasons as to why the Company is not able to contribute funding as will be agreed in the Detailed Plan.

### 13.5 Consideration of sufficiency

13.5.1 The Scottish Ministers are satisfied that the tree mallow removal is additional to routine and ongoing management at the SPA.

13.5.2 The Outline Plan states that in 2006, it was shown that successfully removing tree mallow could double the number of puffins nesting in a given area. Data from 2021 showed that 4,168 puffin apparently occupied burrows were recorded on Craigleith Island however historically, in 1999, this number was 28,000 prior to the arrival of tree mallow (SMP, 2024). The Outline Plan goes on to state that even if the proposed

measure is only 10% effective, this could be expected to lead to additional habitat for 400 burrows, or circa 800 breeding adults.

13.5.3 The Scottish Ministers note that there is strong evidence that the removal of tree mallow can substantially benefit breeding populations of puffin on the Forth Islands. NatureScot agrees that tree mallow removal in puffin nesting habitat is an effective compensation measure in terms of ecological feasibility.

13.5.4 It is not clear how much additional tree mallow clearance and therefore benefit to puffin the Company would provide due to ongoing programme of removal via the SOS puffin project. The Company indicates that even 10% of the benefit accrued already would be sufficient to compensate for the effects of the Project. The Scottish Ministers note that the target benefit level of the tree mallow removal will be clarified in the Detailed Plan and taken into consideration when developing monitoring plans.

13.5.5 The Scottish Ministers consider that there is a reasonable likelihood that the tree mallow removal will deliver the required level of compensation for puffin, even if the levels of benefit presented by the Company are overestimates.

## 14 Conclusion

14.1 Table 4 shows the impact of the Project on the various sites and species for which AEOSI was identified alongside the proposed benefit from the identified compensation measures.

**Table 4: Summary of predicted impact from the Project on species where AEOSI was identified in the AA alongside predicted benefits to be delivered by the proposed compensatory measures.**

		Number of breeding adults				
		Guillemot	Razorbill	Gannet	Kittiwake	Puffin
Level of Impact	East Caithness Cliffs SPA	60	4.2		1.6	
	Fowlsheugh SPA	8.6			0.9	
	Forth Islands SPA			7.6		0.8
	Buchan Ness to Collieston Coast SPA				1.4	
	Troup, Pennan and Lion's Heads SPA				1.1	
	<b>Total</b>	<b>68.6</b>	<b>4.2</b>	<b>7.6</b>	<b>5</b>	<b>0.8</b>
Predicted Benefit	Drainage management	157	17		74	
	Disturbance reduction	69	40	56	131	
	Tree mallow removal					800
	<b>Total</b>	<b>226</b>	<b>57</b>	<b>56</b>	<b>205</b>	<b>800</b>

- 14.2 The Scottish Ministers note that whilst the proposed compensatory measure (drainage management) for the impacts on guillemot at Fowlsheugh SPA and kittiwake at Fowlsheugh SPA, Buchan Ness SPA, and Troup, Pennan and Lion's Head SPA is targeted at East Caithness Cliffs SPA, this would still result in appropriate network level benefits. This is due to the connectivity between kittiwake colonies and between guillemot colonies across the region. These and other seabird species function as metapopulations, whereby some young will return as adults to breed at their natal colonies and some will emigrate to other colonies to breed, with the network of colonies at large representing this mix of emigration and immigration between SPAs or other sites.
- 14.3 Similarly, whilst the proposed compensatory measure for the impact on gannet at the Forth Islands SPA is targeted at Troup Head SPA, which does not have gannet as a qualifying feature, this would still result in appropriate network level benefits. This is due to the connectivity between gannet colonies across the region, which function as a metapopulation. This is where young birds disperse from their natal colonies a proportion of which will recruit as immigrants into other colonies as breeding adults. In this way, the network represents the population and this exchange between SPAs or other colonies.
- 14.4 NatureScot concluded that from an ecological feasibility perspective, the proposed measures are likely to compensate for the impacts predicted from the Project. It noted that the compensation measures are largely novel and thus there is a need for ongoing, continuing dialogue with all parties. The Scottish Ministers agree with NatureScot regarding the need for approval of the Detailed Plan and the need for adaptive management should the monitoring show that the measures are failing to provide the required compensation.
- 14.5 Although more detail still requires to be provided as part of the Detailed Plan, the Scottish Ministers have the required level of confidence that the necessary compensatory measures can be secured. Furthermore, the Scottish Ministers are satisfied that the estimated compensation ratios are sufficient to ensure that the overall coherence of the UK Site Network for guillemot, razorbill, gannet, kittiwake and puffin is protected. The condition listed in section 16 will be added to the marine licences and section 36 consent to prevent any construction of the Project until such time as the Scottish Ministers are satisfied that compensatory measures have been implemented and shown to be effective.

## **15 Implementation & Monitoring Plan**

- 15.1 The Company is proposing to develop a Detailed Plan based on the Outline Plan which has informed the derogation case. In addition to further details of the proposed compensatory measures, it will also provide details of baseline data to be collected

before and after the implementation of the proposed measures to monitor their effectiveness.

- 15.2 The Company proposes to collect one full breeding season of baseline monitoring data, with contingency for a second year of baseline monitoring. This will inform the Detailed Plan which will then be submitted to Scottish Ministers for approval.
- 15.3 Following approval of the Detailed Plan by the Scottish Ministers, in consultation with relevant stakeholders including NatureScot. The proposed compensatory measures will be implemented.
- 15.4 The Company proposes that further monitoring, including colony use and habitat improvement, will then be undertaken for at least one full breeding season to confirm the effectiveness of the measures. The Scottish Ministers note that for the three measures set out by the Company, the period of monitoring is likely to be substantially longer than a single year post implementation of each compensation measure due to the time (in some cases several years) that it may take for created habitat to be occupied, productivity to respond, or for fledged chicks to recruit into the breeding population. Appropriate evidence must be submitted to Scottish Ministers for their approval prior to commencement of construction on the wind farm and this will be conditioned on the section 36 consent and marine licences.
- 15.5 The Company proposes to carry out ongoing monitoring annually for five years and then every five years thereafter for the remaining life of the wind farm. Adaptive management measures will be applied as required to effectively respond to any mismatch between actual and anticipated levels of compensation delivered. A draft approach to this is provided in the Outline Plan.
- 15.6 Full details of the monitoring and adaptive management measures will be included in the Detailed Plan.

## **16 Securing of Compensatory Measures**

- 16.1 The following condition will be added to the section 36 consent and marine licences to ensure that the compensatory measures are implemented and demonstrated to be effective before the commencement of construction works.
- 16.2 The wording of the below condition is as it will appear on the section 36 consent however the condition will also be added to the marine licences for the Project with appropriate changes to defined terms. Defined terms used in the condition below will have the meaning given to them in the section 36 consent, if granted.



## Detailed Seabird Compensation Plan

- 1) The Company must submit a Detailed Seabird Compensation Plan in writing to the Scottish Ministers for their written approval at least six months prior to the implementation of the compensatory measures. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers, which may include a compensatory measures steering group.
- 2) The Detailed Seabird Compensation Plan must be in accordance with the Outline Seabird Compensation Plan submitted on 16 April 2024, unless otherwise agreed by the Scottish Ministers, and demonstrate that the compensatory measures will compensate for any adverse effects on kittiwake at Buchan Ness to Collieston Coast SPA; kittiwake, razorbill and guillemot at East Caithness Cliffs SPA; gannet and puffin at Forth Islands SPA; kittiwake and guillemot at Fowlsheugh SPA; kittiwake at Troup, Pennan and Lion's Heads SPA, as identified in the Appropriate Assessment for the Development. The Detailed Seabird Compensation Plan must include, but not be limited to, the following:
  - a) a timetable of implementation and maintenance of the compensatory measures;
  - b) the location of the compensatory measures;
  - c) a description of the characteristics of the proposed compensatory measures;
  - d) the predicted outcomes of each compensatory measure, including timescales of when those outcomes will be achieved;
  - e) details of monitoring and reporting of the effectiveness of the compensatory measures including—
    - i) survey methods;
    - ii) survey programmes;
    - iii) success criteria;
    - iv) timescales for monitoring reports to be submitted to the Scottish Ministers;
    - v) reporting of meeting success criteria, and
    - vi) measures to adapt, and where necessary increase, compensatory measures and the criteria used to trigger any adaptation of compensatory measures.
- 3) The Company must implement the measures set out in the approved Detailed Seabird Compensation Plan.
- 4) The Development shall only be commenced where the Scottish Ministers have concluded that the success criteria have been met and that the compensatory measures taken are effective and confirmed this in writing to the Company following its consideration of monitoring and reporting information provided by the Company.
- 5) Any requests for amendments to the approved Detailed Seabird Compensation Plan must be submitted, in writing, to the Scottish Ministers for their written approval.

Such approval may only be granted following consultation by the Scottish Ministers with NatureScot and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers, which may include a compensatory measures steering group.

- 6) The Company must make such alterations to the approved Detailed Seabird Compensation Plan as directed by the Scottish Ministers and submit the updated Detailed Seabird Compensation Plan to the Scottish Ministers for approval within such a period as directed in writing by the Scottish Ministers.
- 7) The Company must notify the Scottish Ministers and NatureScot of the completion of any compensatory measures set out in the Detailed Seabird Compensation Plan.

## 17 References

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