VATTENFALL

Redacted

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Date:
11/04/2019

Contact: Redacted
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Mob Redacted

Ref: ABE-ENV-CB-0035_Extension of S36 Consent Request

Dear Redacte ,

Please accept this cover letter and appended report as an application by Aberdeen Offshore Wind Farm Limited (AOWFL) to vary the Section 36 consent which was granted on 26th March 2013 (the "S.36 Consent") to AOWFL to develop the European Offshore Wind Deployment Centre (EOWDC).

Condition 1 of the S.36 Consent states the following:

1. *The consent is for a period from the date the consent is granted until the date occurring 22 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.*
   Reason: To define the duration of the consent.

Final Commissioning of the EOWDC took place on 25th July 2018; therefore, in line with Condition 1, the current S.36 Consent will remain valid until 25th July 2040[1]. AOWFL is seeking to extend the S.36 Consent for the operational life of the wind farm to 25 years (excluding decommissioning), to 25th July 2043, in order to align with the design life of the wind farm assets. Specifically, the MHI Vestas V164-8.0 MW turbines (8.8MW Power Mode) have a structural design life of 25 years, indicating that they do not require additional maintenance in excess of manufacturers' recommendations over this time period.

Following a meeting with Marine Scotland Licencing and Operations Team (MS-LOT) on 18th July 2018, AOWFL submitted a screening request to MS-LOT in relation to the proposed extension. In their Screening Opinion (Ref: 018/OW/AOWFL-9, dated 11th December 2018) MS-LOT, on behalf of Scottish Ministers, stated that *"…the Proposed Development is not an EIA project under* [The Electricity Works (EIA) (SCOTLAND) Regulations 2017 (as amended)] *and an EIA is not required to be carried out in respect of the Proposed Development*". AOWFL therefore now requests the extension of the S.36 Consent, and has provided supporting information in the appended report (Appendix 1). Appendix 2 provides a full copy of the Section 36 Consent together with the mark-up of the variation sought.

[1] AOWFL understands that the duration of the S.36 Consent does not cover Decommissioning.

AOWFL trusts that the information provided is sufficient to be considered as an application to vary the S.36 consent. On receipt of instruction from MS-LOT, AOWFL will place public notices and hard copies of this application in all required locations.

If you require any further information or have any questions please do not hesitate to contact me.

Yours sincerely,

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Environment & Sustainability Unit

Appendix 1 – Supporting Information Report

EOWDC Section 36 Consent Variation Application

1. Project Background

On 26th March 2013, Aberdeen Offshore Wind Farm Limited (AOWFL) received consent from the Scottish Ministers under Section 36 (S.36) of the Electricity Act 1989 for the construction and operation of the European Offshore Wind Deployment Centre (EOWDC) and on 15 h August 2014 a Marine Licence was awarded under Section 25 of the Marine (Scotland) Act 2010[2]. Final Commissioning of the EOWDC took place on the 25 h July 2018.

The EOWDC is located approximately 2 to 4.5 km offshore to the north east of Aberdeen, Scotland, within Aberdeen Bay. The Offshore Export Cables (OECs) reach landfall at the adjacent coastline, at Blackdog. The EOWDC consists of the following main components:

- 11 Wind Turbine Generators (WTGs);
- Three legged jacket substructures each installed on suction bucket foundations;
- A network of circa 9.7 km of Inter-array cables; and
- Two buried or mechanically protected, subsea OECs, totalling up to ~8 km in length, transmitting the electricity from the WTGs to the cable landfall location at Blackdog, within Aberdeen Bay, and connecting to the onshore buried cables for transmission to the onshore substation and connection to the National Grid network.

A plan showing the development area is provided (Figure 1). Further details of the Development layout and design are set out in the Environmental Statement (ES), the Supplementary Environmental Information Statement (SEIS) and in the MS-LOT approved post-consent plans, which can be accessed here - https://www.gov.scot/Topics/marine/Licensing/marine/scoping/EOWDC, which are soon to be migrated to MS-LOT's new website http://marine.gov.scot/ml/european-offshore-wind-deployment-centre.

2. Need for Variation

Condition 1 of the S.36 Consent states the following:

> 1. *The consent is for a period from the date the consent is granted until the date occurring 22 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.*
> *Reason: To define the duration of the consent.*

Final Commissioning of the EOWDC took place on the 25th July 2018; therefore currently the S.36 Consent will remain valid until 25th July 2040. AOWFL is seeking to extend the S.36 Consent for the operational life of the wind farm to 25 years (excluding decommissioning), to 25th July 2043, in order to align with the design life of the wind farm assets. Specifically, the MHI Vestas V164-8.0 MW turbines have a structural design life of 25 years, indicating that they do not require additional maintenance in excess of manufacturers' recommendations over this time

[2] Current Marine Licence reference: 04309/18/4.

period. Furthermore, it is noted that 25 years is the standard operational life for offshore wind farms, as evidenced by S.36 consents for Beatrice Offshore Wind Farm (dated 2014), Inch Cape Offshore Wind Farm (dated 2014) and Moray East Offshore Wind Farm (dated 2018).

3. Screening Summary

To inform this application, AOWFL first carried out a screening exercise in line with Regulations 4 and 8 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the '2017 EIA Regulations'). The screening exercise concluded that the extension of consent duration would not change any of the inputs to the environmental assessments presented in the Environmental Statement (ES), the Supplementary Environmental Information Statement (SEIS) submitted in 2012 (also referred to as the Addendum), or the Licencing Authority's Appropriate Assessment (AA), and therefore the assessments already undertaken would not be affected by this application.

AOWFL subsequently submitted the screening request to MS-LOT on 10th September 2018. As part of the screening consultation, MS-LOT consulted with Scottish Natural Heritage (SNH), Aberdeenshire Council and Aberdeen City Council. In their Screening Opinion (Ref: 018/OW/AOWFL-9, dated 11th December 2018) MS-LOT, on behalf of Scottish Ministers, stated that "…*the Proposed Development is not an EIA project under* [the 2017 EIA Regulations] *and an EIA is not required to be carried out in respect of the Proposed Development*".

AOWFL responses to consultee comments are provided in Annex A.

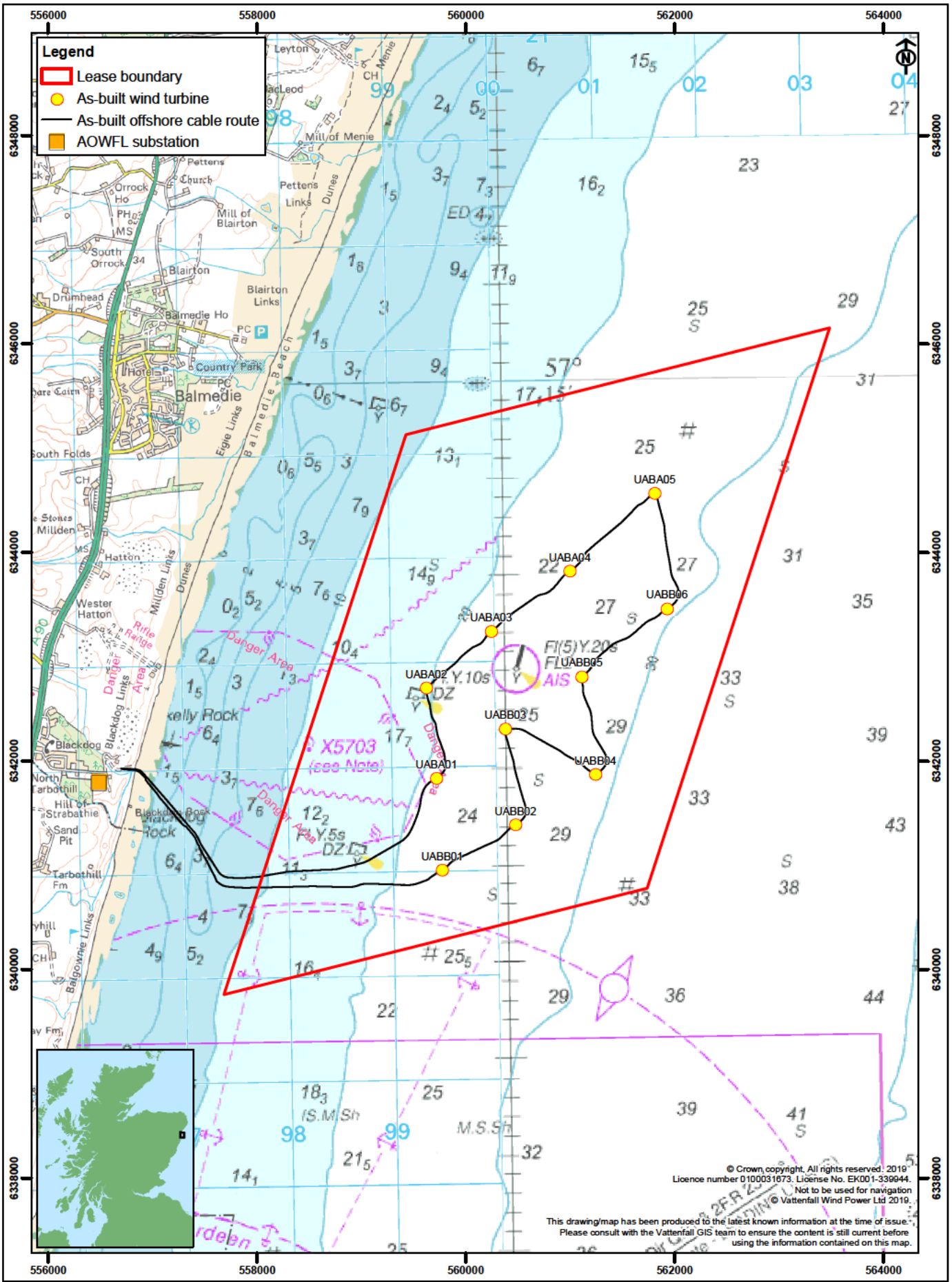
4. S.36 Variation Sought

It is requested that the wording of Condition 1 of the S.36 Consent is amended as follows:

> *The consent is for a period from the date the consent is granted until the date occurring ~~22~~ 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.*
> ***Reason**: To define the duration of the consent.*

It is also noted that within the section titled "The Scottish Ministers' Consideration of the Application", and under the subheading "Consideration of other material issues" (Page 31 of 46), there is reference to the 22 year operational life of the Development. AOWFL recognises that this text may also need to be amended to reflect the current variation application.

No other changes to the S.36 Consent are currently proposed.



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areg
Aberdeen Renewable Energy Group

0 0.5 1 km

0 0 25 0 5 nm

Aberdeen Offshore Wind Farm

Offshore Site Layout

Rev	Date	Drawn By	Checked By	Comment
				Data exchanged for As-Built
				Revised turbine IDs
				Removed "commercial in confidence"
				First issue

Datum	Projection	Plot	Scale	Purpose	Layout	Rev	Drg No
WGS84	UTM30N	A4	1:50,000	For information	LABER048	D	61290-2AG-700-001

Ref UAB_OELE_SUB_PT_v01_181213dati27700 [COMMENT1 'AOWFL substation'], UAB_OBDY_LEA_PN_v01_190108dati32630, UAB_OWTG_WTG_PT_LABER048_v04_181210ahnt32630, UAB_OELE_CAB_LN_v04_181024dati32630, os50k_aug2016, Marine_Raster_Charts_75000_scale_0210.tif, UK_Ireland.png

Annex A – Consultee Responses to Screening

Consultee Comment	AOWFL Response
Aberdeen City Council	
The Environmental Policy team at Aberdeen City Council does not have any concerns with the Proposal for an Extension of Consent	Noted.
Aberdeenshire Council	
Having read the information provided, it is noted that there is mention that 'all operational phase impacts were assessed as long-term impacts' and as such, there appear to be no additional impacts warranting an additional EIA anticipated by virtue of the extension of time.	Noted.
Aberdeenshire Council would, however, still recommend that consideration be given to: • The altered positioning of the WTGs as noted in the 'changes to screening' section to ensure there are no additional significant visual or other impacts arising from the changes;	AOWFL confirms that all WTGs are within the consented site boundary[3] and within the 100 m micro-siting allowance which was secured by Appendix 19.1 of the original ES[4] and restated within the ES Addendum[5]. Separation distances provided within the ES were indicative, and as built locations of the WTGs were submitted to MS-LOT on 11th September 2018.
• Ensuring that there are no time sensitive elements / surveys within the approved EIA that would be impacted by time; and	AOWFL confirms that there are no time sensitive elements or surveys that would be impacted by an increase in S.36 consent duration to 25 years.
• Ensuring that the mitigation approved within the application is still appropriate.	AOWFL confirms that all relevant approved mitigation measures will be adhered to throughout the duration of the S.36 Consent.
As an aside, although not encapsulated within this enquiry, it should be confirmed that the altered positioning of the WTGs do not need a separate planning permission.	As the WTGs are located seaward of Mean Low Water Springs, Planning Permission under the Town and Country Planning (Scotland) Act 1997 is not applicable. The relevant consents are the S.36 Consent and Marine Licence, and AOWFL confirms that all WTGs are within the 100 m micro-siting allowance provided for in Appendix 19.1 of the original ES[4].

[3] Displayed in Part 4 of the EOWDC Marine Licence (04309/18/4), available from http://marine.gov.scot/sites/default/files/marine_licence_04309_18_4.pdf

[4] Available from http://marine.gov.scot/datafiles/lot/eowdc/EOWDC_Aberdeen_Bay_EIA.pdf

[5] Available from http://marine.gov.scot/datafiles/lot/eowdc/ES%20addendum/Addendum/

Scottish Natural Heritage	
Having reviewed the information provided I can confirm that SNH does not require any new EIA to be submitted in support of the request to extend the duration of consent for Aberdeen offshore wind farm. We agree with the assessment of effects presented in Table of the screening request: that extending the duration of consent will not result in any additional impacts to environmental receptors of concern.	Noted.

Appendix 2 – Section 36 Consent & variation sought

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The Scottish Government
Riaghaltas na h-Alba

LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

Redacted
Offshore Consenting Manager
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Aberdeen
Scotland
AB10 1HA

26th March 2013

Dear Redacted

CONSENT GRANTED BY THE SCOTTISH MINISTERS TO CONSTRUCT AND OPERATE THE EUROPEAN OFFSHORE WIND DEPLOYMENT CENTRE (EOWDC) ELECTRICITY GENERATING STATION, ABERDEEN BAY, APPROXIMATELY 2 km EAST OF BLACKDOG, ABERDEENSHIRE.

The Application

I refer to the Application and the Supplementary Environmental Information Statement to the Application made by Aberdeen Offshore Wind farm Limited ('the Company') dated 1st August 2011 and 6th August 2012, respectively, for:

> consent under section 36 of the Electricity Act 1989 ("the Electricity Act") for the construction and operation of the European Offshore Wind Deployment Centre ("EOWDC") electricity generating station approximately 2km off the coast of Aberdeenshire in Aberdeen Bay with a generation capacity of up to 100 MW.

At this time, the Company also applied for a Marine Licence under Part 4 of the Marine (Scotland) Act 2010. This is being considered alongside the Application under section 36 of the Electricity Act and will be determined in due course.

In this letter, "the Development" means the proposed EOWDC electricity generating station for which the Application is made and is described in **ANNEX 1** to this letter.

STATUTORY AND REGULATORY FRAMEWORK

The Electricity Act 1989

Consent under section 36 of the Electricity Act is required for any proposal to construct, extend or operate a generating station situated in the territorial sea with a permitted generation capacity of 1 megawatt and above. A section 36 consent may include conditions as appearing to the Scottish Ministers to be appropriate.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on operators of generating stations to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. Operators of generating stations are statutorily obliged to do what they reasonably can to mitigate any effect the proposals may have on these features.

Paragraph 3 of Schedule 9 to the Electricity Act also provides that the Scottish Ministers must have regard to the desirability of these matters and the extent to which operators of generating stations have complied with their duty to mitigate the effects of the proposals. The Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

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

The Scottish Ministers are required to obtain the advice of the Scottish Environment Protection Agency (SEPA) on matters relating to the protection of the water environment. SEPA's advice has been considered by the Scottish Ministers and due regard has been given to the Water Environment and Water Services (Scotland) Act 2003 and to the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

Under Schedule 8 to the Electricity Act and the Electricity (Applications for Consent) Regulations 1990, notice of applications for section 36 consent must be published by the applicant in one or more local newspapers and in the

Edinburgh Gazette to allow objections to be made to the application. Under Schedule 8 to the Electricity Act the Scottish Ministers must serve notice of application for consent upon any relevant Planning Authority. As the development is wholly offshore the closest planning authorities are not 'relevant Planning Authorities' in terms of the Electricity Act.

The Scottish Ministers are satisfied that they have considered all the necessary tests set out within the Electricity Act when assessing the application and that all procedural requirements have been complied with.

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

The location and extent of the proposed Development to which the Application relates being wholly offshore means that the development is not within the area of any local planning authority. The Scottish Ministers are not, therefore, obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a public inquiry to be held. The nearest local planning authorities did not object to the Application. If they had objected to the Application, and even then if they did not withdraw their objections, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

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

Integrated Coastal Zone Management

The UK Marine Policy Statement 2011 states that UK Administrations are committed to ensuring that coastal areas, and activities taking place within them, are managed in an integrated and holistic way in line with the principles of Integrated Coastal Zone Management (ICZM). Integrated Coastal Zone Management is an EU led strategy delivered at a local level and deals with the coastal and marine environment in a sustainable way. The ICZM seeks, over the long term, to balance environmental, economic, social, cultural and recreational objectives. At a local level, the East Grampian Coastal partnership has been set up to aid the delivery of ICZM in the East Grampian area. The Scottish Ministers are satisfied that the proposal is in accordance with the aims of ICZM.

Marine (Scotland) Act 2010 and the Climate Change (Scotland) Act 2009

The Marine (Scotland) Act 2010 regulates the territorial sea adjacent to Scotland for marine environment issues.

Subject to exemptions specified in subordinate legislation, under Part 4 of the Marine (Scotland) Act 2010 licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

Under Part 2 of the Marine (Scotland) Act 2010 the Scottish Ministers have general duties to carry out their functions in a way best calculated to achieve the sustainable development, including the protection and, where appropriate, the enhancement of the health of the area. The Scottish Ministers when exercising any function that affects the Scottish marine area under the Marine (Scotland) Act 2010, the Climate Change (Scotland) Act 2009 or any other enactment must act in a way best calculated to mitigate, and adapt to, climate change.

Also of relevance to the Application is that under the Climate Change (Scotland) Act 2009 annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions.

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

Environmental Impact Assessment Directive and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

The Environmental Impact Assessment Directive, which is targeted at projects which are likely to have significant effects on the environment, identifies projects which require an environmental impact assessment (EIA) to be undertaken. The Company identified the proposed development as one requiring an environmental statement in terms of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000.

The proposal for the Development has been publicised, to include making the environmental statement available to the public, in terms of those regulations. The Scottish Ministers are satisfied that an Environmental Statement has been produced and the applicable procedures regarding publicity and consultation all as laid down in those regulations have been followed.

The Scottish Ministers have, in compliance with those regulations consulted with SNH, SEPA, the planning authorities most local to the development, and such other persons likely to be concerned by the proposed development by reason of their specific environmental responsibilities on the terms of the environmental statement and the supplementary environmental information statement in accordance with the regulatory requirements. Marine Scotland have also consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application and on the

environmental statement and as a result of the issues raised, upon the required supplementary environmental information statement.

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

They have taken into consideration the environmental information, including the Environmental Statement and Supplementary Environmental Information, and the representations received from the statutory consultative bodies.

The Habitats Directive

The Habitats Directive on the conservation of natural habitats and wild fauna and flora has, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 ('the 1994 Regulations') and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007.

The key mechanism for securing compliance with the Directive is the carrying out of an Article 6(3) Appropriate Assessment under regulation 48 of the 1994 Regulations. Developments in, or adjacent to protected sites, or in a location which has the potential to affect such a site, must undergo what is commonly referred to as a Habitats Regulations Appraisal. The appraisal involves two stages, and if the proposal is likely to have a significant effect on a protected site, then an Appropriate Assessment must be carried out.

The Scottish Ministers, as a competent authority under the Habitats Directive, have complied with their EU obligations in relation to the Development. They have, following the undertaking of an Appropriate Assessment, ascertained that the Development will not adversely affect the integrity of any European protected sites and have imposed conditions on the grant of the consent ensuring that this is the case. This is confirmed by consultation responses received from SNH and RSPB Scotland. The Appropriate Assessment will be published and available on the Marine Scotland's licensing operations team's website.

Applicable policies and guidance

Marine area

The UK Marine Policy Statement 2011

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

The Statement which was jointly adopted by the UK Administrations sets out the overall objectives for marine decision making. It specifies issues that

decision-makers need to consider when examining and determining applications for energy infrastructure at sea, namely– the national level of need for energy infrastructure as set out in the Scottish National Planning Framework; the positive wider environmental, societal and economic benefits of low carbon electricity generation; that renewable energy resources can only be developed where the resource exists and where economically feasible; and the potential impact of inward investment in offshore wind energy related manufacturing and deployment activity. The associated opportunities on the regeneration of local and national economies need also to be considered.

Chapter 3, paragraphs 3.3.1 to 3.3.6, 3.3.16 to 3.3.19 and 3.3.22 to 3.3.30 of the Statement are relevant and have been considered by the Scottish Ministers as part of the assessment of the Application.

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

Terrestrial area

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The UK Marine Policy Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach. In addition to high level policy documents regarding the Scottish Government's policy on renewables (2020 Renewable Routemap for Scotland - Update (published 30 Oct 2012) and Scotland's Offshore Wind Route Map 2010), the Scottish Ministers have had regard to the following documents.

Scottish Planning Policy

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

The Scottish Ministers are satisfied that these matters have been addressed in full both within the Application and within the responses received to the consultation by the closest onshore Planning Authorities, SEPA, SNH and other relevant bodies.

National Planning Framework 2

Scotland's National Planning Framework 2 ("NPF2") sets out strategic development priorities to support the Scottish Government's central purpose, namely sustainable economic growth. Relevant paragraphs to the Application are paragraphs 65, 145, 146, 147, 203 and 204. NPF2 provides strong support for the offshore wind sector in Scotland and specifically identifies Aberdeen and Aberdeenshire and the Energetica project as building upon the energy sector and offshore strengths of the region.

Aberdeen City and Shire Structure Plan 2009

The purpose of the Structure Plan is to set a clear direction for the future development of the North East. All parts of the Structure Plan area fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. Relevant objectives of the Structure Plan to the proposed Development are:- the promotion of economic growth; the promotion of sustainable economic Development to reduce carbon dioxide production; the adaptation to the effects of climate change and limitation of the amount of non-renewable resources used; the encouragement of population growth; the maintenance and improvement of the region's built, natural and cultural assets; the promotion of sustainable communities and the improvement in the accessibility of developments.

The Scottish Ministers consider that the Development can draw support from the objectives regarding economic growth, sustainable economic development and climate change, and to some extent the quality of the environment.

Regarding economic growth and sustainable economic development, the proposal is an opportunity to develop the economy with a potential capital expenditure of approximately £16m in the Aberdeen and Aberdeenshire area.

The proposal also accords with the Structure Plan objective of the region increasing the supply of energy from renewable resources. The developer estimates that throughout the 22 year lifespan of the proposed Development, the proposal has the potential to save up to between 2.9 million and 5.8 million tCO2. Based on a similar load factor (0.35) it is estimated that the proposal could provide renewable electricity for up to 49,000 homes. This is just under 50% of all the homes in Aberdeen City (2011 estimate of 103,843 Aberdeen city households by gro-scotland.gov.uk).

It is noted by Scottish Ministers that the Structure Plan considers the significant potential in realising the potential of the Menie Estate golf resort. They also note that in terms of the objective relating to economic growth, the

Structure Plan provides that a strong service sector, including all forms of tourism to include business tourism, is important to encouraging economic development and creating new employment that is appropriate and attractive to the needs of different industries.

Scottish Ministers note the important role of the Energetica project. It is listed in the Structure Plan as one of a range of proposals which will assist Aberdeen City Council and Aberdeenshire Council achieve their vision for the North East of Scotland.

The Scottish Ministers consider that the Development complies with the Structure Plan.

Aberdeenshire Local Development Plan 2012

The Aberdeenshire Local Development Plan 2012 looks at how Aberdeenshire will manage development in line with the principles of sustainable development, looking at the social, economic and environmental effects. Sustainable development is an essential element of its policies. The Plan recognises the need to protect and improve the quality of life for the local community, to protect natural resources and promote economic activity with a need to reduce greenhouse gases. The Plan aims to take precautions to reduce carbon emissions and promotes measures needed to adapt to a world where climate change is taking place.

The Scottish Ministers have considered the terms of the supplementary guidance SG Bus 5: Development in the Energetica Framework Area. While all development in the Energetica corridor is subject to the policies and strategies of the relevant constituent authority, in order to achieve the Energetica vision, supplementary guidance also applies in this area. Aberdeen City and Aberdeenshire Councils both support the Energetica framework, as supported in the National Planning Framework 2. The Development is consistent with the guidance in that the development must make a contribution to both environmental performance and economic development targets.

Consideration has also been given by the Scottish Ministers to SG Rural Development 2: Wind farms and medium to large wind turbines. The aim of the policy is to encourage the sensitive development of wind energy facilities. The policy provides that the proposal must not have a significant adverse effect on tourism or recreation interests. The Scottish Ministers consider that there would be impacts upon both tourism and recreation, however when weighing up that impact on tourism with the considerations numbers 1 to 8 mentioned on page 25 below in relation to the planning judgment on the proposed location of the Development, it is in their view that those considerations outweigh the impact on tourism and recreation.

The Development complies with all other issues in relation to this policy.

The Scottish Ministers have also considered the terms of the guidance SGLSD2: layout, siting and design of new development. The purpose of this policy is to improve the standard of layout, siting and design of developments in Aberdeenshire. The proposed site location and design has been determined through a long process of examining constraints and undertaking consultations, surveys and assessments with many stakeholders, in particular the Aberdeen Harbour Board, the aviation industry, the MoD and key environmental bodies. The Scottish Ministers consider the siting and design of the wind farm as acceptable.

Consideration has been given to guidance SG Natural Environment 1: Protection of nature conservation sites by the Scottish Ministers. This policy promotes the protection of nature conservation sites from new development that may affect the qualifying interests of these protected areas. The Scottish Ministers have considered the relevant information and undertaken two Appropriate Assessments. These Appropriate Assessments conclude that the proposal would not adversely affect the integrity of any of the relevant designated sites so long as mitigation measures are implemented by means of enforceable conditions attached to any consent.

SG Natural Environment 2: Protection of the wider biodiversity and geodiversity. This policy gives strong protection to habitats, species, geological features even when they are not associates with specifically designated conservation sites. The proposal was subject to an Environmental Statement and a Supplementary Environmental Information Statement. Scottish Natural Heritage (SNH") and other nature conservation bodies are of the opinion that the proposal is acceptable subject to mitigation measures in the form of conditions. The proposal is considered consistent with this policy.

Aberdeen Local Development Plan 2012

The Aberdeen Local Development Plan's vision is for Aberdeen in 2030 to be a sustainable city, supporting the Aberdeen City and Shire Structure Plan. Relevant policies to the consideration of the development are set out below–

Policy D6 – Landscape

Natural topography and landscape play an important role in determining future development. Landscape character within Aberdeen ranges from rural, to informal and formal open spaces which, according to the Plan add to Aberdeen's unique setting. The plan seeks to maintain and manage these unique aspects. Although it is accepted that the Development would have an effect on the landscape and seascape as viewed from Aberdeen, these impacts are not deemed by the Scottish Ministers to be unacceptable and the proposal is seen to be consistent with this policy.

Policy NE8 – Natural Heritage

The protection, preservation and enhancement of the natural heritage (both sites and species) are important aims of the Plan. The Plan takes a broader

approach to protecting natural heritage than just conserving designated or protected sites and species, it considers ecosystems and natural processes rather than individual sites. The proposal will not have unacceptable impacts on the natural heritage as long as mitigation measures are included as conditions. These conditions will be incorporated into any consent. Two Appropriate Assessments have been undertaken by the Scottish Ministers which conclude the proposal will not adversely affect the integrity of any designated site.

Policy R8 – Renewable and Low Carbon Energy Developments

The development of all renewable energy generating technologies, on all scales, is supported in principle. The Plan recognises that a positive approach to renewable development will help meet Scottish Government targets. The proposal is consistent with this policy, although the impact on tourism is seen as a departure from the policy. This impact however is thought to be acceptable given the economic and climate change benefits the proposal will bring.

Consultation

In accordance with statutory requirements, advertisements of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Notice of the Application for section 36 consent is required to be served on any relevant planning authority under Schedule 8 to the Electricity Act.

Notifications were therefore sent to Aberdeen City Council and Aberdeenshire Council, as the nearest onshore Planning Authorities, as well as to SNH and the Scottish Environment Protection Agency (SEPA).

Objections from the Trump Organization and the Trump International Golf Links Scotland ('TIGLS')who are the owners and operators of the golf and resort complex at the Menie Estate at Balmedie, Aberdeenshire ("the Menie Estate Golf and Resort Complex"), Murcar Links Golf Club and the Royal Aberdeen Golf Club and from members of the public are being maintained.

Representations and objections

A two-stage formal public consultation process was undertaken by the Scottish Ministers. The first, which related to the application for section 36 consent, the marine licence application and the Environmental Statement, was conducted in August 2011, and the second which related to the submission of additional information in the Supplementary Environmental Information Statement was conducted in August 2012.

The first consultation generated 583 valid responses in total, comprising mainly responses from individuals, with smaller proportions from businesses and organisations. In all, 131 respondents objected to the Development, 430 respondents supported the development, and the remainder did not provide a

definitive view, mainly on the basis of the need for further information or the securing a range of stated conditions.

Many views for and against the Development related to its economic impact, renewable energy and the offshore wind sector overall. Beyond these largely general views, the key reasons for opposition related to visual impacts and associated impacts on tourism and recreation. There was strong opposition to the Development by the tourism and leisure sector, particularly those with interests in golf tourism in the North East.

The consultation on the Supplementary Environmental Information Statement generated 41 responses in total, comprising mainly responses from organisations, with smaller proportions from individuals and businesses.

Subsequent to those consultations, a further number of representations were submitted to the Scottish Ministers in response to two campaigns supporting and opposing the Scottish Government's renewable energy policy. That correspondence indicating support or opposition to the Development was not included in the consultation analysis of the responses received to the Application, the marine licence application, the Environmental Statement and the Supplementary Environmental Information Statement and is not included in the figures provided above.

Including the representations received under those campaigns 613 public representations were received, 148 of which were objections to the wind farm and 465 were in support.

Of the public representations made concerning the Application none was received from elected representatives.

Overall views of support or objection were less apparent in these responses than in the previous consultation, with most submitting either neutral or conditional responses. Some reiterated views on issues previously raised while others made recommendations for addressing these issues.

Objections were received from, amongst others, SEPA, SNH, the Royal Society for the Protection of Birds, the Ministry of Defence, the Civil Aviation Authority, British Airports Authority, National Air Traffic Services and the Blackdog, Milden, Eigie and Berryhill Salmon Fishery.

Several respondents, including the MoD, NATS, and RSPB, stated their willingness to withdraw their objections provided certain stated conditions were met, while others used their responses to raise concerns or recommendations that they felt should be addressed. These included:

- The development of management plans for the construction, operation and decommissioning of the development agreed with appropriate parties prior to the commencement of the development, and adherence to these over its lifespan. These included a more detailed programme of works, detailed design statement, site-specific environmental

management document, marine management protection plan, vessel movement plan, and adoption of an iterative process for development of a decommissioning strategy.

- The development and agreement over a radar mitigation scheme prior to commencement of the development.

- Greater emphasis on monitoring, establishment of an expert monitoring panel, and agreement on a detailed monitoring programme prior to commencement of the development. This included suggestions for additional studies and provision of research and monitoring results to be made available.

Additional mitigation above that currently proposed (i.e. above soft-start) be developed and implemented.

Like RSPB Scotland, SNH raised concerns about the proposal having the potential to impact upon a number of European protected areas, namely Special Protection Areas (SPA's) under the Wild Birds Directive and Special Areas of Conservation (SAC's) under the Habitats Directive. SNH considered that the proposal is likely to have a significant effect on the qualifying interests of certain SPA and SAC sites. An appropriate assessment was undertaken by the Scottish Ministers which concluded that impacts on the integrity of the protected sites would be avoided.

All objections received from all statutory consultees to the Application have been withdrawn either by agreement or by the inclusion of conditions to the consent. No objections were received from the two closest onshore local authorities, Aberdeen City Council and Aberdeenshire Council.

Objections from the Trump Organization and TIGLS, the Royal Aberdeen Golf Club and the Murcar Links Golf Club and from members of the public are being maintained.

The Trump Organization and TIGLS argue that the Development in its proposed location would have a significant negative impact upon their business and that in order to safeguard the golf resort it should be located elsewhere. The Royal Aberdeen Golf Club and Murcar Links Golf Club have also argued that granting the development would result in negative impacts upon the Aberdeen coast line and upon the golf, leisure and tourism industry in North East Scotland. The Trump Organization argue that the findings of the Reporters of the Inquiry into the Menie Estate application in 2008 and the related decision of the Scottish Ministers regarding that application should not be undermined by a subsequent decision of the Ministers.

Agents acting for the Trump Organization state that the Scottish Ministers must ask themselves if the alleged environmental benefits of the wind farm in its proposed location uniquely justify the risk of losing the identified national, regional and local economic and social benefits of the golf resort. They state that this is a key determining issue for the wind farm development and have

repeatedly stated that this can only be properly assessed by a public inquiry into the impact of the development on the golf resort.

Agents for the Trump Organization wrote to Marine Scotland on 29th January 2013 enclosing a Statement of Case on Economic Impact including Tourism in relation to the Development and advising that were the Development to be given consent in its proposed location then the Trump Organization would not proceed further with the golf resort.

Material considerations

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

- efficiency of wind energy;
- cumulative impacts;
- the proposed location of the Development;
- the visual impacts of the Development in its proposed location;
- the impacts on the tourism industry both in Aberdeenshire and in Scotland;
- the impacts on recreation in Aberdeenshire;
- the economic impact on the golf resort at the Menie Estate;
- the impacts on shipping and navigational safety;
- the impacts on aviation;
- the impacts on communications;
- the impacts on birds;
- the impacts on marine mammals;
- the impacts on environment;
- the impacts on fishing activity;
- development of the renewable energy sector.

Public Local Inquiry

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

The location and extent of the Development to which the Application relates being wholly offshore means that the Development is not within the area of any local planning authority. The Scottish Ministers are not, therefore, obliged under paragraph 2(2) of Schedule 8 to the Electricity Act to require a public

inquiry to be held. The nearest local planning authorities did not object to the Application. Even if they had objected to the Application, and even then if they did not withdraw their objection, the Scottish Ministers would not have been statutorily obliged to hold a public inquiry.

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

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

(i) the efficiency of wind energy;

(ii) visual impacts of the Development in its proposed location;

(iii) the potential impact upon tourism industry both in Aberdeenshire and in Scotland and recreation in Aberdeenshire;

(iv) the potential impact upon shipping and aviation; and

(v) the potential impact upon birds.

The efficiency of wind energy

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

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

Visual impacts of the Development in its proposed location

Adverse visual impact of the Development in its proposed location was raised in the outstanding objections objection to the Development. The Company in its Environmental Statement indicates that the Development would have

visual impacts that range from minor to major depending upon where the viewer is situated. SNH, the Scottish Ministers' statutory nature conservation advisers who advise on, amongst other matters, visual impacts on designated landscape features, advised that the Development would have an adverse impact on coastal character and visual amenity from within Aberdeen City. However, SNH advised that these impacts would be on local landscape interests and not on those that would pass their national interest test. SNH also advised that further consideration of an actual Design Statement for the scheme could help to reduce these impacts, by setting out the design principles for the scheme. The Scottish Ministers agree that a Design Statement would be a necessary mitigation to be included within any consent. The Company's Environmental Statement includes a number of visual photomontages that give an indication of the likely visual impacts. Although these are not definitive, the visualisation material acts as a tool to help inform the decision-making process. The Minister for Energy, Enterprise and Tourism carried out a site visit of a selection of viewpoints provided in the Company's Environmental Statement and in the course of which he was able to compare the views from those viewpoints using the visual photomontages. Officials also undertook a site visit at an earlier date.

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

Impact upon tourism industry both in Aberdeenshire and in Scotland and recreation in Aberdeenshire

Concerns have been raised by various respondents to the Application regarding the development's potential impact upon tourism, leisure businesses and employment. In particular, Royal Aberdeen Golf Club, Murcar Links Golf Club and the Trump Organization and TIGLS all objected to the Application based upon the negative socio-economic impact the Development would potentially have upon their respective businesses and more generally on tourism in Aberdeenshire and Scotland on account of the visual impact of the turbines.

Objection by the Trump Organization and TIGLS

The application for planning permission for the Menie Estate Golf and Resort Complex, which had been refused by Aberdeenshire Council, was granted by the Scottish Ministers following a public inquiry which was held in 2008. The Inquiry Reporters stated then that they were 'in no doubt, based on the independently generated conclusions of EKOS who appeared at the inquiry for the council, that the economic impact of the proposed resort development would be nationally significant.'

The Inquiry Reporters concluded 'that the economic and social advantages of [that development] at national, regional and local level are such as to justify,

uniquely, the adverse environmental consequences caused by a development on its scale and in this location.'

The Trump Organization have argued that the findings of the Inquiry Reporters into the Menie Estate golf resort and the resulting decision of the Scottish Ministers, in which they agreed with, and for the purpose of their own decision on the application adopted, the reasoning and recommendations of the Inquiry Reporters, should not be undermined by a subsequent decision of the Ministers.

Graham and Sibbald submitted a letter of objection on behalf of TIGLS to the Scottish Ministers on 24th September 2012. At paragraphs 89 to 91 of their letter, when referring to the impacts of wind farms on tourism in Scotland, they note that it is difficult to argue that there is an overarching empirical evidence based case for the causal relationships between wind farms and tourism in Scotland. They state that attempting to calculate the precise level of harm to TIGLS's business interests from a proposed wind farm development, including cumulative and secondary effects, is difficult to do in terms of exact quantification and make reference to survey reports from Visit Scotland.

The Trump Organization have stated that the Scottish Ministers must ask themselves if the alleged environmental benefits of the Development in its proposed location uniquely justify the risk of losing the identified national, regional and local economic and social benefits of the Menie Estate golf resort. They state that this is a key determining issue for the Development and state that this can only be properly assessed by a public inquiry. Given the circumstances of the case, they argued that it is appropriate for the Scottish Ministers to cause a public inquiry to be held so that the evidence for the wind farm and the evidence regarding the potential impact to the golf resort can be scrutinised and cross-examined.

The Scottish Ministers requested that the Trump Organization provide evidence which supports their claim that the Development in its proposed location would risk the identified national, regional and local economic and social benefits of the golf resort. Agents acting for the Trump Organization advised that they consider that it would not be appropriate to lodge the evidence other than at a public inquiry, relying upon more general assertions about socio-economic impact in its various objection documents, stating that it is relevant to the determination of the application for section 36 consent, and not to the question of whether or not to hold an inquiry.

On behalf of the Trump Organization, Dundas & Wilson in their letter of 29 January 2013 enclosed a Statement of Case on Economic Impact including Tourism. This sets out the case made by the Trump Organization that if the Development were to be given consent in its proposed location then the stated benefits of the golf resort would not be achieved because it would not proceed any further with the development of that resort.

Under the Electricity Act there is no presumption in favour of holding a public inquiry. It is a matter of discretion for the Scottish Ministers as to whether it is

appropriate for a public inquiry to be held. When considering whether to cause a public inquiry to be held the Scottish Ministers may have regard to–

a) whether they possess sufficient information to enable them to decide upon and weigh up the various issues;

b) whether those parties with a right to make representations have been afforded the opportunity to do so; and

c) whether a public inquiry would provide any further factual evidence which would be likely to cause them to change their view on the application.

The Scottish Ministers have carefully considered the request by the Trump Organization that the Scottish Ministers should cause a public inquiry to be held. In considering that request Ministers have considered a significant amount of evidence about the potential benefits of the Menie Estate Golf and Resort Complex. These are referred to in the objector's recent Statement of Case on Economic Impact including Tourism and also include the Report by the Fraser of Allander Institute in May 2008.

The Scottish Ministers have also considered significant evidence provided by the Company concerning the benefits of the Development.

In the Scottish Ministers' view it is not possible to predict with accuracy what benefits would accrue from the Menie Estate Golf and Resort Complex were consent to be given to the Development in its proposed location. The Scottish Ministers accept that there would be some impact on the Menie Estate Golf and Resort Complex were the Development to be built in its proposed location.

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

The Scottish Ministers accept at face value the statement by the Trump Organization that, were the Development to be given consent in its proposed location, the benefits outlined in the objector's Statement of Case on Economic Impact including Tourism would not be achieved because they

would not proceed with the development of the Menie Estate Golf and Resort Complex. In this respect, the Scottish Ministers consider that what would actually happen to the Menie Estate Golf and Resort Complex were the Development to be given consent in its proposed location is not amenable to answer at a public inquiry.

In accepting that the present intention of the Trump Organization and TIGLS is as stated above, the Scottish Ministers recall that paragraph 6 of Annex A to the Scottish Government Planning Circular 4/2009 ("Development Management Procedures") states –

> "The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests the basic question is whether the proposal would unacceptably affect the amenity and existing land use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development."

In the circumstances, the Scottish Ministers are satisfied that-

> (1) they possess sufficient information upon the benefits of both the Development and the Menie Estate in order to determine the Application; and
>
> (2) an inquiry into the issues proposed by the Trump Organization would not be likely to provide any further factual information to assist Ministers to resolve the issues of risk and planning judgment raised by the Application or to change their views on these matters as expressed later in this letter,

and, accordingly, it is not appropriate to cause an inquiry to be held into these matters.

Shipping and aviation

Concerns were raised that the Development might present a hazard to vessels navigating in and out of Aberdeen Port. There were lengthy discussions between the Company and check the Aberdeen Harbour Board and other navigation bodies and the Scottish Ministers consider that the information provided to them by, amongst others, the Maritime Coastguard Agency and the Northern Lighthouse Board, provides them with sufficient information on which to take a decision in this matter. NATS (En Route) plc raised objections against the proposal on the basis of the Development's impact upon its ability to provide safe and efficient air traffic services in the surrounding area. Following discussions between the Company and NATS, there is an agreed position which has allowed NATS to remove their objection and allow an aviation mitigation scheme. In the circumstances, the Scottish Ministers do not consider it appropriate to cause a public inquiry to be held, in

addition to, or instead of, the opportunities that there have already been to give views on the Development.

Birds

Concerns were raised about the potential effects of the Development on a variety of bird species using Aberdeen Bay. SNH and the RSPB advised that the Company had used incomplete survey data within their Environmental Statement and so the data could not be sufficiently assessed for a final conclusion to be made. The Company therefore undertook further assessments, and submitted these in the form of an Supplementary Environmental Information Statement to the Application. The Scottish Ministers undertook a further round of statutory consultation and, based upon this additional information, the consultees were able to remove their objections, subject to conditions being attached to the section 36 consent.

The Scottish Ministers have fully and carefully considered the Application and accompanying documents and all relevant responses from Consultees, as well as all the third party representations that have been received. The Scottish Ministers have taken all material considerations into account. The Scottish Ministers consider that there are no significant issues which have not been adequately considered in the Environmental Statement, consultation responses and third party representations and that they have sufficient information to be able to make an informed decision on the Application without the need for a Public Inquiry.

Determination

In the circumstances, the Scottish Ministers are satisfied that-

(1) they possess sufficient information upon which to determine the Application

(2) an inquiry into the issues proposed by the Trump Organization and TIGLS would not be likely to provide any further factual information to assist Ministers to resolve the issues of risk and planning judgment raised by the Application or to change their views on these matters as expressed later in this letter; and

(3) the objectors have been afforded every opportunity to provide information and to make representations.

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

The Scottish Ministers' consideration of the environmental information

The Scottish Minsters are satisfied that an Environmental Statement has been produced in accordance with the Electricity Works (Environmental Impact

Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") and the applicable procedures regarding publicity and consultation laid down in the 2000 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the Environmental Statement and Supplementary Environmental Information, and the representations received from the consultative bodies, namely SNH and SEPA, and from Aberdeenshire Council too.

In terms of paragraph 3(1)(a) of Schedule 9 to the Electricity Act, the Company, when formulating a proposal to construct the generating station, must have regard to the desirability of preserving natural beauty, of conserving flora, fauna, and geological or physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Paragraph 3(1)(b) of Schedule 9 to the Electricity Act requires the Company, when formulating such proposal, to do what it reasonably can to mitigate the effects that the generating station would have on these features.

In considering the Application, the Scottish Ministers have had regard to the desirability of the matters mentioned in paragraph 3(1)(a) and the extent to which the Company has complied with the duty under paragraph 3(1)(b). The Scottish Ministers consider that the Company has fulfilled the requirements of Schedule 9 to the Electricity Act and, by virtue of the Scottish Ministers undertaking an appropriate assessment in terms of the Habitats Directive based on the evidence, the requirements of Schedule 9 are capable of being met.

The Scottish Ministers' consideration of the possible effects on a European Site

When considering an application for section 36 consent which might affect a European protected site, the competent authority must first determine whether the Development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the Development is likely to have a significant effect on the site. Under the Habitats Directive, if the proposal is likely to have a significant effect, the competent authority must undertake an appropriate assessment of its implications for the site in view of the site's conservation objectives.

With regards to the Development, SNH advised that the wind farm could have a significant effect upon the qualifying interests of a number of sites – both Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). As the recognised competent authority under European legislation, Scottish Ministers have considered the relevant information and undertaken two appropriate assessments. The appropriate assessments conclude that the Development would not adversely affect the integrity of any of the designated

sites if the mitigation measures outlined were implemented by means of enforceable conditions attached to any consent.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

The Scottish Ministers' consideration of the Application and the material considerations mentioned above is set out below.

Cumulative Impact

The issue of potential cumulative impact on landscape, visual amenity and natural heritage was considered by SNH. In particular, SNH raised concerns about the cumulative impacts arising from the Development and onshore wind farms at Keith Inch and Green Hill, Peterhead. The Company further assessed the cumulative impact issue on all relevant species in the Supplementary Environmental Information Statement (SEIS) submitted to Scottish Ministers on 6th August 2012. SNH considered this additional evidence and did not raise any objection on the grounds of cumulative impact with regards to natural heritage.

With respect to landscape and visual amenity, SNH acknowledged that the Development would set a new precedent of proposals of this type being situated close to shore rather than on land, and it would necessitate cumulative impacts with onshore developments being considered in the future. SNH did not raise any objection on the grounds of cumulative impacts with regards to landscape and visual amenity. The Scottish Ministers accept this view.

Location of Development

The proximity of the Development to the Aberdeenshire coastline is clearly an important and defining issue to be considered. The Scottish Ministers consider that the Company has carefully considered the location of the Development due to its many advantages. Aberdeen Bay was adjudged by the Company as a suitable location due to its relatively sheltered position and close to a major harbour facility which would allow for very close proximity to important construction/lay down areas, survey vessels and operations and maintenance vessels, making it ideal for research and training purposes. These matters are largely a direct/indirect output from the major learning points from the Beatrice demonstration project, namely that deploying turbines at sea can take months longer than anticipated due to weather and logistical constraints. Aberdeen is also the centre for expertise in the offshore oil and gas supply chain, has excellent transport links and has offshore academic experience in its two universities and is home to the Scottish Government's world renowned Marine Laboratory.

Approximately six years (2004 – 2010) were spent by the Company examining constraints, undertaking consultations, and conducting surveys, studies and assessments for the most suitable location of the development. With Aberdeen Bay identified as a suitable area following a robust

assessment of alternative locations on the east coast of Scotland, the selection of the location within Aberdeen Bay brought key advantages to the project. The proposed location and layout of turbines are as a result of a long process of examining the constraints namely, but not exclusively, due to the:

- Proximity to European designated sites;
- Helicopter routes to the north;
- Ministry of Defence's concerns;
- Aviation industry;
- Coastal bird populations to the west;
- Shipping to the east; and
- Proximity to Aberdeen Harbour to the south.

The unique characteristics of the location suit its use as a demonstration site. The Aberdeen Renewable Energy Group ("AREG") undertook a feasibility study into the possible use of the sites as a demonstration site for new turbine designs which led to a commitment by a joint venture between AREG and Vattenfall. The feasibility study also led to interest from the EU who subsequently announced they wished to invest 40 million Euros in the project to assist in this objective. The Company wishes to establish the Development as a pioneer in the design and deployment of large scale offshore wind farms and associated infrastructure.

The Development could become a major component of Aberdeen City and Shire Economic Future's (ACSEF) Energetica project. Energetica is a 25 year vision to create an exemplar low carbon, sustainable development corridor that could attract energy organisations and individuals to a natural and built coastal environment. It is an integral part of Aberdeen City and Shire's work to strengthen its position as a global energy hub building on the region's rich oil and gas heritage. The Development presents a significant opportunity to contribute to the success of Energetica, helping to build a robust supply chain around offshore wind.

The Application has been considered fully and carefully, as have the accompanying documents and all relevant responses from consultees. Third party representations received have also been considered. Taking into account the extent to which any environmental effects would be modified and mitigated by measures the Company has agreed to take, or will be required to take, under the conditions attached to the consent and licence. The Scottish Ministers are satisfied that environmental issues can be appropriately addressed by way of mitigation, and that any impacts which remain are outweighed by the benefits the Development would bring.

The Scottish Ministers accept that the location of the Development is the significant factor in the objection made by the Trump Organization and by TIGLS. TIGLS also submitted supplementary objections on 3 October 2012. It is also a significant factor in the objections by the Murcar Links Golf Club and the Royal Aberdeen Golf Course Club.

Objection by the Trump Organization and TIGLS

The objection to the location of the Development by The Trump Organization and TIGLS founds upon the impacts which the Development would have on the Menie Estate Golf and Resort Complex based on –

- Adverse visual impact;
- Adverse impact on tourism;
- Incompatibility with neighbouring land uses.

They also object on the basis of adverse economic impact on Aberdeenshire and Scotland.

On behalf of the Trump Organization, Dundas & Wilson have stated that the development on the Menie Estate is one of national economic importance. The term 'national economic importance' is one which does not confer any particular status in Scottish planning policy and the Menie Estate development is not designated as a 'national development' in the National Planning Framework. However, consistent with the fact that the Scottish Ministers accepted the Reporters' findings of fact, agreed with their reasoning and recommendation and adopted them for the purpose of their own decision on the application, the Ministers consider that the Menie Estate development is one which has potential significant economic and social advantages at a national, regional and social level if it were built in full.

Agents acting on behalf of the Trump Organization and TIGLS subsequently made further submissions both in relation to the request for a public local inquiry and also in support of the objections. The most relevant recent correspondence is a letter of 29 January 2013 from Dundas & Wilson which enclosed a Statement of Case on Economic Impact including Tourism in relation to the objection that the Development in its proposed location would have significant adverse impact upon the economic benefits of the Menie Estate Golf and Resort Complex.

The Scottish Ministers have carefully considered the objections by the Trump Organization and TIGLS about the impacts of consenting to the Development in its proposed location.

The material considerations mentioned above require to be weighed against each other in considering those objections.

The Scottish Ministers consider that they have sufficient evidence about the potential economic benefits of the Menie Estate Golf and Resort Complex and of the Development.

In relation to the economic benefits of the Menie Estate, these are referred to in the Statement of Case on Economic Impact including Tourism submitted by Dundas & Wilson on 29 January 2013 and which are assessed in detail in the Fraser of Allander Institute's report of May 2008 submitted to the public inquiry into the planning application for the Menie Estate.

It is not possible to predict what benefits would accrue from the Menie Estate Golf and Resort Complex if the Development were to be given consent. The Scottish Ministers accept that there would be some impact on the Menie Estate if the Development were to be built in its proposed location.

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

The Scottish Ministers accept at face value the statement by the Trump Organization that, if the Development were to proceed in its proposed location, the benefits outlined in the objector's Statement of Case on Economic Impact including Tourism would not be achieved because they will not proceed with the Menie Estate Golf and Resort Complex.

In accepting that the present intention of the Trump Organization and TIGLS is as stated above, the Scottish Ministers recall that paragraph 6 of Annex A to the Scottish Government Planning Circular 4/2009 ("Development Management Procedures") states –

> "The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests the basic question is whether the proposal would unacceptably affect the amenity and existing land use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development."

It is the Scottish Ministers' planning judgment that, whilst they accept that the present intention of the Trump Organization and TIGLS is not to proceed further with the development of the Menie Estate Golf and Resort Complex if the Development were to be given consent in its proposed location, when weighing up that material consideration with the considerations mentioned in the next paragraph it is in their view an appropriate planning judgment nevertheless to grant consent to the Development in its proposed location.

The considerations mentioned in this paragraph are:-

1. The benefits that the Development would be expected to bring in terms of contribution to the development of the renewable energy sector;

2. The need to achieve targets for renewable energy;

3. The economic and social importance of Scotland's renewable energy sector;

4. The specific benefits of the Development being the first demonstrator wind turbine to be used by several companies which would provide a facility for testing in real conditions and assist in driving down the costs of developing wind turbines;

5. The role that the Development can play strategically in this context;

6. The clear advantages that the proposed location offers;

7. The potential to unlock a variety of economic benefits for Aberdeen and Scotland in the future;

8. The evidence that elsewhere in the United Kingdom golf courses co-exist with offshore wind farm developments;

9. The golf course already built at the Menie Estate has had an excellent reception from golfing commentators, as submitted on behalf of the Trump Organization by Dundas & Wilson on 29 January 2013, and would appear to have good prospects for expansion from its present state as a golf resort in future;

10. Part of the anticipated economic benefits of the Menie Estate Golf and Resort Complex are already being realised; and

11. The fact that the Development is a development of relatively limited duration in comparison with the potential duration of the Menie Estate Golf and Resort Complex.

Murcar Links Golf Club and the Royal Aberdeen Golf Course Club

It is also the Scottish Ministers' planning judgment that when weighing up the objections by the Murcar Links Golf Club and the Royal Aberdeen Golf Course Club as regards the proposed location with the considerations numbers 1 to 8 mentioned in the paragraph above it is in their view an appropriate planning judgment nevertheless to grant consent to the Development in its proposed location.

Visual impacts of the Development in its proposed location

The Trump Organization and TIGLS, Murcar Links Golf Club and the Royal Aberdeen Golf Club all expressed in their objections strong concern about

adverse visual impact on their respective golf courses (and in the case of TIGLS the wider golf resort) if the Development were to be built in its proposed location due to the closeness of the turbines to the shore.

As mentioned above in relation to the impacts on the Menie Estate Golf and Resort Complex, the Scottish Ministers accept that the Development would have a visual impact on that resort and on the golf courses at Murcar and Royal Aberdeen.

The Scottish Ministers note that there is evidence that golf courses elsewhere in the United Kingdom co-exist with offshore wind farm developments.

It is the Scottish Ministers' planning judgment that, whilst accepting that there would be some adverse visual impact resulting from the location of the Development on the Menie Estate Golf and Resort Complex and golf courses at Murcar and Royal Aberdeen, and more generally on the seascape from Aberdeenshire Coast, when weighing up that material consideration with the considerations numbers (1) to (8) mentioned in the paragraph above in relation to the planning judgment on the proposed location of the Development, it is in their view an appropriate judgment nevertheless to grant consent to the Development in its proposed location.

Impacts on the tourism industry both in Aberdeenshire and in Scotland

In their objections, each of the Trump Organization and TIGLS, Murcar Links Golf Club and the Royal Aberdeen Golf Club expressed concern that the Development in its proposed location would have an adverse impact on tourism and recreation.

As noted above in relation to the objection by the Trump Organization and TIGLS as to the proposed location of the Development, it is argued by them that Development would have a direct impact on tourism due to the direct impact on the Menie Estate Golf and Resort Complex because the present intention of the Trump Organization and TIGLS is not to proceed further with the development of the resort in the event that consent is granted to the Development.

The Scottish Ministers accept that this is the present intention of the Trump Organization and TIGLS.

The Scottish Ministers also note what is said above in relation to the attitude of tourists generally towards wind farms.

It is the Scottish Ministers' planning judgment that, whilst they accept that-

- the present intention of the Trump Organization and the TIGLS is not to proceed further with the development of the Menie Estate Golf and Resort Complex if consent were to be granted;

- that resort might therefore remain in its present state of development; and
- there is a risk of some adverse effect on tourism both in relation to the other golf courses and more generally,

when weighing up that impact on tourism with the considerations numbers (1) to (8) mentioned in the paragraph above in relation to the planning judgment on the proposed location of the Development, it is in their view an appropriate planning judgment nevertheless to grant planning consent to the Development in its proposed location.

Navigational safety

There were concerns that the proximity of the Development to Aberdeen harbour could cause difficulties for vessels navigation in the general area of the wind farm, particularly in inclement weather.

The Chamber of Shipping is satisfied that issues surrounding shipping and navigation have been addressed in the wind farms final design iteration. They are of the opinion that the final turbine layout will allow sufficient space for vessels operating on the NE/SW route and that any route deviation caused by the construction of the wind farm will be minimal and acceptable from a navigational safety point of view, provided the risk mitigation measures and monitoring outlined in Section 20 of the Company's Navigational Risk Assessment are applied. In addition, the chamber of Shipping is satisfied that 0.25nm separation between the designated anchorage area in Aberdeen Bay and the nearest turbine will be sufficient to maintain the safety of anchored vessels.

Aberdeen Harbour Board expressed some concern regarding the proposed development, however were content with the Navigational Risk Assessment prepared by the Company. The Harbour Board did raise certain issues within the NRA and the Anchoring Analysis, however these have since been alleviated by the Company. The Northern Lighthouse Board was content with the Development providing certain conditions were included in any section 36 consent.

The Scottish Ministers are satisfied that the adoption of the measures recommended by the Northern Lighthouse Board and other navigational Consultees adequately address the navigational safety concerns and that there are no concerns about navigational safety that would require consent to be withheld.

Impacts on Aviation

Aberdeen Airport and National Air Traffic Services (En Route) Limited ("NERL") objected because of potential impacts on the Perwinnes radar and associated air traffic operations without mitigation. An agreement has been entered into between the Company and NERL for the design and

implementation of an identified and defined mitigation solution in relation to the Development. As such, both NERL and Aberdeen Airport have withdrawn their objection.

The Ministry of Defence also objected to the Application due to the potential unacceptable interference to the air defence radar at RAF Buchan. Following discussions with the Company, the Ministry of defence withdrew their objection subject to a section 36 condition being included in any consent.

The Scottish Ministers are therefore satisfied that, subject to the agreed mitigation measures recommended by NERL and the MOD, the aviation impacts would be suitably mitigated. Consequently, the Scottish Ministers consider there are no concerns about impact on aviation that would require consent to be withheld.

Marine mammals

The Scottish Ministers note that techniques used in the construction of most offshore renewable energy installations have the potential to impact on marine mammals. As this is a demonstrator project, there will be a variety of foundations used. The Company has confirmed that they do not believe monopoles will be used at the site, however, in considering the most likely worst case scenario the Scottish Ministers have considered the potential for a maximum of four monopoles to be used. If the Company uses no more than a maximum of four monopoles, this will reduce the duration and scale of underwater noise emissions which could impact on marine mammals.

SNH advised that the Development is unlikely to have an adverse effect on the integrity of the Moray Firth SAC and did not object subject to conditions being attached to any section 36 consent. Similarly the Whale and Dolphin Conservation Society ("WDCS") raised concerns regarding the potential impact on bottlenose dolphins that reside in Aberdeen harbour and local populations of harbour seals. The WDCS did not object to the proposal, and also recommended conditions be included in any section 36 consent to help minimise the potential impacts on these species.

The Scottish Ministers are satisfied that the adoption of appropriate marine mammal mitigation measures within any section 36 consent will ensure that there are no significant impacts to marine protected species. In light of these measures, the Scottish Ministers consider there are no concerns about impact on marine protected species that would require consent to be withheld.

Birds

The RSPB and SNH expressed concerns about the potential impact of the Development on several bird species using Aberdeen bay. The species of most concern were common and velvet scoters, eiders, red throated divers, herring gulls, little, Sandwich and common terns.

As far as impacts on common and velvet scoters are concerned, they relate mostly to potential displacement and disturbance rather than collision as their general flight height suggests low collision risk under most conditions. RSPB advised it is important to minimise disturbance due to construction and maintenance with activity planned to coincide with periods of lowest use for both species.

Displacement and disturbance was also considered to be a potential impact on eiders and the RSPB advised there should be a construction plan and vessel movement schedule developed to reduce disturbance from these elements of the project. They went on to say that evidence from elsewhere suggests that an operating wind farm approximately 2km from the favoured feeding area is unlikely to deter eiders, but boat movements and construction/servicing activity are more critical.

Despite low numbers since the 1980's, Aberdeen bay is thought to be of likely national importance for red-throated divers. Concerns were raised regarding the potential significant displacement of this species but following further boat based surveys by the Company, the RSPB confirmed that due to the usage patterns, displacement impacts in this part of Aberdeen bay are likely to be relatively small, based on the numbers of divers present.

The main concern for the Herring gull population in the area was that of collision risk. Previous radar studies showed large numbers of gulls moving, including at night and in adverse weather. The RSPB thought this suggested that the Company's collision risk assessment of 'moderate' may have been too low. A revised collision risk assessment was submitted as part of the Supplementary Environmental Information Statement and the RSPB accepted the revised calculation and assessment of probable low impact on the SPAs (approximately 1% of baseline mortality).

Concerns raised over the impacts to little, Sandwich and common terns were focussed on collision risk. Evidence from other European sites suggests a relatively high risk of terns not being deterred from turbines, passing through them frequently, and colliding due to a high number of transits. However, the RSPB suggested that the mitigating factor in this case was the distance of the Development from the main nesting colony at Sands of Forvie, and the fact that migrating and foraging terns appear to favour areas within 2-3km of the shore. The RSPB therefore considered the collision risk and displacement impacts were likely to be low for the tern species.

In light of the above, the Scottish Ministers consider that, while the Development would have an impact on birds, this would not be so significant that it would require consent to be withheld.

Fishing activity

A joint consultation response from the Dee, Don and Ythan District Fishery Boards raised the importance of the location of the Development due to the presence of salmon and sea trout. The 2 key issues identified by the Boards

included the potential impacts associated with noise and vibration, particularly avoidance behaviour by salmon at distances from 3.5 to 4.2 km from construction activities, and potential EMF impacts during the operation of the wind farm. There was interest expressed by the Boards in the potential for the Development to act as a useful trial to examine the deployment of offshore wind turbines in close proximity to three major rivers. The Boards requested that they work with the Company, not only during the construction phase for the development, but also through the operational lifespan of the project. The Company has indicated that as part of the mitigation proposals a representative of the Boards would be included.

Regarding commercial fishing activity, although the Scottish Fisherman's Federation and the Scottish Fisherman's Organisation were consulted on the Application, no responses were received. Additionally, Marine Scotland's Compliance Division, having consulted the owners of the three inshore boats that work from Aberdeen and fish in the general area where the Development will be located, also did not receive any comments or objections.

The Scottish Ministers consider that, having taken account of the information provided by the Company and the response of the Dee, Don and Ythan District Fishery Boards, the impact of fishing activity is not likely to be so significant, in light of the mitigation measures proposed, that it would require consent to be withheld.

Consideration of other material issues

The Scottish Ministers consider the following issues material to the merits of the section 36 consent application.

The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development.

The Company has identified what can be done to mitigate the impact of the Development.

The matters specified in paragraph 3(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and the Scottish Ministers have judged that the likely environmental impacts are acceptable.

The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that any decommissioning programme required under the Energy Act 2004 is prepared in a timely fashion by imposing a condition requiring the submission of a draft decommissioning plan before construction of works can take place.

The Scottish Ministers have considered fully and carefully the Application and accompanying documents and all relevant responses from consultees and the 613 public representations received, 148 of which were objections to the wind farm and 465 were in support.

The representations received by the Scottish Ministers in response to the two campaigns supporting and opposing the Scottish Government's renewable energy policy are included in the total representation numbers provided above.

The 100 MW Development 2 km off the coast of Aberdeenshirewill annually generate renewable electricity equivalent to the demand from approximately 49,000 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's annual electricity demand by 2020.Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of much renewables generation, a balanced electricity mix is required to support security of supply requirements. Scotland has the capability and the opportunity to generate a level of electricity from renewables by 2020 that would be the equivalent of 100% of Scotland's gross electricity consumption. This does not mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

The Scottish Ministers aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland's manufacturing capacity, to develop new indigenous industries, and to provide significant export opportunities. The Scottish Ministers have considered material details of how this proposal can contribute to local or national economic development priorities.

Within their Environmental Statement, the Company state that total capital expenditure during the two-year construction phase of the Development has been estimated at £260.4 million. It has also been estimated that this would support 738 job-years worth of employment, and £40 m of Gross Value Added (GVA) in Scotland; of which 296 job-years and £16 million of GVA would be in Aberdeen and Aberdeenshire. The impact related to Aberdeen and Aberdeenshire would relate mainly to the construction and assembly of turbines and foundations. The additional impact in the rest of Scotland relates to the supply chain activity such as the manufacture of foundations and potentially also wind turbines.

The Development would require a local team of around 25 jobs for operational and maintenance activities. Over the 22 year operational life of the Development, this would support 768 job-years worth of employment and £23 million of Gross Value Added (GVA) at the Scotland level.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **ANNEX 2** to this decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act for the

construction and operation of the Development, consisting of up to 11 turbines with a permitted capacity of up to 100 megawatts (as described in **ANNEX 1**).

At present the Scottish Ministers have no powers to grant deemed planning permission for any ancillary onshore development relating to the offshore electricity generating station, therefore consent is not granted for the onshore cabling as applied for by the Company.

The Scottish Ministers direct that this consent is to lapse on the expiry of a period of 5 years from the date of this direction if Commencement of the Development has not taken place within that period.

The Scottish Ministers direct that within 2 months of the date of this consent (and within 2 months of the final commissioning if there has been any variation on the original approved plan), the Company must provide a detailed plan showing the site boundary and all turbines in a format compatible with the Scottish Government's Spatial Data Management Environment (SDME), along with appropriate metadata to the Scottish Ministers.

The SDME is based around Oracle RDBMS and ESRI ArcSDE and all incoming data must be supplied in ESRI shapefile format. The SDME also contains a metadata recording system based on the ISO template within ESRI ArcCatalog (agreed standard used by the Scottish Government), all metadata should be provided in this format.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended), the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development.

In reaching their decision they have had regard to all objections and relevant considerations and, subject to the conditions of this consent, are satisfied that it is appropriate for the Company to construct and operate the generating station in the manner as set out in the Application.

Copies of this letter and the consent have been sent to the nearest onshore Planning Authorities. This letter has also been published on the Marine Scotland's website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – http://www.scotcourts.gov.uk/session/rules/print/rules/CHAP58.pdf.

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

Yours sincerely

Redacted

A member of the staff of the Scottish Ministers

ANNEX 1
DESCRIPTION OF THE DEVELOPMENT

The Development as shown on Figure 1, in **ANNEX I PROJECT LOCATION**, attached to this consent shall have a permitted generating capacity not exceeding 100 MW and shall comprise a wind-powered electricity generating station at Aberdeen Bay, approximately 2 kilometres east of Blackdog, Aberdeenshire, including:

1. not more than 11 three-bladed horizontal axis wind turbines each with a maximum blade tip height of 198.5 metres;
2. all foundations and scour protection;
3. inter array cabling and export cables to the shore; and
4. transition pieces including access ladders / fences and landing platforms.

all as specified in the Application, the Environmental Statement and the Supplementary Environmental Information Statement to the Application and to the Environmental Statement, and references in this consent shall be construed accordingly.

ANNEX 2
CONDITIONS OF THE SECTION 36 CONSENT

Part 1
Conditions of Section 36 Consent

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

1. The consent is for a period from the date the consent is granted until the date occurring 22 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.

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

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

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

3. In the event that for a continuous period of 12 months or more any wind turbine installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with any advisors as required at the discretion of the Scottish Ministers, any such wind turbine and all associated foundations and fitments shall be deemed by the Scottish Ministers to cease to be required. If so deemed, the wind turbine and its ancillary equipment must be dismantled and removed from the Site by the Company within the period of 12 months from the date of the decision to deem the wind turbine as ceasing to be required, and the Site must be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers after consultation with any advisors as may be required at the discretion of Scottish Ministers.

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

4. The Company is not permitted to assign the consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant consent (with or without conditions) or refuse such

authorisation as they may, in their own discretion, see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

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

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

6. Commencement of the Development must not proceed until after the Company has submitted to the Secretary of State a decommissioning programme in compliance with a notice served upon the Company by the Secretary of State following consultation with the Scottish Ministers, pursuant to Sections 105(2) and (5) of the Energy Act 2004.

Reason: *To ensure that a decommissioning plan is submitted to the Secretary of State following consultation with the Scottish Ministers before any construction commences.*

Development

7. The Development must be constructed and operated in accordance with the terms of the Application and the accompanying Environmental Statement and the Supplementary Environmental Information Statement, except in so far as amended by the terms of the Section 36 consent and any direction made by the Scottish Ministers.

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

Aviation

8. To mitigate the impact of the Development on the Primary and Secondary Radar Installation at Perwinnes Radar no wind turbine shall be erected until the Company has agreed a Radar Mitigation Scheme ("RMS") with the Operator and until the RMS has been submitted to, and agreed in writing by, the Scottish Ministers in consultation with the Operator. No wind turbine shall be erected before the approved RMS has been implemented. The Development must at all times thereafter be operated fully in accordance with the approved Scheme.

Reason: *To mitigate the adverse impacts of the Development on the Primary and Secondary radar Installation at Perwinnes.*

9. Prior to the erection of any wind turbines on the Site the Company must submit a Defence Radar Mitigation Scheme ("the Scheme") for the written approval of the Scottish Ministers, following consultation with the Ministry of Defence ("MOD"). The Company must meet all costs that are attributable to the Scheme, its delivery into service, and the implementation and support of the mitigation measures as set out within the Scheme. No wind turbines shall become operational until:

(a) the mitigation measures that are required under the approved Scheme have been implemented; and
(b) any performance criteria, all as specified in the approved Scheme as requiring to be satisfied, have been so satisfied; and
(c) the implementation and satisfaction of the performance criteria has been approved by the Scottish Ministers in consultation with the MOD.

The Company must, at all times, comply with all obligations under the Scheme.

Reason: *To mitigate the adverse impacts of the Development on the air defence radar at RAF Buchan and the operations of the MOD.*

Construction

10. Prior to the erection of any wind turbines on the Site, the Company must submit a Black Dog Firing Range Management Plan ("Management Plan") to the Scottish Ministers for their written approval, following consultation by the Scottish Ministers with the MOD. To ensure that the safety of vessels, installations and personnel deployed within the offshore danger area (X5703) whilst range activities are not compromised the Management Plan must identify the operational procedures requiring to be implemented by the Company. The Company must meet all costs attributable to the delivery of the Management Plan. The Company must comply with all operational procedures under the Management Plan.

Reason: *To ensure that Black Dog Firing Range Activities are not compromised.*

11. The Development must be lit and marked in accordance with current Civil Aviation Authority Policy and Guidance, or any other relevant documents from time to time, that may supersede said guidance.

Reason: *To ensure that the Development is marked and lit in accordance with Civil Aviation Authority requirements.*

12. At a time to be agreed by the Scottish Ministers, in consultation with the Civil Aviation Authority, the positions and maximum heights of the wind turbines and construction equipment must be provided by the

Company to the Defence Geographic Centre for aviation charting purposes.

Reason: *In the interests of aviation safety.*

13. Prior to the Commencement of Development a Construction Method Statement ("CMS") must be submitted by the Company to the Scottish Ministers and approved, in writing by the Scottish Ministers, following consultation with Scottish Natural Heritage, Scottish Environment Protection Agency, the Marine and Coastguard Agency, the Planning Authorities, Northern Lighthouse Board, and any such other advisors as may be required at the discretion of the Scottish Ministers. Unless otherwise agreed in writing by the Scottish Ministers, construction of the Development must proceed in accordance with the approved CMS. The CMS must include, but not be limited to, information on the following matters:

(a) Commencement dates;
(b) Working methods including the scope, frequency and hours of operations;
(c) Duration and Phasing Information of key elements of construction, for example turbine structures, foundations, turbine locations, inter-array cabling and land fall cabling;
(d) Method of installation including techniques and equipment and depth of cable laying and cable landing sites;
(e) The use of Dynamic Positioning vessels and safety/guard vessels;
(f) Pollution prevention measures including contingency plans; and
(g) Design Statement

The CMS must be cross referenced with the Project Environmental Management Plan, the Vessel Management Plan and the Navigational Safety Plan.

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

14. Prior to the Commencement of the Development, a detailed Design Statement must be submitted by the Company to the Scottish Ministers for their written approval, after consultation by the Scottish Ministers with SNH, Marine and Coastguard Agency, Northern Lighthouse Board, National Air Traffic Services and any such other advisors as may be required at the discretion of the Scottish Ministers. The Design Statement must provide guiding principles for the deployment of the wind turbines. This plan must detail:

(a) Layout location for each phase and each turbine; and

(b) Turbine height, finishes, blade diameter and rotation speed across each phase, rows and individual turbine locations; and

(c) Lighting requirements (navigation and aviation) for each turbine / row, or, as the case may be, phase including any anemometer mast; and

(d) further detailed assessment of visual impacts to inform the detailed layout and design of each location and phase of the deployment centre from selected viewpoints to be agreed with the Scottish Ministers and any such other advisors as may be required at their discretion.

Reason: *To set out design principles to mitigate, as far as possible, the visual impact of the turbines.*

Environmental Management Monitoring

15. Within six months of the date of the granting of the Section 36 consent, an expert panel must be established by Scottish Ministers to provide scientific advice to them on a research and monitoring programme to inform, where appropriate and as timescales allow, the Project Environmental Management Programme. Membership, funding, the terms of reference and the functions of the panel are to be agreed by Scottish Ministers in consultation with any such advisors at the discretion of the Scottish Ministers. The programme must survey and monitor the impact of the Development on important species, habitats, and users of the sea within Aberdeen Bay all as agreed by the Scientific Panel. The programme must also monitor the habitats around, and the communities that develop on, the submerged structures. The monitoring programme must be subject to input from the expert panel, to consultation with agreed consultees and subject to agreed review periods. The programme must ensure that the monitoring is robust and covers pre, during and post construction aspects and must be agreed, so far as is possible, prior to the Commencement of Development.

The subjects to be included for monitoring, but not exclusively, are:

(a) Agreed methods to consider any changes to species, densities and behavioural patterns during all phases of the wind farm;

(b) Agreed measures to detect bird collisions e.g. blade sensors, targeted radar studies, thermal detection systems etc.

(c) Gathering field measurements of under water and air borne noise during piling and operation of the turbines at the Development;

(d) Operational under water and air borne noise emissions for an initial period of twelve months from the date of the Commencement of the Development and then for such

further periods when considered necessary by the expert panel based upon the results received and as agreed by Scottish Ministers in consultation with advisors as identified at their discretion.

(e) Deployment of Passive Acoustic Monitoring systems to record vocalisation of marine mammals before, during and after construction of the Development;

(f) The agreement of a Marine Mammal Protection Plan (MMPP);

(g) Impacts on the adjacent coastline and on other users and uses of the sea; and

(h) Migration and behaviour of European eel, salmon and sea trout due to electro-magnetic fields.

The research and monitoring programme information and outputs must be reported annually to the Scottish Ministers who may consult with any advisors at their discretion before providing their written approval of said programme information and outputs. Subject to any legal restrictions regarding the treatment of the information, the results shall be made publicly available by the Scottish Ministers, or by such other party appointed at their discretion.

Reason: *To ensure that the best available evidence and most appropriate scientific and technical information is used to inform and develop a monitoring programme to allow evaluation of any impacts before, during and after the construction of the Development.*

16. Within six months of the date of the granting of the Section 36 consent, the Company must provide to the Scottish Ministers information on the funding mechanisms for the research and monitoring programme referred to in Condition 15.

Reason: *To ensure that the research and monitoring programme is implemented and that funding is available before construction work commences.*

17. No later than three months prior to the Commencement of the Development, a Project Environmental Monitoring Programme (PEMP) must be submitted to, and approved by, the Scottish Ministers in consultation with SNH and any other ecological, or such other advisors as required at the discretion of the Scottish Ministers. The PEMP must detail the measures through all the phases of the wind farm (before, during and after the construction work) to prevent adverse impacts to marine mammals, birds, fish, migratory fish including European eels, habitats, coastal processes, and other users and uses of the area and must include species protection plans where appropriate and necessary. Where appropriate and reasonable, the PEMP must take account of, and implement recommendations from, the Construction Noise Management Plan, the Design Statement, the Cable Laying Strategy, the Black Dog Firing Range Management Plan, the

Construction Method Statement, the Research and Monitoring Programme, the Vessel Management Plan and the Navigational Safety Plan and from the Company's Environmental Statement and Supplementary Environmental Information Statement.

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

18. Prior to the Commencement of the Development, a Construction Noise Management Plan must be submitted to, and approved by, the Scottish Ministers, in consultation with any such advisors from Aberdeenshire Council and Aberdeen City Council, as identified at the discretion of the Scottish Ministers.

The Company must implement the approved Construction Noise Management Plan in full, unless otherwise agreed in writing by the Scottish Ministers.

Reason: *To ensure the proper environmental control in respect of noise, and to safeguard the amenities of the nearest residential properties.*

19. At wind speeds not exceeding 12 metres per second as measured or calculated at a height to be agreed by the Scottish Ministers following consultation with the Planning Authorities, the noise emission level emitting from the Development at any dwelling present at the date of the granting of consent must comply with the following:

(a) During night time hours, as defined in ETSU-R-97 as 23.00 to 07.00 on all days, the wind farm noise emission level shall not exceed 38dB LA_{90}, 10 min or the ETSU-R-97 derived "night hours" noise limit based on the measured LA_{90}, 10 min background noise level plus 5dB(A), whichever is the greater.

(b) At all other times, the wind farm noise emission level must not exceed 35dB LA_{90}, 10 min or the ETSU-R-97 derived "quiet waking hours" noise limit based on the measured LA_{90}, 10 min background noise level plus 5dB(A), whichever is the greater.

For the avoidance of doubt "quiet waking hours" refers to the periods between 1800 and 2300 every day, and between 1300 and 1800 on Saturday, and between 0700 and 1800 on Sunday.

Reason: *To ensure the proper environmental control in respect of noise, and to safeguard the amenities of the nearest residential properties.*

20. At the reasonable request of the Scottish Ministers, as enforcing authority, and following a complaint made to the Scottish Ministers relating to noise emissions arising from the operation of the

Development, the Company must measure the level of noise emission from the Development at the property to which the complaint relates. The measurement and calculation of noise levels must be undertaken in accordance with ETSU-R-97 having regard to paragraphs 1 to 3 and 5 to 11 inclusive of the schedule of pages 95 to 97 inclusive and Supplementary Guidance Notes to the Planning Obligation, Pages 99 to 109. The Company must provide to the Scottish Ministers the independent consultant's assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information must be provided within 3 months of the date of the written request by the Scottish Ministers unless otherwise extended in writing by the Scottish Ministers.

Reason: *To ensure proper environmental control in respect of noise and to safeguard the amenities of the nearest residential properties.*

21. The Company must measure, at their own expense, the level of noise emissions from the Development within the first year of the operation of the turbines, and every two years thereafter, or other such period as directed by the Scottish Ministers. The frequency of measurement of the level of noise emissions is subject to review every two years by the Scottish Ministers. The results of any measurement exercise must be provided to the Scottish Ministers as soon as is practicable.

Reason: *To ensure proper environmental control in respect of noise, and to safeguard the amenities of the nearest residential properties.*

22. That for the lifetime of the Development, the Company must log wind speed and wind direction data on a continual basis and must retain the data for a period of no less than 12 months. The data must include the average wind speed in metres per second for each 10 minute period at a height to be agreed by Scottish Ministers in consultation with the Planning Authorities. The measuring periods must be set to commence on the hour or in 10 minute increments thereafter. The wind speed data must be made available to the Scottish Ministers on request by way of a Microsoft Excel spreadsheet in electronic format. Where the wind speed is measured at a height other than that agreed by Scottish Ministers, this data must be supplemented by adjusted values which allow for wind shear, normalising to the original agreed height. Details of the wind shear calculation must be provided.

Reason: *To ensure proper environmental control in respect of noise, and to safeguard the amenities of the nearest residential properties.*

23. When directed by the Scottish Ministers, the Company must carry out an assessment for tonal noise in accordance with the procedure recommended in Section 6 of the document "The Assessment and Rating of Noise from Wind Farms"(ETSU-R-97), namely the procedure based on the Joint Nordic Method

Where the tone level above audibility is greater that 3dB a tonal penalty must be applied to permitted noise levels, in accordance with figure 16 of the aforementioned document to provide that the permitted levels specified in these conditions will be reduced by the tonal penalty.

Reason: *To ensure proper environmental control in respect of noise and to safeguard the amenities of the nearest residential properties.*

24. Prior to the Commencement of the Development, a Vessel Management Plan must be submitted to, and approved by, the Scottish Ministers in consultation with SNH and any such other ecological or other advisors as may be required at the discretion of the Scottish Ministers. The Vessel Management Plan must include, but is not limited to, the following issues:

(a) Individual vessel details;
(b) Number of vessels;
(c) Whether ducted propellers will be in operation;
(d) How vessel management will be coordinated, particularly during construction but also during operation; and
(e) Location of working port(s), how often vessels will be required to transit between port(s) and the site and the routes used.

The Development must be constructed and operated in accordance with the Vessel Management Plan, and the Vessel Management Plan must be cross-referenced with the Project Environmental Management Plan, the Construction Method Statement, the Design Statement and the Navigational Safety Plan.

Reason: *To minimise the disturbance to marine mammals and birds.*

25. No later than six months prior to the commencement of cable laying, a Cable Laying Strategy ("the Strategy") must be submitted by the Company to the Scottish Ministers for approval by the Scottish Ministers following consultation with SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Strategy must include the details of the location, the construction methods, and the monitoring methods for the grid export cables and cable landfall site. The Strategy must also include the survey results of an inter-tidal habitat and relevant species survey which will help inform the cable routing location. The Development must be constructed and operated in accordance with the Strategy.

Reason: *To safeguard coastal processes in the wider Aberdeen Bay. To ensure all environmental issues are considered in the location and construction of the export and inter array cables. This must include coastal processes and benthic and intertidal habitats.*

Navigation

26. Prior to the Commencement of the Development, a Navigational Safety Plan must be submitted to, and approved by, the Scottish Ministers in consultation with the Maritime and Coastguard Agency, the Northern Lighthouse Board, Aberdeen Harbour Board, the Chamber of Shipping and any other navigational advisors, or such other advisors, as may be required at the discretion of the Scottish Ministers. The Navigational Safety Plan must include, but is not limited to, the following issues:

(a) Navigational safety measures;
(b) Exclusion zones;
(c) Notice(s) to Mariners and Radio Navigation Warnings;
(d) Buoyage;
(e) Anchoring areas; and
(f) Lighting.

The Development must be constructed and operated in accordance with the Navigational Safety Plan at all times.

Reason: *In the interests of safe navigation.*

Definitions

In this consent

“the Application” means the Application and Environmental Statement submitted by the Company on 1 August 2011;

“Civil Aviation Authority Policy and Guidance” means “CAP 437 Standards for Offshore Helicopter Landing Areas”, “DAP Policy: Lighting of Wind Turbine Generators in United Kingdom Territorial Waters”, “DAP Policy: Guidance On Actions In The Event Of The Failure Of Aviation Warning Lights On Offshore Wind Turbines Listed In The UK Aeronautical Information Publication” or any other relevant documents that, from time to time, may supersede this guidance;

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

“the Company” means Aberdeen Offshore Wind Farm Limited , Johnstone House, 52 – 54 Rose Street, Aberdeen, Scotland, AB101HA, Company Registration No. SC278869;

"dB" means the measurement in decibels of the emitted sound power level of a wind turbine;

"dB(A)" means the measurement in decibels of the emitted sound power level of a wind turbine using the A-weighting network as referred to in ETSU-R-97;

“Defence Radar Mitigation Scheme” means a detailed scheme to mitigate the adverse impacts of the Development on the air defence radar at RAF Buchan and the air surveillance and control operations of the MOD;

“the Development” means the European Offshore Wind Deployment Centre (EOWDC) electricity generating station in AberdeenBay, approximately 2 km east of Blackdog, Aberdeenshire, as described in ANNEX 1;

“Environmental Statement” means the Environmental Statement submitted by the Company on 1 August 2011 as part of the Application as defined above;

"ETSU-R-97" means the ETSU Report number ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms' published in September 1996;

ETSU-R-97 derived "quiet waking hours" or "night hours" noise limit means the noise limits derived in accordance with paragraphs 1.2.3, 1.3.1 and 1.3.2 of the Supplementary Guidance Notes to the Planning Obligation, pages 101 to 102, of ETSU-R-97;

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

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

"LA90" means the decibel (dB) level exceeded for 90% of each sample period;

“Offshore Danger Area (Z5703)” means The seaward extent of the Blackdog Firing Range as X5703 depicted on Practise and Exercise Area (PEXA) Chart Q.6405 published by the UK Hydrographic Office;

“Operator” means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO157FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act);

“Planning Authorities” means Aberdeen City Council and Aberdeenshire Council;

"Radar Mitigation Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the

impact of the development on the Perwinnes primary and secondary radar and air traffic management operations of the Operator;

“SEPA" means the Scottish Environment Protection Agency;

“Site” means the area outlined in red on Figure 1, attached to this consent;

"SNH" means Scottish Natural Heritage;

“Supplementary Environmental Information Statement” means the Supplementary Environmental Information Statement to the Application and Environmental Statement submitted by the Company on 6 August 2012; and

“Wind farm noise emission level" means the rated LA90 noise level due to the combined effect of all wind turbines including any tonal penalty incurred under the methodology described in ETSU-R-97, but exceeding the effect of background noise, as measured and correlated with 10 m height wind speed.