

Cabinet Secretary for Wellbeing Economy, Net Zero and Energy

**APPLICATIONS FOR CONSENT UNDER SECTION 36 AND FOR A DECLARATION UNDER SECTION 36A OF THE ELECTRICITY ACT 1989 FOR CONSTRUCTION AND OPERATION OF AN OFFSHORE GENERATING STATION, GREEN VOLT OFFSHORE WINDFARM, APPROXIMATELY 80 KILOMETRES EAST OF THE ABERDEENSHIRE COAST**

**Priority and Purpose**

1. Immediate priority. A decision is required before 12 noon on 19 April 2024.
2. To seek your determination on the applications submitted by Green Volt Offshore Windfarm Ltd (“the Company”) for:
  - a) consent under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) to construct and operate Green Volt Offshore Windfarm (“the Development”) (hereafter referred to as “the Application”); and
  - b) a declaration under section 36A (“s.36A”) of the Electricity Act to extinguish public rights of navigation.
3. To seek your approval of the case for a derogation under the Conservation (Natural Habitats, &c.) Regulations 1994 and Conservation of Offshore Marine Habitats and Species Regulations 2017 (together, “the Habitats Regulations”) for the Development.

**Recommendation**

4. Recommends that you determine it is appropriate not to cause a public inquiry (“PI”) to be held, and to grant consent under s.36 of the Electricity Act for the Development, subject to the imposition of conditions.
5. Recommends that you do not issue a declaration under s.36A as the power to extinguish public rights of navigation extends only to renewable generating stations situated in the territorial sea. The Development is located in offshore waters, outwith the territorial sea.
6. Recommends that you approve the case for a derogation and note the proposed compensatory measures as detailed in Annex E.

**Context and Issues**

7. The proposed Development is a floating offshore wind farm located approximately 80 kilometres (“km”) off the coast of Aberdeenshire, and it will have a generating capacity of up to 560 Megawatts (“MW”) produced by up to 35 offshore Wind Turbine Generators (“WTGs”). 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 installation, with any excess electricity generated exported to the national grid. The Application has been made prior to the conclusion and approval of an updated sectoral marine plan incorporating the INTOG leasing round.

8. The Company has been granted an electricity generation licence by the Gas and Electricity Markets Authority. The Company has separately applied, to the Department for Energy Security and Net Zero (“DESNZ”), for an exemption to the prohibition on unlicensed supply of electricity to a premises in relation to the Development supplying electricity to offshore oil and gas facilities. DESNZ has consulted on the relevant exemption order, holding a position that it is minded to grant the exemption, with conditions including a requirement that no more than 195.5MW of electricity may be supplied to offshore installations. Under the proposal, electricity may be generated and exported to the onshore grid, subject to having the appropriate licences in place.
9. The Company has also applied for marine licences under the Marine and Coastal Access Act 2009 (“the 2009 Act”) to construct the wind farm and the export cable to supply electricity to the Buzzard oil installation, and a marine licence under the 2009 Act and the Marine (Scotland) Act 2010 to construct the export cable from the wind farm to landfall on the Aberdeenshire coast.
10. The Application was supported by an Environmental Impact Assessment (“EIA”) Report, including information to inform the Habitats Regulations Appraisal (“HRA”). A full description of the Development and the Application is set out in Annex C.
11. Consultation and public engagement have been undertaken on the Application in line with regulatory requirements and the responses received taken into consideration. A full summary of the consultation exercise and the key issues raised by consultees is set out in Annex C, at sections 4 to 7.
12. Objections to the Application were maintained by the RSPB (Scotland), National Air Traffic Services (“NATS”) and the Scottish Fishermen’s Federation (“SFF”) during formal consultation.
13. RSPB (Scotland) objects to the Application due to the scale of predicted impacts on Special Protection Areas (“SPAs”) in combination with other projects, and in particular the impacts on seabird species of kittiwake, gannet, puffin and guillemot.
14. NATS objects to the Application due to adverse impacts on primary radar. NATS intends to maintain its objection until sufficient mitigation is agreed through a Primary Radar Mitigation Scheme but is supportive of achieving this through the post-consent process and prior to construction activities commencing.
15. The SFF objects to the Application on the basis that there is no published guidance or a sectoral marine plan for the INTOG leasing round adopted by the Scottish Ministers. In relation to HRA derogation, the SFF object on the basis that

there are clear alternatives to the Development decarbonising oil and gas assets which would have less carbon footprint. The SFF also objects stating that the Application contradicts the fisheries policies of Scotland's National Marine Plan ("the NMP") due to insufficient assurances from the Company regarding the future impact to fishing in the area from the Development.

16. An Appropriate Assessment ("AA") has been completed under the Conservation (Natural Habitats, &c.) Regulations 1994 (in respect of the associated marine licence applications) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (together "the Habitats Regulations"). The AA concluded that there would be no adverse effect on the site integrity from the Development either alone or in combination with other plans or projects for a number of European sites. However, the AA concluded that there would be an adverse effect on the following features and SPAs from the Development in combination with other plans or 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
- Kittiwake at Troup, Pennan and Lion's Heads SPA

17. Further, the AA was unable to conclude beyond reasonable scientific doubt that there will be no adverse effect on site integrity from the Development in combination with other plans or projects for the following features and SPAs:

- Guillemot at Fowlsheugh SPA
- Puffin at Forth Islands SPA

18. Therefore, the Development can only receive consent if the habitats derogation tests under the Habitats Regulations have been satisfied. The derogation case (see Annex E) has been undertaken and the conclusion drawn that there are no alternative solutions to the Development in order to meet its objectives and that the Development must be carried out for imperative reasons of overriding public interest, notwithstanding a negative assessment of the implications for a European site.

19. Further, the Scottish Ministers consider that the compensatory measures proposed by the Company can be secured by conditions attached to the consent (and marine licences) and that they are sufficient to ensure that the overall coherence of the UK site network is protected. Full details of the Scottish Ministers considerations on the habitats derogations can be found in Annex E: Derogation Case.

20. As noted, the AA has considered the impact of the Development in combination with other windfarms, including the proposed Berwick Bank offshore windfarm. Applications have been received for the Berwick Bank offshore windfarm consisting of 307 wind turbine generators, 47.6 km from the coast of East Lothian. A determination has not yet been made on the applications for Berwick Bank however, the AA has concluded that it will have an adverse impact on site integrity

("AEOSI") for a number of qualifying interests of SPAs or the AA is unable to conclude that Berwick Bank offshore windfarm will not have an AEOSI. Berwick Bank can therefore only be consented if a derogation case is agreed, including compensatory measures to offset its impacts on those species/sites where the AA cannot conclude that there will be no AEOSI. This means that if Berwick Bank is consented, the effects from Berwick Bank on these species/sites will be compensated for and on this basis they were not considered in the in-combination assessment for the Development. Berwick Bank was considered in the in-combination assessment for those species/sites where it has likely significant effects but no AEOSI.

### **Options Considered and Advice**

21. In determining whether to grant s.36 consent (including the terms on which it is to be granted and conditions attached to it), in accordance with their obligations under paragraph 3(2) of Schedule 9 of the Electricity Act, the Scottish Ministers shall have regard to:

- a) 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 and;
- b) the extent to which the Company has complied with its duty under paragraph 3(1)(b) of Schedule 9 to do what it reasonably can do to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

Under paragraph 3(3) of Schedule 9, the Company and the Scottish Ministers must avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

22. The above considerations have been made alongside the EIA decision which includes various required information on the potential environmental effects of the Development. Marine Directorate – Licensing Operations Team ("MD-LOT") is of the view that the Application has had 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 and any other relevant matters considered and set out in the Decision Notice (Annex C). MD-LOT is also of the view that you have discharged your responsibilities in terms of Schedule 9 to the Electricity Act.

23. Consideration has been given to the views of all consultees, including the objections from the SFF, NATS and RSPB (Scotland).

24. An appropriate condition to ensure mitigation of effects on primary radar is in place prior to construction has been agreed with NATS and the concerns of RSPB (Scotland) have been addressed through the derogations case and associated consent condition.

25. The EIA concluded no significant effects on commercial fisheries and this conclusion was not disputed by statutory stakeholders and advisers. However the Company will be required to monitor the impacts of the Development on commercial fisheries to validate the conclusions of the EIA.
26. With regard to the SFF's objection on the grounds that a sectoral marine plan is not yet in place for INTOG projects, we would note that there is no statutory requirement for a plan to be in place in order for an INTOG development to apply for a consent. We would also note that there is a policy commitment from Scottish Ministers to take forward INTOG developments, where possible, and that they have agreed to the INTOG leasing round being included within the updated sectoral marine plan, scheduled to be adopted in 2025.
27. With regard to SFF's objections in relation to the fisheries policy within the NMP, we note that the NMP should be applied proportionately, taking account of the potential scale of impact of any proposal as well as the sensitivity of the environment and/or any potential social or economic effect under consideration. We are satisfied that a decision to grant consent would be in accordance with the NMP. Neither the NMP nor the UK Marine Policy Statement define priorities across categories of marine users and they do not provide a preference for one use of the sea over another.
28. The NMP's fisheries sector policies are subject to its General Planning Principles which include, at General Planning Principle 5, a requirement that marine planners and decision makers must act in the way best calculated to mitigate, and adapt to, climate change. The fisheries sector policies requires that marine planners and decision makers should aim to ensure existing fishing opportunities and activities are safeguarded wherever possible and set expectations for the key aspects to be considered in decisions and assessments.
29. The INTOG areas of search were consulted in 2021 and published in the initial planning framework in 2022 as part of the sectoral marine planning process. The NMP policies do not exclude renewables development outside of plan option areas.
30. MD-LOT considers that the key issues arising from the Application have been resolved, mitigated and/or successfully addressed through the use of appropriate conditions as set out in the Decision Notice (Annex C) – the full considerations in relation to the determination of the Application are set out in sections 9 and 10. All legislative requirements have been complied with throughout the determination process. MD-LOT has further considered the impacts of the Development against the economic and renewable energy benefits which would be realised. National and local policy documents identified are considered to be broadly supportive of the Development as set out in Annex A.
31. Further, in relation to the duties of the Scottish Ministers under section 36B of the Electricity Act, MD-LOT concludes that the Company has had regard to the potential interference of recognised sea lanes essential to international and

national navigation. Any obstruction or danger to navigation has been addressed through specific consent conditions at Annex C.

### **Assessment of Options**

32. Under paragraphs 2(1) and 2(2) of Schedule 8 to the Electricity Act, the Scottish Ministers may cause an inquiry to be held in connection with their determination of an application for s.36 consent where a notice of the relevant application is served on the relevant planning authority, and where the planning authority objects to the application and its objection is not withdrawn. The Development is not within the area of any local planning authority, but the planning authorities most local to the Development were consulted on the Application and did not object.
33. Under paragraph 3(2) of Schedule 8 to the Electricity Act, where by virtue of paragraph 2(2) a PI is not required but objections or copies of objections have been made by persons other than the relevant planning authority, the Scottish Ministers shall consider those objections, together with all other material considerations, with a view to determining whether a PI should be held.
34. MD-LOT is satisfied that sufficient information to assess the various competing considerations is available, has been properly taken into account, and that all interested parties have had sufficient opportunity to make representations on the Application. MD-LOT is further satisfied that any inquiry would not be likely to provide any factual information to assist the Scottish Ministers to resolve the issues of risk and planning judgment raised by the Application or to take a different view on the substantive issues on the Application. Accordingly, you may conclude that it is not appropriate to cause a PI to be held into these matters.
35. If, having considered the Application and supporting documents, together with other material considerations set out in the Decision Notice (Annex C), you determine that it would not be appropriate for a PI to be held, then it remains for you to grant or refuse consent under s.36 of the Electricity Act, having regard to the considerations set out in the documentation.

### **Contribution to the Government's Three Missions**

36. The Development is related to the commitment to provide opportunity by contributing to a just transition to net zero and increasing the use of renewable energy to respond to the climate crisis.

### **Bute House Agreement Implications**

37. Approval of the Application is related to the commitment in the Bute House Agreement to manage the potential impacts on marine biodiversity alongside the growth of marine renewables and offshore wind sectors in a proportionate manner.

### **Verity House Agreement Implications**

38. There are no known implications to the Verity House Agreement.

**Financial Considerations**

39. There are no financial considerations related to this submission.

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[REDACTED]

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[REDACTED]

[REDACTED]





## **New Deal for Business Implications**

50. There are no known implications to the New Deal for Business.

## **Quality Assurance**

51. This Submission has been approved by Iain Wallace and Mike Palmer, Deputy Directors, Marine Directorate.

## **Conclusions and next Steps**

52. Should the Cabinet Secretary choose to approve the Application, MD-LOT will finalise and issue the draft decision notice attached at Annex C.

53. As noted above, MD-LOT does not consider that a s.36A declaration can be made as the power to extinguish public rights of navigation extends only to renewable generating stations situated in the territorial sea. The draft decision notice attached at Annex C details this to the Developer.

54. Marine licence applications under the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 for the Development, the export cable to Buzzard oil installation, and the export cable to landfall are being considered alongside the Application. These will be determined by MD-LOT and, if granted, these licences will be forwarded to you for your information.

55. In compliance with regulation 31(4) of the Conservation of Offshore Marine Habitats and Species Regulations 2017, if Scottish Ministers agree to a project under regulation 29, it must notify the Secretary of State as soon as practicable following that agreement. If consent is granted, MD-LOT will draft a letter for you to send to the Secretary of State to fulfil this obligation.

56. In order for the determination process to be fully open and transparent, MD-LOT recommends that this submission is published on the Marine Directorate Information website, alongside the key documentation related to the Application.

## **Debbie England**

Marine Directorate – Licensing Operations Team

## **List of Annexes**

Annex A – Legislative Requirements

Annex B – Appropriate Assessment

Annex C – Decision Notice

Annex D – Marine Protected Areas Assessment  
Annex E – Derogation Case

<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Cabinet Secretary for Wellbeing Economy, Net Zero and Energy	X			
First Minister				X
Cabinet Secretary for Rural Affairs, Land Reform and Islands		X		
Cabinet Secretary for Transport		X		
Minister for Energy, Just Transition and Fair Work		X		
Minister for Green Skills, Circular Economy and Biodiversity		X		
Lord Advocate				X
Solicitor General				X

<b>Officials Copy List</b>
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