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

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

SITE DETAILS: CENTRAL NORTH SEA, APPROXIMATELY 47.6KM FROM THE EAST LOTHIAN COASTLINE AND 37.8KM FROM THE SCOTTISH BORDER COASTLINE IN THE OUTER FIRTH OF FORTH

Name	**Date**
[redacted]	12 June 2025
[redacted]	12 June 2025

TABLE OF CONTENTS

LIST OF TABLES

SECTION 1: INTRODUCTION

1 Requirement for Derogation

1.1 Berwick Bank Wind Farm ("the Project") is an offshore wind farm located approximately 47.6 kilometres ("km") from the East Lothian coastline and 37.8 km from the Scottish Border coastline and will have a generating capacity of up to 4.1 Gigawatts ("GW") produced by up to 307 wind turbine generators ("WTGs"). There will be up to 10 Offshore Substation Platforms ("OSPs") located within the wind farm array area, up to 8 inter-array cables and up to 8 High Voltage Alternating Current ("HVAC") export cables. The HVAC export cables are proposed to run from the wind farm array area to landfall near Skateraw Harbour, East Lothian (872 km total of cable).

1.2 The Project forms part of the Firth of Forth Zone (Phase 2 and 3) identified under the Crown Estate 3rd Offshore Wind Leasing Round ("Round 3"). Berwick Bank Wind Farm Limited ("the Company") as a subsidiary of SSE Renewables Limited was awarded a leasing option in 2010 under Round 3 in respect of the Firth of Forth Zone.

1.3 The Appropriate Assessment ("AA") for the Project concluded there will be an adverse effect on site integrity ("AEOSI") from the Project alone or in combination with other plans or projects for the following breeding (or non-breeding) features in respect of the following designated sites:

Alone;

- Kittiwake for Forth Islands, Fowlsheugh, Outer Firth of Forth and St Andrews Bay Complex (breeding and non-breeding) and St Abb's Head to Fast Castle Special Protection Areas (SPA);
- Guillemot for Forth Islands, Fowlsheugh, Outer Firth of Forth and St Andrews Bay Complex (breeding and non-breeding) and St Abb's Head to Fast Castle SPAs;
- Razorbill for St Abb's Head to Fast Castle SPA; and
- Seabird assemblage qualifiers for Farne Islands (kittiwake), Forth Islands (guillemot, kittiwake), Fowlsheugh (guillemot, kittiwake), breeding Outer Firth of Forth and St Andrews Bay Complex (guillemot, kittiwake), non-breeding Outer Firth of Forth and St Andrews Bay Complex (guillemot, kittiwake) and St Abb's Head to Fast Castle (guillemot, kittiwake, razorbill) SPAs.

In-combination:

- Kittiwake for Buchan Ness to Collieston Coast, East Caithness Cliffs, Flamborough and Filey Coast, North Caithness Cliffs and Troup, Pennan and Lion's Heads SPAs;
- Gannet for Forth Islands and Outer Firth of Forth and St Andrews Bay Complex (breeding) SPAs;

- Puffin for Forth Islands and Outer Firth of Forth and St Andrews Bay Complex (breeding) SPAs;
- Razorbill for East Caithness Cliffs, Flamborough and Filey Coast, Fowlsheugh and Troup, Pennan and Lion's Heads SPAs; and
- Seabird assemblage qualifiers for Buchan Ness to Collieston Coast (kittiwake), East Caithness Cliffs (kittiwake, razorbill), Forth Islands (gannet, puffin), Fowlsheugh (razorbill), North Caithness Cliffs (kittiwake), Outer Firth of Forth and St Andrews Bay Complex breeding (gannet, puffin) and Troup, Pennan and Lion's Heads (kittiwake, razorbill) SPAs.

1.4 Furthermore, the AA was unable to conclude beyond reasonable scientific doubt that there will be no AEOSI from the Project alone or in combination with other plans or projects for the following features in respect of the following designated sites

Alone:

- Guillemot for Farne Islands SPA;
- Kittiwake for West Westray SPA;
- Razorbill for Forth Islands SPA; and
- Seabird assemblage qualifiers for Forth Islands (razorbill) and West Westray (kittiwake) SPAs.

In-combination:

- Gannet for Hermaness, Saxa Vord & Valla Field SPA;
- Razorbill for Outer Firth of Forth and St Andrews Bay Complex (non-breeding) SPA; and
- Seabird assemblage for Hermaness, Saxa Vord and Valla Field (gannet) and Outer Firth of Forth and St Andrews Bay Complex non-breeding (razorbill) SPAs.

1.5 A copy of the AA can be found in Annex B: Appropriate Assessment.

1.6 Given that the AA identified adverse effects at the sites listed above, the Scottish Ministers, as the competent authority, can only agree to the Project if the requirements of the derogation provisions in the Conservation (Natural Habitats, &c.) Regulations 1994 ("the 1994 Regs") and Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the 2017 Regs") (together, "the Habitats Regulations") are met. These provisions are set out at Regulations 49 and 53 of the 1994 Regs and Regulations 29 and 36 of the 2017 Regs, and the Scottish Ministers have considered the Project against the requirements of these provisions to determine whether the Project can be consented.

1.7 Regulation 49 of the 1994 Regs and Regulation 29 of the 2017 Regs state that the competent authority may agree to a project if: firstly, it is satisfied that there are no alternative solutions; secondly, the project must be carried out for imperative reasons of overriding public interest ("IROPI"), notwithstanding a negative assessment of the

implications for a European site. Thirdly, sections 53 of the 1994 Regs and 36 of the 2017 Regs further require that where a project is agreed to in accordance with Regulation 49 of the 1994 Regs and Regulation 29 of the 2017 Regs, notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of the UK site network is protected. These three provisions must be considered by the Scottish Ministers sequentially.

1.8 In addition, Regulation 31(5) of the 2017 Regs provides that where the Scottish Ministers propose to agree to a project, notwithstanding a negative assessment of the implications for a European site outside Scotland, or a European offshore marine site outside the Scottish offshore region, then the Scottish Ministers must notify the Secretary of State and agree to the project only after having been notified of the Secretary of State's agreement, which may be subject to certain conditions or restrictions. Given the AA for the Project concluded AEOSI for the Farne Islands SPA and the Flamborough and Filey Coast SPA which are European sites outside Scotland and the Scottish offshore region the requirements of Regulation 31(5) will apply and require to be satisfied before consent can be granted.

1.9 The following sections document the Scottish Ministers' considerations in respect of each of these provisions, which have been assessed in the following sequential order:

- alternative solutions to the Project have been considered;
- consideration has been given to whether there are IROPI justifying the Project proceeding; and
- whether necessary compensatory measures can be secured to ensure the overall coherence of the UK site network is protected.

1.10 The Company submitted a Derogation Case ("Derogation Case") to the Scottish Ministers on 9 December 2022. Following a request for additional environmental information from the Scottish Ministers, the Company submitted an Addendum to the Derogation Case ("Addendum") together with Supplementary Information ("Supplementary Information") dated 4 August 2023 in support of the Derogation Case and proposed compensatory measures. In its response to consultation comments received on the Addendum and the Supplementary Information, the Company submitted a Statement of Case and Gap Analysis to the Scottish Ministers on 20 December 2023.

SECTION 2: CONSIDERATION OF ALTERNATIVE SOLUTIONS

2 Project Objectives

2.1 This section of the derogation assessment identifies the objectives of the Project before considering how these objectives could be met by alternative solutions with a lesser impact on the UK site network.

2.2 The Company has outlined at section 5.1 of its Derogation Case a series of objectives for the Project as follows:

- Develop a large-scale offshore wind farm to generate low carbon electricity to support Scottish and UK decarbonisation targets.
- Maximise generation and export capacity within the constraints of the available UK sites.
- Make efficient use of very limited seabed available for fixed foundation offshore wind farms in Scottish waters.[1]
- Deliver low carbon electricity at the lowest possible cost to the UK consumer.
- Deliver a significant volume of new low carbon electricity generation as soon as possible, with a substantial contribution to the UK national grid before 2030.
- Help ensure UK energy supply security from the mid-2020s through increasing the proportion of electricity coming from domestic renewables and thus reducing exposure to volatile fossil fuel markets.

2.3 The Company sets out the rationale for each Project objective at table 8 of its Derogation Case. This in turn is derived from the identified need for the Project, detailed within the Statement of Need, forming part of the Derogation Case, and summarised at section 3 of the Derogation Case.

2.4 The Company's Derogation Case considers within section 3.1 that the Project is needed given its critical contribution toward UK and Scottish legislative commitments on climate change and in pursuance of key energy policy objectives and outcomes related to the need for renewable energy. The drivers which underpin the need for the Project are identified as (1) the need for decarbonisation to achieve net zero as soon as possible to mitigate against climate change; (2) the need for action before 2030 requiring rapid and early deployment of offshore wind; (3) the need to secure energy supply through geographically and technologically diverse supplies; and (4) the need to secure affordable electricity by providing energy at the lowest cost to consumers.

[1] The Scottish Ministers consider references to Scottish waters to include the Scottish inshore region (between 0 and 12 nautical miles) under the Marine (Scotland) Act 2010 and in the Scottish offshore region (between 12 and 200 nautical miles).

2.5 The Scottish Ministers consider that whilst the objectives identified by the Company, as underpinned by the identified legislative and policy landscape, are valid in terms of helping to frame the development of the Project and present its needs case, they are not all essential for the consideration of alternative solutions.

2.6 The Scottish Ministers have considered the Project objectives in the context of Scottish and UK policy frameworks, including the Scottish Government's legislative commitments and policy framework, which set out key national ambitions for Scotland's energy future to achieve net zero emissions by 2045 to mitigate the effects of climate change. The development of offshore wind is driven by the urgent need to limit the magnitude and impacts of climate change and the earlier that steps towards decarbonisation are introduced the greater their contribution to limiting climate change will be. The need for urgent, additional and substantial increases in offshore wind capacity is a significant and constant theme in Scottish and UK policy. The Scottish Ministers consider therefore a key objective of the Project is to be operational at the earliest date possible in terms of making a significant contribution to decarbonising the Scottish electricity supply by way of offshore wind.

2.7 The Scottish Ministers have, in particular, considered part one of the Climate Change (Scotland) Act 2009, the Scottish Government's Offshore Wind Policy Statement (2020) together with the draft 'Update to the 2020 Offshore Wind Policy Statement: Scotland's Offshore Wind Ambition' (2025) and paragraph 3.1.1 of the Scottish Government's draft Energy Strategy and Just Transition Plan ("ESJTP") (2023).

2.8 The Scottish Ministers have also had due regard to the UK Government's Overarching National Policy Statement for energy (EN-1), published in January 2024, and its National Policy Statement for renewable energy infrastructure (EN-3), published in November 2023. These policies provide a framework for delivering the UK's international commitments on climate change. The Scottish Ministers have taken particular account of EN-1's identification of nationally significant low carbon infrastructure (which includes offshore wind) as a critical national priority ("CNP") such that when considering derogations under the Habitat Regulations the starting point for CNP infrastructure should be the overarching need for energy security and decarbonising the power sector to combat climate change (para 4.2.21).

2.9 The Scottish Ministers have also considered the UK Government's British Energy Security Strategy (2022) and the contribution which Scotland can make to the target of 50 GW of offshore wind by 2030 across the UK together with the UK Government's Clean Power 2030 Action Plan. In addition, the Scottish Ministers have considered the Climate Change Committee ("CCC") "Progress in reducing emissions" 2023 Report to Parliament, which highlights that an average annual deployment rate of 4.5 GW is required to deliver 50 GW of offshore wind by 2030 (p.204). The Scottish Ministers have further considered the CCC "Progress in reducing emissions" 2024 Report to

Parliament, which notes low levels of offshore wind deployment in 2023 (p.56) and the need to get rates back on track given offshore wind's essential contribution to net zero and government renewables targets (p.84).

2.10 The Scottish Ministers consider the following to be the appropriate and primary objectives of the Project and consider that the benefits from the Project to Scotland and/or the Company could alternatively be provided by any projects with these same objectives:

i. To generate a significant volume of low carbon electricity from offshore wind farms in support of the decarbonisation of the Scottish electricity supply;
ii. To export electricity to the electricity grid to support Scottish commitments for offshore wind generation and security of supply;
iii. To contribute to the delivery of a significant volume of operational offshore wind in Scottish waters before 2030; and
iv. To optimise generation and export capacity within the constraints of available Scottish sites and onshore transmission infrastructure.

3 Identification of Alternative Solutions

3.1 The Company has identified and assessed at Part B (sections 6 to 9) of its Derogation Case, several alternatives to the Project and their feasibility. The comparison considers the 'do nothing' option, alternative locations, alternative design, and alternative means of operation.

3.2 The Scottish Ministers do not consider alternative forms of renewable technologies or onshore wind farms to be "alternatives" to offshore wind given the policy objectives identified for the Project. It follows that identification of reasonable alternative solutions will consist of either a 'do nothing' approach, or consideration of an alternative project location, scale or design. Furthermore, any alternative identified must be capable of meeting the identified policy objectives, be legally, technically and financially feasible, and have a lower impact on the designated sites.

3.3 The Scottish Ministers have not considered expediting the construction and operation of already consented wind farm projects noting there are external factors as to whether a consented project will be constructed and become operational and at the scale it was consented for.

3.4 The Scottish Ministers have also taken into consideration the policy on alternatives contained in the UK's EN-1, which provides that the need for energy security and decarbonisation of the power sector to combat climate change requires a significant number of deliverable locations for CNP Infrastructure, across the UK, and for each location to maximise its capacity. On this basis, EN-1 notes that "other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is

unlikely to be treated as an alternative solution" and "…the existence of another way of developing the proposed project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution" (para 4.2.21).

3.5 Alternatives considered are:

a) Offshore wind farms not in Scottish waters;
b) Offshore wind farms within Scottish waters, including:
    i) Outside existing leasing round areas;
    ii) Within existing leasing round areas;
    iii) Within the leasing area in which the Project is located (the former Firth of Forth Zone); and
c) Alternative scale or design for the Project.

4 Consideration of Alternative Solutions

4.1 Do Nothing

4.1.1 The Company considers a 'do nothing' scenario at section 6 of its Derogation Case and provides that not proceeding with the Project would result in the loss of 4.1 GW of offshore wind capacity and thus a failure to increase the volume of installed offshore wind in Scotland in the 2030s. In this regard, the Company underscores the negative consequence which this would have on meeting Scotland's offshore wind capacity target (Offshore Wind Policy Statement, 2020). In addition, such a scenario would mean that a significant area of seabed identified as suitable for large-scale offshore wind development in Scottish waters would fail to be developed, and supply chain opportunities would be missed.

4.1.2 The Scottish Ministers consider that not proceeding with the Project would remove the risk of impacts to the qualifying features of the designated sites detailed in section 1.3 and 1.4 of this derogation assessment, however, it would fail to meet the identified Project objectives, including the need to deploy additional offshore wind generation at scale before 2030. It would also be inconsistent with the emissions reductions requirements of the Climate Change (Scotland) Act 2009 to mitigate the effects of climate change. In addition, the Scottish Ministers consider that taking a 'do nothing' approach would hinder meeting the ambitions set out in the British Energy Security Strategy (2022).

4.1.3 As such, the Scottish Ministers do not consider the 'do nothing approach' to be a feasible alternative solution as it would fail to meet the aim of the Project as established by its need.

4.2 Offshore Wind Farms not in Scottish waters

4.2.1 The Scottish Ministers consider that offshore wind farm projects located either outside Scottish waters, i.e., within UK waters, or in other countries, are not an alternative to the Project since this would not meet the identified objectives which are specific to Scottish waters with a view to achieving Scotland's offshore wind ambitions and net zero targets.

4.3 Offshore Wind Farms within Scottish waters

4.3.1 Alternative locations – Outside existing leasing round areas

4.3.1.1 The Company's Derogation Case at section 7.3 considers alternative locations for the Project outwith the former Firth of Forth Zone, forming part of Round 3, where the Project is located. The Company specifically notes the approach adopted by the UK Secretary of State in previous derogation cases such that areas of seabed not subject to the Crown Estate ("TCE") or CES leasing process, and areas which have not been secured by an applicant, cannot be considered as legally feasible alternative solutions. On this basis, the Company concludes that any location subject to a potential future offshore wind leasing round that is not currently identified for leasing does not constitute a viable alternative.

4.3.1.2 The Scottish Ministers agree that consideration of alternative locations is linked to the site selection process for offshore wind proposals controlled by the CES leasing process. It follows that those sites that are not subject to a CES leasing round, are not economically or legally viable alternative options as reflected by objective (iv) which recognises the constraints of available Scottish sites.

4.3.1.3 Furthermore, the Scottish Ministers are of the view that any location which has not yet commenced a site selection exercise would not meet the Scottish Ministers identified objective (iii) due to the long lead in times for site selection, environmental impact assessment, consenting, detailed design, procurement, consent compliance, and construction. On this basis, the Scottish Ministers consider that an alternative Scottish site outside an existing leasing round area would not significantly contribute to Scottish 2030 offshore wind capacity targets in response to the urgent need for renewable energy.

4.3.2 Alternative locations – Within existing lease round areas

4.3.2.1 In its assessment of alternative locations, the Company discounts those which are subject to leasing rounds which have been largely developed (TCE 2010 Rounds 1, 2 and 3, TCE 2010 Extension Rounds and the Scottish Territorial Waters 2009 leasing round) and sets out its detailed justification for this approach at paragraphs 191 – 209 of its Derogation Case.

4.3.2.2 By taking this approach, the Company emphasises the need for the Project, as considered at section 2.6 of this derogation assessment, and its significant contribution, alongside all offshore wind farm projects in the UK and Scottish pipeline, to meeting 2030 targets (British Energy Security Strategy, 2022). The Scottish Ministers agree with this assessment and consider the consenting of other offshore wind farms does not lessen the scale or urgency of the need for further large-scale offshore wind projects in pursuance of renewable energy and net zero government targets, as reflected by the Scottish Ministers Project objectives. Furthermore, in considering whether certain TCE 2010 Round 3 sites that have not been taken forward could be considered as alternatives, the Scottish Ministers consider that such sites would fail to deliver within the timeframe of the Project and therefore not satisfy the identified Project objectives relating to contributing to Scottish Government's 2030 targets for installed offshore wind capacity.

4.3.2.3 The Company therefore focuses its assessment of alternative locations on the viability of offshore wind locations subject to current leasing rounds, namely ScotWind sites (paragraphs 224 to 228 of its Derogation Case), Innovation and Targeted Oil and Gas Decarbonisation ("INTOG") sites (paragraphs 219 to 223), TCE 2017 Extension Round sites (paragraphs 210 to 211), TCE Round 4 sites (paragraphs 212 to 214) and Celtic Sea Floating Offshore Wind Farm Round sites (paragraphs 215 to 218). The Company further assesses the option of repowering existing offshore wind farms (paragraphs 229 to 231).

ScotWind Leasing Round

4.3.2.4 In its assessment of ScotWind locations, the Company does not consider these to be a viable alternative to the Project on the basis of project timescales, the possibility of project attrition and uncertainties around securing National Grid connection agreements, indicating that power from ScotWind projects is unlikely to be generated before 2030, which would fail to meet objective (iii) of the Scottish Ministers identified Project objectives.

4.3.2.5 The Scottish Ministers recognise the need for urgent decarbonisation of the electricity supply and the significant role Scottish offshore wind projects can contribute to both Scottish and UK net zero targets. This is evidenced by the current consultation on the Scottish Government's Update to the 2020 Offshore Wind Policy Statement: Scotland's Offshore Wind ambition (see 6.7) which sets out an ambition of up to 40 GW of new offshore wind by 2035-2040. The Scottish Ministers consider that the Project can provide a critical and significant contribution to operational offshore wind capacity before 2030. In considering ScotWind projects as alternatives, the Scottish Ministers have considered the likelihood of these projects being operational before 2030.

4.3.2.6 The Project's location within shallow waters and use of fixed bottom foundations offers certainty in the ability to deliver an operational project at scale and within short term timescales. As compared to floating offshore wind farm technology fixed bottom foundations are an established technology, used multiple times across Scotland and the wider UK which will ease the construction process and commissioning timescales, in support of objective (iii). Comparatively the majority of ScotWind sites will likely comprise of floating offshore wind farm projects, given their location in deeper waters. As a new developing technology this will bring about more complex technical challenges with potentially longer project timescales and economic costs. The Scottish Ministers also recognise that the Company is an experienced developer in this area.

4.3.2.7 The Project has the potential to generate and export at least 2.3 GW of low carbon electricity to the electricity grid by 2029. The Project has a contract for Transmission Entry Capacity ("TEC") with the National Energy System Operator ("NESO") for 1,150 MW of electricity at the Berwick Bank A 275/66kV offshore substation with an effective date from October 2028 and a further 1,150 MW of electricity at Berwick Bank B 275/66kV offshore substation with an effective date from October 2029.[2] In addition, the Project has the potential to deliver a further 1.8 GW of electricity with a contract for TEC with NESO with an effective date from November 2029 at Blyth 400kV substation ("Blyth connection"). The Blyth connection is subject to separate marine licence applications relative to construction of up to four high voltage direct current offshore export cables and up to four fibre optic cables from up to two offshore converter station platforms within the Berwick Bank Offshore Wind Farm array area, located approximately 48 km from the East Lothian coastline, to landfall at Cambois, Northumberland, England. The export cables cross the boundary between Scottish and English waters and extend to a maximum of 180 kilometre ("km") in length with 40 km located within Scottish offshore waters and the remaining 140 km located within English waters. The marine licence applications for the Blyth connection are yet to be determined in both in Scotland and England.

4.3.2.8 The Scottish Ministers have considered the projects which formed part of the ScotWind leasing round and whilst developers may seek to become operational before 2030, only the West of Orkney project has a contract for TEC with NESO with an effective date before 2030.[2] The Scottish Ministers therefore do not consider those projects with contracts for TEC with NESO without effective dates before 2030 to be alternatives under objective (iii).

4.3.2.9 The proposed West of Orkney project is a significant size which is also located in shallow waters and will use fixed bottom foundations. The West of Orkney project has a contract for TEC with NESO for 750 MW of electricity with an effective date

[2] https://www.neso.energy/data-portal/transmission-entry-capacity-tec-register Version dated: 26 November 2024, Accessed: 03 December 2024

from October 2029 and for a further 1,500 MW of electricity with an effective date from October 2031.[2] Whilst the West of Orkney project has the potential to be partly operational before 2030 (if consented), the Scottish Ministers do not consider it to be an alternative under objective (iii). A significant volume of operational offshore wind is required as soon as possible to meet both Scottish and UK targets but also to mitigate the magnitude and impacts of climate change. The Scottish Ministers consider that in the event that both the Project and West of Orkney are consented, they would both be required to satisfy objective (iii).

INTOG Leasing Round

4.3.2.10 The Company does not deem INTOG projects to be a viable alternative to the Project based on its understanding that they will not be generating electricity at scale before 2030 and will be focused on facilitating the North Sea energy transition.

4.3.2.11 CES offered exclusivity agreements to 13 INTOG projects for the purpose of either supplying low carbon electricity to oil and gas infrastructure ("TOG project") or for small scale innovation projects (100 MW or less) ("IN project"). The Scottish Ministers have considered the projects which were offered these exclusivity agreements and only the Salamander and Green Volt projects have contracts for TEC with NESO with an effective date before 2030. The Scottish Ministers therefore do not consider those projects with contracts for TEC with NESO without effective dates before 2030 to be alternatives under objective (iii).

4.3.2.12 The proposed Salamander project is an IN project for around 100 MW of electricity consisting of up to 7 wind turbine generators with floating substructures. The Salamander IN project has a contract for TEC with NESO for 200 MW of electricity with an effective date from October 2029.[2] Whilst the Salamander IN project has the potential to be operational before 2030 is not at the scale required to act as an alternative to the Project. A significant volume of operational offshore wind is required as soon as possible to meet both Scottish and UK targets but also to mitigate the magnitude and impacts of climate change. The Scottish Ministers do not consider that the Salamander TOG project is an alternative under objectives (i) and (iii).

4.3.2.13 A consent under section 36 of the Electricity Act 1989 (s.36 consent) and marine licences under part 4 of the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 ("2009 Act") were granted on 19th April 2024 for the Green Volt TOG project. The Green Volt TOG project is for up to 35 wind turbine generators, with a maximum generating capacity of 560 MW of electricity. Whilst it is anticipated that a proportion of this electricity will be provided to an oil and gas installation, the excess electricity generated will be exported to the onshore grid. In this regard the Green Volt TOG project has a contract for TEC with NESO for 300 MW of electricity with an effective date from October 2029. Whilst the Green Volt TOG project has

the potential to be operational before 2030 it is not at the scale required to act as an alternative to the Project. A significant volume of operational offshore wind is required as soon as possible to meet both Scottish and UK targets but also to mitigate the magnitude and impacts of climate change. The Scottish Ministers do not consider that the Green Volt TOG project is an alternative under objectives (i) and (iii).

4.3.2.14 In addition, a marine licence under part 4 of the 2009 Act was granted on 15 August 2024 for the Culzean TOG project. This project is for one floating wind turbine generator and semi-submersible floating substructure. The wind turbine generator will have a maximum generating capacity of 3 MW and will not export electricity to the grid onshore. The Scottish Ministers do not therefore consider this to be an alternative under objectives (i) and (ii).

TCE 2017 Extension Round, TCE Round 4 and Celtic Sea Floating Offshore Wind ("FOW") Farm Round

4.3.2.15 The Company does not consider projects located at sites from these leasing rounds to represent viable alternatives to the Project and its reasoning is largely based on the sites failing to align with the Company's proposed Project objectives. The Scottish Ministers are of the view that these leasing sites located in English and Welsh waters do not represent feasible alternative locations, as they fail to align with the Scottish Ministers identified Project objectives that are specific to Scottish decarbonisation targets and security of the Scottish electricity supply.

Repowering Existing Offshore Wind Farms

4.3.2.16 The Company further takes account of the option to repower existing offshore wind farms as an alternative location for the Project. Typically, offshore wind farms have a life span of 20 to 25 years before planned decommissioning and current operational wind farms will not reach their decommissioning stage for another decade under exception of the Robin Rigg project for which the s.36 consent is due to expire in 2032. The Robin Rigg project is however only for up to 60 turbines with the generating capacity for each turbine being up to 3.6MW. The Scottish Ministers are therefore of the opinion that the option of repowering existing offshore wind farms would fail to meet Project objective (iii). Furthermore, the Scottish Ministers consider that a substantial number of offshore wind farms would need to be repowered to meet government decarbonisation targets. It follows that these locations do not represent a viable alternative to the Project.

4.3.2.17 Having considered alternative offshore wind locations within existing leasing round areas, the Scottish Ministers are satisfied that there are no alternative viable projects located within Scottish waters either in isolation or cumulatively. In reaching this view, the Scottish Ministers have also taken account of the policy contained in EN-

1 that projects for CNP infrastructure deliverable in alternative locations are unlikely to be suitable alternatives.

4.3.3 Alternative locations – Within the former Firth of Forth Zone

4.3.3.1 The Company's Derogation Case at section 7.4 provides detailed information on the Firth of Forth Zone identification process and its subsequent development into three phases informed by project identification and approval processes. Initially forming phases two and three (known as Berwick Bank and Marr Bank) site boundaries were further developed and refined before agreeing the final location of the Project, as a single offshore wind farm, combining both the Berwick Bank and Marr Bank boundaries.

4.3.3.2 The Company details the subsequent boundary change occurring in May 2022, which resulted in a further 23% reduction of the array area (from 1,314 km squared to 1,010.2 km squared) and figure 8 of the Derogation Case provides an illustration of the phased boundary refinement. The Company concludes that there is no feasible alternative location for the Project within the Firth of Forth Zone on the basis that the Project boundaries have been developed as part of an iterative, careful and exhaustive process which has taken account of impacts of all possible locations within the Firth of Forth Zone.

4.3.3.3 Taking account of the development process for the Project, and in particular the Company's refinement of its boundary, the Scottish Ministers are of the view there are no alternative viable project locations within the former Firth of Forth Zone that could meet the identified Project objectives, specifically the need to deliver a significant volume of offshore wind in Scottish waters before 2030 (objective (iii)) and the need to optimise generation and export capacity within the constraints of available Scottish sites (objective (iv)). The Scottish Ministers have also had regard to the policy contained in EN-1 in respect of CNP infrastructure projects deliverable in alternative locations as unlikely to be suitable alternatives.

4.3.4 Alternative scale or design for the Project

4.3.4.1 The Company's Derogation Case explores alternative scales and design iterations of the Project at section 7.5. The alternatives considered are a reduction in the size of the array area, a reduction in WTG numbers and an increase in the minimum lower tip height of the WTG blades.

4.3.4.2 In respect of a reduction in the array area and turbine numbers, the Company refers to the site boundary refinement process (as outlined at section 4.3.3.1 of this derogation assessment) which was informed by the identified impact pathways for the Project. Taking account of the various outcomes and the consequences on intended Project timelines that will occur in the event of a further reduction in the

array area and turbine numbers for the Project (paragraph 284 of the Derogation Case) the Company concludes this option not to be a feasible alternative. The Company gives due consideration to the option of increasing the minimum air-draught height of the WTG blades noting that it was increased from 22 metres ("m") to 37m as part of the Project refinement process for the purpose of mitigating against collision risk impact for seabirds (paragraphs 289 – 292). The Company concludes in this case that any further design change in respect of air-draught height would not be technically or financially feasible and consequently impact Project delivery timescales.

4.3.4.3 The Scottish Ministers consider that alternative scales or design parameters for the Project would not be a viable alternative as they would reduce capacity for electricity generation and therefore fail to meet the identified Project objectives. Furthermore, the Scottish Ministers have considered the policy contained in EN-1 that the existence of another way of developing the proposed project which results in a significantly lower generation capacity is unlikely to be treated as an alternative solution.

4.4 Conclusion on Alternative Solutions

4.4.1 The Scottish Ministers have considered the information on alternatives submitted by the Company in the context of the objectives of the Project identified at paragraph 2.9 of this derogation assessment and are of the view that there are no less damaging alternatives to the Project that would satisfy the objectives and be technically, legally and financially viable. The Scottish Ministers therefore conclude that alternative solutions are not available and IROPI must therefore be considered.

SECTION 3: IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST

5 Imperative Reasons of Overriding Public Interest

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

5.2 The parameters of IROPI are explored in guidance provided by Defra[3] and the European Commission,[4][5] which identify the following principles:

- **Imperative** – Urgency and importance: There would usually be urgency to the objective(s) and it must be considered "indispensable" or "essential" (i.e., imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following:

  i) Actions or policies aiming to protect fundamental values for citizens' life (health, safety, environment);
  ii) Fundamental policies for the State and the Society; or
  iii) Activities of an economic or social nature, fulfilling specific obligations of public service.
- **Public interest**: The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objective);
- **Long-term**: The interest would generally be long-term; short-term interests are unlikely to be regarded as overriding because the conservation objectives of protected sites are long term interests.
- **Overriding**: The public interest of development must be greater than the public interest of conservation of the relevant protected site(s).

5.3 The IROPI test under the Habitat Regulations identifies certain grounds for IROPI that may be advanced in favour of such a project. When the designated site hosts a priority natural habitat or species, reasons must include human health, public safety or beneficial consequences of primary importance to the environment, or any other IROPI. Otherwise, if the designated site does not host a priority natural habitat or species, IROPI may include reasons of a social or economic nature.

5.4 As outlined at sections 1.3 and 1.4 the affected features of the Buchan Ness to Collieston Coast SPA, East Caithness Cliffs SPA, Farne Islands SPA, Flamborough and Filey Coast SPA, Forth Islands SPA, Fowlsheugh SPA, Hermaness, Saxa Vord and Valla Field SPA, North Caithness Cliffs SPA, Outer Firth of Forth and St Andrews Bay Complex SPA (breeding and non-breeding) SPA, Troup, Pennan and Lion's Heads SPA, St Abb's Head to Fast Castle SPA and West Westray SPA from the Project are not priority species. The Company's IROPI submission within its Derogation Case pertains to consideration of health, safety and beneficial environmental consequences

[3] Defra, NE, the Welsh Government and Natural Resources Wales (2021) 'Habitats Regulations Assessment: protecting a European site': Habitats regulations assessments: protecting a European site - GOV.UK
[4] European Commission (2019), Directorate-General for Environment, Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC, Publications Office, 2019: Managing Natura 2000 sites — The provisions of Article 6 of the Habitats Directive 92/43/EEC - Publications Office of the EU
[5] While the UK is no longer an EU member state and not subject to the oversight of the EU Commission, the guidance is still helpful in understanding the intention behind the drafting of the Habitats Directive as captured within our domestic legislation.

of the Project, in addition to its economic and social benefit, as it recognises that the Project will contribute towards:

- Rapid decarbonisation of the energy sector, which is of benefit to the environment and is essential for human health and public safety reasons;
- Security of electricity supply and reduced electricity cost serving public health and safety; and
- Supply chain opportunities, increased investment and employment generation for the offshore wind industry providing socio-economic benefits for local and national economies.

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

6 Description of public interest

6.1 The Scottish Ministers consider that the identified appropriate and primary objectives of the Project (paragraph 2.10) are relevant to assessing and weighing IROPI for the Project.

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

6.3 The need to address climate change is the principal driver behind the Climate Change (Scotland) Act 2009. This legislation legally binds the Scottish Government to reach net zero in Scotland by 2045. In addition, at a UK level the Climate Change Act 2008 binds the UK to achieving 100% reduction in greenhouse gas emissions by 2050 compared to 1990 levels. In this regard, the Scottish Ministers consider that the Project will make an important material contribution to delivering on these statutory duties and thereby mitigating the effects of climate change. The Scottish Government's programme for offshore wind is set out across a number of policy documents and establishes the critical role for offshore wind in the delivery of Scottish and UK net zero targets.

6.4 The Scottish Energy Strategy (2017)

6.4.1 This strategy sets out Scotland's 2050 energy vision, recognising the need to decarbonise the whole energy system and deliver "secure, affordable, clean energy" in alignment with net zero ambitions. It recognises the strategic priority of renewables and low carbon solutions as part of the transition. Targets sets for the Scottish energy system by 2030 include the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewables sources. This strategy also introduces the concept of "no regret" or "low regret" options and actions when pursuing its strategic priorities. This concept is also adopted in the UK Government's Net Zero Strategy (2021) and defined as actions which are cost effective and are likely to provide benefit in the future.

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

6.5.1 The statement includes an ambition (but not a limit) to achieve 8-11 GW of offshore wind in Scottish waters by 2030. This is the basis for the planning assumptions for the existing Sectoral Marine Plan for Offshore Wind Energy, which sets out a spatial footprint for a maximum potential capacity of up to 10 GW. The Offshore Wind Policy Statement also highlights the Committee on Climate Change report, published in May 2019, which includes a scenario requiring at least 75 GW of offshore wind in UK waters by 2050 in order to achieve net zero.

6.6 Update to the 2020 Offshore Wind Policy Statement: Scotland's Offshore Wind ambition

6.6.1 On 18 June 2025, Scottish Government launched a consultation to update the Offshore Wind Policy Statement (see section 6.5 of this derogation assessment) acknowledging that since 2020 there had been considerable change in the policy and planning landscape for offshore renewable energy generation in Scotland and the wider UK, referencing the Clean Power 2030 Action Plan (see section 6.15 of this derogation assessment) as a considerable driver for change. The updated Policy Statement, sets out the Scottish Government commitment to maximise the deployment of offshore wind in Scotland, by resetting its ambition and aiming for the development of up to 40 GW by 2035-2040.

6.7 Scotland's Energy Strategy Position Statement (2021)

6.7.1 This statement provides an update to the policies contained within the 2017 Scottish Energy Strategy and further emphasises the commitment of the Scottish Government in supporting the Scottish energy sector's path to net zero in pursuance of climate change targets.

6.8 The Scottish Government's draft Energy Strategy and Just Transition Plan (ESJTP) (2023)

6.8.1 Following publication of a draft Energy Strategy and Just Transition Plan in 2023 the Scottish Ministers have consulted on setting further offshore wind deployment ambitions out to 2045 (by which point the Government is committed to achieving net zero). The draft ESJTP sets out how its vision of affordable, resilient and clean energy supplies for Scotland will be delivered, maximising home-grown clean energy provision and significantly increasing domestic production of renewable electricity by 2030, helping to address climate change by substantially reducing the emissions of our energy sector.

6.9 The CCC's Progress in reducing emissions in Scotland - Report to Parliament (2023)

6.9.1 In its report monitoring Scotland's progress in reducing emissions, the CCC notes that Scotland is failing to achieve its climate change goals and actions continue to fall short of what, at the time the report was published, was legally required under the targets in the Climate Change (Scotland) Act 2009. In its assessment of electricity supply policies, the CCC recommends that the Scottish Government should work with the UK Government to ensure that targets for Scotland (as set out in the ESJTP) are met, together with the UK-wide objective of a decarbonised electricity supply by 2035. The CCC recognises that energy policy, regulation of energy markets and networks remains a reserved matter to UK Government and therefore Scottish targets will depend on the delivery of UK policy and supporting energy infrastructure (i.e., grid connections).

6.10 UK Government Policy

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

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

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

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

6.12 **The CCC's Progress in reducing emissions - Report to Parliament (2023 and 2024**)

6.12.1 In its consideration of electricity supply within its progress reports on net zero, the CCC has emphasised the need to ensure that decarbonisation ambitions are delivered on through the rapid scale up of low carbon electricity supply and its supporting infrastructure. As regards the deployment of renewable energy, the 2023 CCC report recognised that generating capacity has grown through 2022, however, deployment rates are not tracking the UK government's target of 50 GW by 2030, which would require annual deployment of 4.5 GW. In its most recent 2024 report, the CCC further noted that current installation rates of offshore wind remain off track due to low levels of deployment in 2023, which present a continued risk to achievement of UK government renewables targets. It provided that achieving at least 50 GW by 2030 will now require more than 5 GW of offshore wind to be added on average each year.

6.13 **British Energy Security Strategy (2022)**

6.13.1 This strategy aims to respond to concerns over security, affordability and sustainability of the UK's energy supply. In particular, it recognises the importance of ensuring greater energy security for the UK, which can be achieved through an electricity supply coming from domestic renewable energy sources, as opposed to volatile international fossil fuel markets. In the context of offshore wind, this strategy commits to fully decarbonising electricity generation by 2050,and sets out an ambition for the delivery of up to 50 GW of offshore wind capacity by 2030. Given the current pipeline of possible offshore wind development across the UK it is clear that Scottish projects will be required to make a significant contribution to this ambition.

6.14 **UK Government Energy White Paper: Powering our Net Zero Future (2020)**

6.14.1 Building on the ambitions contained within the UK Government's Ten Point Plan for a Green Industrial Revolution (2020), this paper sets a target of 40 GW of offshore wind by 2030, including 1 GW of floating offshore wind, across the UK. It recognises the degree of autonomy within the devolved administrations in contributing towards this target and facilitating the transition towards a low cost, clean electricity system.

6.15 **Clean Power 2030**

6.15.1 Clean Power 2030 sets in place an Action Plan to deliver 43-50 GW of offshore wind capacity across Great Britain in order to achieve a 95% clean energy system by 2030. The Scottish Government is committed to working closely with the UK government on shared ambitions to decarbonise energy generation and drive progress towards net zero in line with these objectives. To meet the Clean Power 2030 target, the action plan recognises the important role projects in Scotland will play and emphasises the need to capitalise on projects that are already in the planning system and able to commence construction before 2030.

7 The Overriding Test

7.1 The AA completed for the Project was unable to conclude beyond reasonable scientific doubt that there would be no adverse effect on the qualifying features of the designated sites identified at sections 1.3 and 1.4 either alone or in combination with other projects. In demonstrating IROPI the public interest of the Project must therefore be weighed against the qualifying interests of these designated sites, which are protected by the Habitat Regulations.

7.2 In its consideration of the 'overriding test,' the Company considers that the overriding nature of the public interest and benefits which the Project will deliver through decarbonisation of the energy sector and security of affordable energy supplies relates to core IROPI reasoning of 'human health, public safety and beneficial consequences of primary importance for the environment.' Given that the Project does not impact upon priority features, the Company has overdelivered on what is required in demonstrating that the Project meets this IROPI reasoning, as opposed to the lower standard of demonstrating IROPI of a social or economic nature where non-priority features are concerned. The Company further identifies the long-term public interest that the Project will serve emphasising the Project as the only Scottish wind farm of significant scale to commission before 2030.

7.3 In light of the Scottish and UK legislative commitments and policy frameworks outlined above and the acute urgency to maintain and quicken the pace of delivery in tackling the climate crisis, the Scottish Ministers consider that the Project will make an important contribution to serving the national public interest, reflecting the clear and urgent need for reducing carbon emissions as swiftly as possible, the requirement to develop renewable energy infrastructure to deliver on the identified Project objectives and the current lack of alternatives. The Scottish Ministers note the scale of the Project (up to 4.1 GW) which would deliver a significant contribution towards UK and Scottish targets for offshore wind energy. This is of particular importance in light of the findings of the 2024 CCC report, which recognise the need to scale up the deployment of offshore wind each year given that rates are currently behind government targets. Further, as discussed above, the Project is one of the few Scottish projects which could become operational before 2030 and respond to the

urgency of the climate crisis, contributing to the British Energy Security Strategy target for 50 GW of offshore wind by 2030 and the Clean Power 2030 action plan. The Scottish Ministers also recognise the importance of a reliable, secure and stable energy supply in the UK, with reduced dependencies on imported oil and gas, which can be subject to geopolitical tensions and volatile international markets, as emphasised by the British Energy Security Strategy. The Scottish Ministers therefore consider the Project will further serve the national public interest through its contribution to energy security as a domestic renewable energy source of electricity.

7.4 The Scottish Ministers are therefore of the view that there is an imperative reason which justifies the need for the Project and as such this overrides the AEOSI of the designated sites and the conservation objectives at risk. In reaching this conclusion, the Scottish Ministers have considered the scale of the predicted adverse impacts on designated sites. Whilst taking this into account, the Scottish Ministers are however of the view that, as Scotland's largest offshore wind farm, the Project will make a key contribution towards the UK and Scottish targets for offshore wind energy within the 2030 timeframe (with associated benefits for climate change and energy security) and as such there is an overriding need and urgency for the Project. In particular, the Scottish Ministers have put considerable weight on the ability for the Project to become operational before 2030, a timeframe for which there is a limited pipeline of projects that can be meet this objective. The Scottish Ministers consider it is in the public's interest to maximise the operational offshore wind capacity by 2030, which means all viable projects are necessary and urgent. The Scottish Ministers also note that the public interest inherent in tackling the climate crisis is also served by the fact that mitigation of the climate crisis will, to an extent, alleviate the nature crisis, given that many of the pressures exerted by the nature crisis emanate from the climate crisis.

7.5 On this basis, and given the established lack of alternative solutions, the Scottish Ministers consider that the Project will serve the national public interest through its urgent and valuable contribution of generating and delivering large capacities of low carbon electricity before 2030. The Scottish Ministers are therefore of the view that the Project will support and contribute towards Scottish Government's decarbonisation commitments in pursuance of its legally binding target for net zero by 2045 and further avoid compromising security of electricity supply in Scotland. The Scottish Ministers are therefore of the view that there is an imperative reason justifying the need for the Project, which overrides the AEOSI and the conservation objectives at risk.

8 Conclusion of Overriding Public Interest

8.1 The Scottish Ministers consider there to be an immediate need to increase energy supply from offshore renewables both for energy security reasons and as a key contribution towards mitigate against climate change. In particular, recognising that

the Project will use established technology that can be constructed and deployed within a deliverable timeframe. The Scottish Ministers have considered the likely magnitude and population implications of the adverse effects arising from the Project on the designated sites, however, are satisfied that there are IROPI for the Project to proceed, subject to adequate compensatory measures being implemented. In arriving at their decision, the Scottish Ministers have considered how the Project provides a public benefit which is essential and urgent and has been assessed as outweighing the harm to the integrity of the designated sites.

SECTION 4: COMPENSATORY MEASURES

9 Aims of Compensatory Measures

9.1 This section of the derogation assessment determines whether necessary compensatory measures can be secured which will ensure the protection of the overall coherence of the network.

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

Alone;

- Kittiwake for Forth Islands, Fowlsheugh, Outer Firth of Forth and St Andrews Bay Complex (breeding and non-breeding) and St Abb's Head to Fast Castle SPAs
- Guillemot for Forth Islands, Fowlsheugh, Outer Firth of Forth and St Andrews Bay Complex (breeding and non-breeding) and St Abb's Head to Fast Castle SPAs
- Razorbill for St Abb's Head to Fast Castle SPA
- Seabird assemblage qualifiers for Farne Islands (kittiwake), Forth Islands (guillemot, kittiwake), Fowlsheugh (guillemot, kittiwake), breeding Outer Firth of Forth and St Andrews Bay Complex (guillemot, kittiwake), non-breeding Outer Firth of Forth and St Andrews Bay Complex (guillemot, kittiwake) and St Abb's Head to Fast Castle (guillemot, kittiwake, razorbill) SPAs

In-combination;

- Kittiwake for Buchan Ness to Collieston Coast, East Caithness Cliffs, Flamborough and Filey Coast, North Caithness Cliffs and Troup, Pennan and Lion's Heads SPAs;
- Gannet for Forth Islands and Outer Firth of Forth and St Andrews Bay Complex (breeding) SPA;
- Puffin for Forth Islands and Outer Firth of Forth and St Andrews Bay Complex (breeding) SPAs;

- Razorbill for East Caithness Cliffs, Flamborough and Filey Coast, Fowlsheugh and Troup, Pennan and Lion's Heads SPAs; and
- Seabird assemblage qualifiers for Buchan Ness to Collieston Coast (kittiwake), East Caithness Cliffs (kittiwake, razorbill), Forth Islands (gannet, puffin), Fowlsheugh (razorbill), North Caithness Cliffs (kittiwake), Outer Firth of Forth and St Andrews Bay Complex breeding (gannet, puffin) and Troup, Pennan and Lion's Heads (kittiwake, razorbill) SPAs

Further, the AA was unable to conclude no AEOSI to:

Alone:

- Guillemot for Farne Islands SPA;
- Kittiwake for West Westray SPA;
- Razorbill for Forth Islands SPA; and
- Seabird assemblage qualifiers for Forth Islands (razorbill) and West Westray (kittiwake) SPAs.

In-combination:

- Gannet for Hermaness, Saxa Vord and Valla Field SPA;
- Razorbill for Outer Firth of Forth and St Andrews Bay Complex (non-breeding) SPA; and
- Seabird assemblage for Hermaness, Saxa Vord and Valla Field (gannet) and Outer Firth of Forth and St Andrews Bay Complex non-breeding (razorbill) SPAs

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

9.4 Note that impacts to the Outer Firth of Forth and St Andrews Bay Complex SPA are not included in the table as the impacted populations that are the qualifying features of this site originate from colonies functionally linked to the Outer Firth of Forth and St Andrews Bay Complex SPA. As such concluded impact is recorded for those populations at their parent SPA, relative to the Outer Firth of Forth and St Andrews Bay Complex SPA.

9.5 Further, seabird assemblage features are not included where the assemblage feature is a named feature of the same site as the impact is counted for the main feature.

Table 1: Mortality summary for species and sites where AEOSI was concluded, or Scottish Ministers were unable to conclude no AEOSI.

Species	SPA	Conclusion	Counterfactual of Population Size	Mortality from Berwick Bank OWF

				(birds per annum – upper value)	
Gannet	Forth Islands	AEOSI in combination	0.957	Adults	245.3
				Immatures	10.9
				Total	**256.2**
Gannet	Hermaness, Saxa Vord and Valla Field	Unable to conclude no AEOSI in combination	N/A (<1% reduction in population size)	Adults	4.1
				Immatures	0.3
				Total	**4.4**
Gannet Total				**260.6**	
Guillemot	Farne Islands	Unable to conclude no AEOSI alone	0.922	Adults	168.2
				Immatures	184.9
				Total	**353.1**
Guillemot	Forth Islands	AEOSI alone	0.804	Adults	180.6
				Immatures	178.2
				Total	**358.8**
Guillemot	Fowlsheugh	AEOSI alone	0.805	Adults	473.3
				Immatures	472.9
				Total	**946.2**
Guillemot	St Abb's Head to Fast Castle	AEOSI alone	0.674	Adults	576.1
				Immatures	574
				Total	**1150.1**
Guillemot Total				**2808.2**	
Kittiwake	Buchan Ness to Collieston Coast	AEOSI in combination	0.968	Adults	21
				Immatures	6.6
				Total	**27.6**
Kittiwake	East Caithness Cliffs	AEOSI in combination	0.973	Adults	41.1
				Immatures	20.3
				Total	**61.4**
Kittiwake	Flamborough and Filey Coast	AEOSI in combination	0.985	Adults	38.1
				Immatures	18.9
				Total	**57.0**
Kittiwake	Forth Islands	AEOSI alone	0.869	Adults	43.3
				Immatures	2.9
				Total	**46.2**
Kittiwake	Fowlsheugh	AEOSI alone	0.872	Adults	130.5
				Immatures	8.8
				Total	**139.3**
Kittiwake	North Caithness Cliffs	AEOSI in combination	0.955	Adults	10.2
				Immatures	5.1
				Total	**15.3**
Kittiwake	St Abb's Head to Fast Castle	AEOSI alone	0.375	Adults	371.3
				Immatures	14.3
				Total	**385.6**

Kittiwake	Troup, Pennan and Lion's Heads	AEOSI in combination	0.973	Adults	18.4
				Immatures	7.6
				Total	**26.0**
Kittiwake	West Westray	Unable to conclude no AEOSI alone	0.912	Adults	12.1
				Immatures	6.1
				Total	**18.2**
Seabird assemblage (Kittiwake)	Farne Islands	AEOSI alone	0.894	Adults	35.3
				Immatures	2.8
				Total	**38.1**
Kittiwake Total				**814.7**	
Puffin	Forth Islands	AEOSI in combination	0.986	Adults	30.2
				Immatures	35.6
				Total	**65.8**
Puffin Total				**65.8**	
Razorbill	East Caithness Cliffs	AEOSI in combination	0.986	Adults	14.8
				Immatures	9.9
				Total	**24.7**
Razorbill	Flamborough and Filey Coast	AEOSI in combination	0.989	Adults	10.7
				Immatures	7.6
				Total	**18.3**
Razorbill	Forth Islands	Unable to conclude no AEOSI alone	0.905	Adults	19
				Immatures	16.8
				Total	**35.8**
Razorbill	Fowlsheugh	AEOSI in combination	0.948	Adults	23.0
				Immatures	17.5
				Total	**40.5**
Razorbill	St Abb's Head to Fast Castle	AEOSI alone	0.859	Adults	14.3
				Immatures	15
				Total	**29.3**
Razorbill	Troup, Pennan and Lion's Heads	AEOSI in combination	0.979	Adults	3.3
				Immatures	2.2
				Total	**5.5**
Razorbill Total				**154.1**	

10 Details of Proposed Measures

10.1 Potential Measures Considered

10.2 In its Derogation Case, the Company submitted a long list of options for compensatory measures. This document was accompanied by a Colony Compensation Measures Evidence Report, Fisheries Compensation Measures Evidence Report and Implementation and Monitoring Plan. The Company carried out consultation with stakeholders to inform the Derogation Case. The Company considered a range of

potential pressures on seabirds and ranked them with poor prey availability and extreme weather events coming highest. The Company began with the following list of generic potential compensatory measures: predator control, increased wardening to reduce human disturbance, habitat management measures, reduced fishing effort in the vicinity of the colony, measures to improve prey, measures to improve nesting habitat, removal of marine litter in and around the colony and eliminate/reduce seabird bycatch through fisheries regulation. These measures were then refined into a series of specific compensatory measures which were broadly divided into fisheries based measures aimed at increasing the prey resource available to seabirds and therefore benefiting productivity, recruitment and survival rates, and colony based measures derived from site-specific issues that focus on reducing mortality, improving breeding success and productivity at a specific colony or series of colonies.

10.3 In terms of fishery based measures, management of sandeel fisheries in the North Sea was considered by the Company to be the most suitable and sufficient compensatory measure for the predicted impact from the Project on kittiwake, guillemot, razorbill and puffin either through closure of the SA4 sandeel fishery or through ecosystem based management of the SA4 sandeel fishery.

10.4 The Company adopted a hierarchical approach to evaluate colony based compensation with the principal focus being SPA colonies within the Firth of Forth, then connected non-SPA colonies within the Firth of Forth and finally compensation outside the Firth of Forth which would benefit the wider SPA network. Ideas were sought from stakeholders and literature reviews were conducted to form a long list which was then put through a matrix approach to create a short list for further development. The following measures were consulted on:

- Remove introduced rodents from islands, both within the Firth of Forth and from Handa Island SPA to potentially benefit kittiwake, guillemot, razorbill and puffin but most especially razorbill and puffin breeding in crevices and burrows respectively;
- Funding a warden (and research) to protect and enhance productivity of kittiwake at Dunbar Castle and surrounds as a non-SPA colony;
- Control of specialist avian predators through diversionary feeding of raptors and large gulls, to potentially benefit kittiwake and any of the auk species;
- Removal of coastal litter from non-SPA islands in the Firth of Forth to benefit breeding colonies of kittiwake, razorbill, guillemot and puffin;
- Supplementary feeding of kittiwake and puffin nestlings to improve breeding success. This would require trials to establish benefits and methodology;
- Cessation of gannet harvest at Sula Sgeir; and
- Gull egg rescue and incubation.

10.5 Feedback in response to consultation was used to further refine and prioritise the list of measures and, following a review of the feasibility of delivery of each of the measures, a final list of compensatory measures was achieved. A summary of each of the proposed measures is provided below.

11 Closure of Sandeel Fishery (SA4)

11.1 Sandeel (*Ammodytes spp.*) is an important forage fish in the North Sea. Sandeels in the North Sea Sandeel Area 4 ("SA4") have been exploited as a commercial fishery for many decades. A no take "box" was added to SA4 in 1999 as a tool to manage the sandeel stock for fisheries and the stock showed signs of recovery until 2018. However, increases in fishing outside the box has resulted in poor sandeel stock recovery in recent years. The Company suggests that there is evidence that the sandeel box only provides limited benefits to seabirds and the appropriate spatial scale of management of the fishery to benefit seabirds is at the whole stock level (i.e. SA4).

11.2 The Company submitted a Fisheries Compensation Measures Evidence Report to demonstrate how the prohibition on fishing for sandeels in SA4 would provide benefit to seabirds, in particular kittiwake, guillemot, razorbill and puffin which will be impacted by the Project. The report predicts the following net gain to seabirds adversely affected by Berwick Bank OWF: 400 guillemot, 622 kittiwake, 1622 puffin and 241 razorbill.

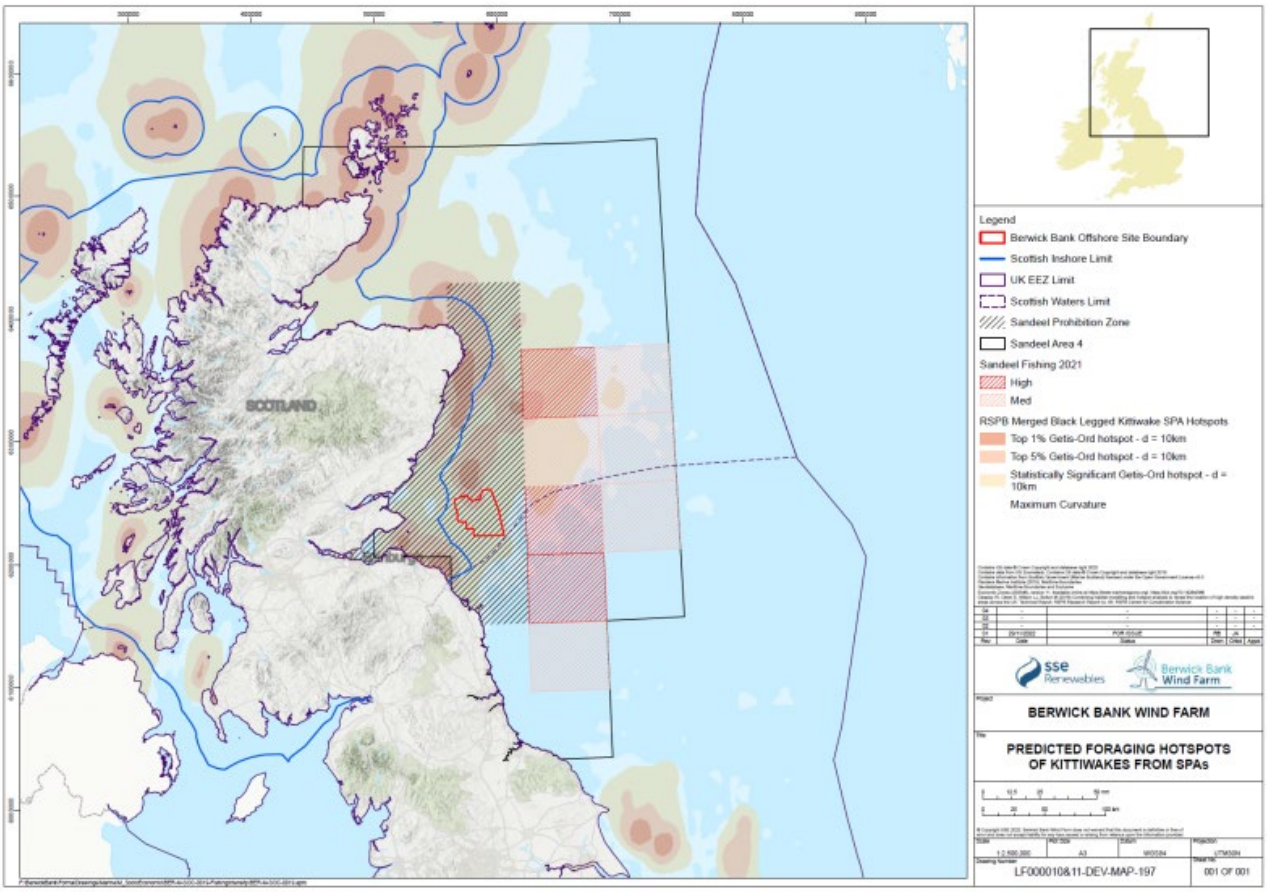

Figure 1: SA4 shown in the black box with the existing closed box in black hatching. Berwick Bank OWF is shown in red.

12 Rat Eradication and Biosecurity Measures at Handa Island

12.1 Handa Island is 367 hectares in area and the closest point is approximately 350m from the Scottish mainland. A ferry service operates from April to September carrying visitors to the island where a ranger and volunteer team are based. A previous rat eradication programme began in 1997 however rat activity on the island has been observed since 2007.

12.2 The Scottish Wildlife Trust who manage the island are currently undertaking a trial of A24 traps at Handa which was scheduled to end in 2023 and currently there is no source of funding to continue to tackle the rats that are still present on Handa. Further, the recurrence of rats following previous eradications means that long term biosecurity measures are required to keep the island rat free in the long term.

12.3 Handa Island lies within the 500m known swimming distance for brown rats. Therefore, the risk of reinvasion with be mitigated by the inclusion of a rat free buffer control and monitored zone on the mainland. The baiting programme will be extended to include a 20 hectare areas around Tarbert where there is human habitation, waste storage and ferry activities and therefore rats are most likely to be active. Further, post

eradication monitoring will extend along a narrow 50m x 3km length of the coastline that lies within the 500m likely swimming distance envelope. This area will also be included in the baiting programme.

12.4 Baiting will be done using anticoagulant rodenticides as this is currently the most widely recognised effective method of eradicating rodents from islands. They can be also used in bait stations to reduce the risk to non-target species. Baiting will be undertaken from November to March. An intensive monitoring programme will be undertaken to monitor bait take and once bait take is reduced to nil, the monitoring programme will continue for three months to detect any rats that have escaped poisoning. If rats are identified in February and March then a second season of baiting will be undertaken the following year.

12.5 Long term monitoring will then continue for three years following the end of the eradication phase following international best practice before the island can be declared rat free. An effective biosecurity plan will be developed and implemented prior to the eradication programme.

12.6 The Company predicts the following benefits to seabirds adversely affected by the Project: 460 guillemot, 124 kittiwake, 44 puffin and 160 razorbill.

13 Dunbar Castle Wardening Role

13.1 Dunbar castle, harbour and the adjacent coast supports a significant local colony of breeding kittiwakes (>800 pairs in 2020) however this number is now declining. It is not in itself part of the UK site network however there is connectivity with birds from nearby SPAs. Current problems identified at the site include human disturbance and discarded fishing nets being left around the harbour which lead to a risk of entanglement/ingestion. In addition to the wardening role and engaging with the local community, the post would also be tasked with trying to understand better the factors limiting growth at the colony. It is proposed that the warden would keep visitors away from the immediate vicinity of the colony whilst providing information to visitors about the birds.

13.2 A large number of nests at Dunbar contain anthropogenic debris, mainly fishing nets. It is proposed that the warden would work with fisherman to reduce the amount of fishing litter in the harbour and potentially also remove some of the debris from nests over the winter when the birds are not present but only where it would not affect the integrity of the nest.

13.3 Another identified issue at the site is the storage of creels next to the castle wall by fishermen which has caused an increase in rats in the main castle area which can then predate the kittiwake nests. The proposal is to remove the creels and implement a rodent control programme.

13.4 The potential to carry out habitat improvement is also suggested. This would involve adding ledges and overhangs to the more favourable locations further away from public disturbance which are currently full. This measure would require further understanding of the various sub-colonies to reduce uncertainty and ensure that any work planned has the best chance of success.

13.5 The Company predicts the measure will provide 23 additional kittiwakes to the Dunbar population annually.

14 Rat Eradication at Inchcolm Island

14.1 Inchcolm Island lies in the Firth of Forth approximately 1km from the Fife coast. It is 10.5 hectares in area and managed by Historic Environment Scotland due to the presence of a historic abbey. The island supports breeding seabirds but does not form part of the UK site network. The island has also been colonised by non-native black rats which can predate on seabirds.

14.2 The Company proposes to use anticoagulant rodenticides over a five month baiting phase of the eradication programme from November to March. Bait stations will be placed in a grid across the island and all offshore islets with vegetation. The Company predicts that after about six weeks, bait take should be reduced to nil and then an intensive monitoring programme will be undertaken using rat attractive food items and chew cards to detect any rats that have escaped poisoning. If rats are detected an intensive targeting programme will be undertaken until rat signs cease. If rats are detected at the end of winter then a second baiting and monitoring operation would be completed the following winter.

14.3 Following the eradication, long term monitoring will be carried out for two years using permanent monitoring stations placed around the island. A final intensive island wide monitoring check will be completed before the island can be declared rat free.

14.4 The Company acknowledges that there is a high incursion risk due to the number of visitors to the island and also its proximity to the mainland however proposes to manage this through stakeholder engagement and implementation of a biosecurity plan.

14.5 The Company predicts the following benefits to seabirds adversely affected by the Project: 7 guillemot, 10 kittiwake, 14 puffin and 5 razorbill.

15 Cessation of Gannet Harvest

15.1 The traditional licensed summer harvest of gannet chicks (guga) at Sula Sgeir results in up to 2,000 fully grown chicks per year being taken by ten men from the village of

Ness on the Isle of Lewis. The activity also causes significant disturbance to the colony and while population modelling shows that the harvest is sustainable, it reduces the rate of population growth relative to other colonies. The proposed measure is to reduce the quota by 50% (1000 chicks) to compensate for the impact of the Project.

16 Summary of proposed measures and predicted benefits

16.1 Table 4 summarises the predicted impacts to each of the species from the AA and the Company's predicted benefits from each of the proposed compensatory measures. The Scottish Ministers note that this shows a shortfall in the compensation for three species, namely guillemot, gannet and kittiwake. However, the additional considerations detailed in section 17 should also be noted when considering the potential benefit of the proposed compensatory measures.

Table 2: Summary of predicted impacts from the Project on species where AEOSI was identified in the AA alongside predicted benefits to be delivered by the proposed compensatory measures.

		Number of breeding adults plus immatures				
		Guillemot	Razorbill	Gannet	Kittiwake	Puffin
Level of Impact	Buchan Ness to Collieston Coast				27.6	
	East Caithness Cliffs		24.7		61.4	
	Farne Islands	353.1			38.1	
	Flamborough and Filey Coast		18.3		57.0	
	Forth Islands	358.8	35.8	256.2	46.2	65.8
	Fowlsheugh	946.2	40.5		139.3	
	Hermaness, Saxa Vord and Valla Field			4.4		
	North Caithness Cliffs				15.3	
	St Abb's Head to Fast Castle	1150.1	29.3		385.6	
	Troup, Pennan and Lion's Heads		5.5		26.0	
	West Westray				18.2	
	Total	**2808.2**	**154.1**	**260.6**	**814.7**	**65.8**
Predicted Benefit	Sandeel Closure	400	241		622	1622
	Rat Eradication – Handa Island	460	160		124	44
	Dunbar Castle Wardening				23	
	Rat Eradication – Inchcolm Island	7	5		10	14
	Cessation of Gannet Harvest			258		
	Total	**867**	**406**	**258**	**779**	**1680**

17 Scottish Ministers Conclusion on Sufficiency of the Measures

17.1 The Marine Directorate – Science, Evidence, Data and Digital ("SEDD") have reviewed the Derogation Case provided by the Company including the Colony Compensation Measures Evidence Report and Fisheries Compensation Measures Evidence Report and provided advice to the Scottish Ministers. SEDD's review takes into consideration the consultation representations from Historic Environment Scotland, Natural England, NatureScot and the Royal Society for the Protection of Birds Scotland. A copy of the full SEDD advice can be found in Annex 1 however a summary is presented below.

17.2 Closure of Sandeel Fishery (SA4)

17.2.1 SEDD acknowledge that sandeel, when available and accessible, is recorded as an important component of seabird diet for some species in the North Sea, particularly during the breeding season. However, the justification for the measure provided by the Company relies to a large part upon a simplistic fishery-prey-predator relationship where a fishery closure benefits the sandeel (prey) which in turn benefits seabirds (predator). Long term studies of sandeel fishery closures and seabirds in Scotland, however, indicate that wider environmental conditions are the key drivers of sandeel populations, their availability, and any resultant seabird responses, not fishery pressure. SEDD advised that the relationship between sandeel and seabird demography outlined by the Developer is of low confidence and high risk of inaccuracy as it is based on very simple correlations, which do not equate to causation. SEDD advised that available evidence indicates that environmental drivers are the key regulators of sandeel dynamics and linked seabird responses. The compensatory measure presented by the Developer therefore has very low confidence of delivery, particularly at the scale required. SEDD therefore advise that the measure would not deliver the required compensation. SEDD therefore concluded that the measure would not deliver the required level of compensation for the impacts to kittiwake, guillemot, razorbill and puffin identified in the AA. This is due to insufficient evidence available to demonstrate that the measure would result in the anticipated sandeel or seabird response.

17.3 Rat Eradication and Biosecurity Measures at Handa Island

17.3.1 SEDD advised that the evidence provided by the Company is insufficient to demonstrate that the measure could be successfully implemented and would result in the anticipated response from cliff nesting seabird species (kittiwake, guillemot and razorbill). SEDD acknowledged the potential for the measure to benefit ground nesting species such as puffin so it may be able to compensate for some of the impacts from the Project, however highlighted that questions remain over the origins of the compensation values presented and the design, implementation and duration of the measure.

17.4 Dunbar Castle Wardening Role

17.4.1 SEDD advised that the evidence provided by the Company does not demonstrate that the measure addresses a currently limiting pressure or that the successfully implemented measure would result in the anticipated kittiwake response. However, these points could be clarified, and further evidence provided. In which case, the proposed measure could potentially provide the compensatory numbers outlined by the proposal however in the wider context it would be insufficient compensation for the magnitude of impact identified in the AA.

17.5 Rat Eradication at Inchcolm Island

17.5.1 SEDD highlighted similar concerns regarding this measure as for the proposed rat eradication at Handa Island. It may provide some compensation for puffin however questions remain regarding the validity of the calculations underpinning the compensation values presented (due to species misidentification in the Company's assessment of nest site availability) and the design, implementation and duration of the measure.

17.6 Cessation of Gannet Harvest

17.6.1 There is currently a lack of clarity on the methodology used to derive the predicted benefit numbers provided by the Company. SEDD also noted that these numbers do not provide sufficient compensation for the magnitude of impact identified in the AA. Further concerns are raised about the practicality of securing and implementing the measure.

17.7 Summary

17.7.1 The compensation for the impacts to most sites and species predominantly relies on the delivery of compensation from the sandeel closure. However, the scientific evidence base reviewed by SEDD does not support the conclusion that the closure of the sandeel fishery will provide improved abundance and availability of sandeels to seabirds. The advice provided by SEDD concluded that there is the potential for some of the other measures to deliver compensation to some species however this would not be at the scale required to compensate for all of the impacts identified in the AA.

17.7.2 The advice provided by SEDD on the sufficiency of the Company's compensatory measures package was reviewed by the Chief Scientific Advisor Marine ("CSA") and a panel from the Scottish Science Advisory Council. The CSA review agreed with the conclusions of SEDD, that there is insufficient evidence to quantify the benefits of most of the proposed measures, particularly the sandeel fishery closure. Overall, the CSA review concluded that based on the available evidence, the proposed compensatory measures package is unlikely to deliver the level of benefit required to compensate for the magnitude of impact identified in the AA. A copy of the panel report containing the CSA review can be found in Annex 2.

17.7.3 The Scottish Ministers have considered the SEDD advice together with the CSA review and conclude that on the basis of the available scientific evidence the measures proposed by the Company will not provide sufficient compensation in respect of the impacts identified and quantified in the AA for the Project.

18 Securing of Compensatory Measures

18.1 As set out above, the Scottish Ministers are of the view that the package of compensatory measures, as currently proposed by the Company, is insufficient to meet the requirements of the Habitats Regulations to secure necessary compensatory measures to ensure that the overall coherence of the UK site network is protected.

18.2 The Scottish Ministers have, however, considered the reforms to the Habitats Regulations' requirement for compensatory measures in relation to offshore wind, being taken forward under powers in the Energy Act 2023 by the UK and Scottish Governments for the Scottish offshore and inshore regions, respectively. The reforms are the subject of ongoing discussions between governments, with consultations to be launched imminently that will set out proposals for material changes to existing obligations for compensatory measures and for enabling broader measures to be taken.

18.3 The Scottish Ministers have also considered the work the Scottish Government is currently undertaking in commissioning a series of projects to develop Scotland's portfolio of strategic compensatory measures. These projects are considering a range of potential measures including predator eradication and biosecurity, habitat management and restoration, fisheries management measures, restoring and enhancing supporting prey habitats, and marine litter removal at scale. The efficacy of these measures will be assessed for a range of priority seabird species including Black-legged Kittiwake, Northern Gannet, Common Guillemot, Razorbill, Atlantic Puffin, and Greater Black-backed Gull. The first projects are intended to report in late 2025, with subsequent projects reporting in early 2026

18.4 The obligation for compensatory measures requires them to be in place before damage to the European site(s) occurs. In the case of the Project, the impacts identified in the AA occur at the point that the Project becomes operational. The Scottish Ministers therefore consider it appropriate to meet the requirement to put in place compensatory measures through a suspensive condition on the section 36 consent and marine licences. A condition will be added to prohibit the commencement of the Project until a compensation package is submitted and approved by the Scottish Ministers. This will ensure that compensatory measures are formally secured as required by the Habitats Regulations before the Project can be lawfully built and operated.

18.5 The following condition will be added to the section 36 consent and marine licences to ensure that satisfactory and sufficient compensatory measures are approved by Scottish Ministers before the commencement of the Project.

18.6 The wording of the below condition is as it will appear on the section 36 consent however the condition will also be added to the marine licences for the Project with appropriate changes to defined terms. Defined terms used in the condition below will have the meaning given to them in the section 36 consent, if granted.

19 Secretary of State Notification

19.1 In accordance with Regulation 31(5) of the Conservation of Offshore Marine Habitats and Species Regulations 2017, the Scottish Ministers notified the Secretary of State through the Department of Environment, Food and Environmental Affairs "(Defra") of its intention to approve the Project on 27 June 2025. The Secretary of State provided a response on 21 July 2025 whereby he agreed to the consent of the Project subject to his written agreement being obtained to the Seabird Compensation Plan (which may be given subject to such to conditions or restrictions as he may specify) and that a condition must be imposed on the Developer reflecting this requirement, the wording of which must be agreed with his officials. The Scottish Ministers have included the Seabird Compensation Plan as a condition to the section 36 consent and relevant associated marine licences and agreed the wording with Defra officials.

20 Compensation condition

Compensation for adverse effects on Special Protection Areas

No later than six months prior to the implementation of proposed compensatory measures (or such alternative timeframe, as approved in writing by the Scottish Ministers), the Developer must submit a Seabird Compensation Plan in writing to the Scottish Ministers for their written approval. Such approval may only be granted following:

(a) consultation by the Scottish Ministers with NatureScot; Natural England; any such other advisors or organisations as may be required at the discretion of the Scottish Ministers which may include a compensatory measures steering group; and

(b) written agreement by the Secretary of State in relation to compensatory measures concerning the English SPAs that the AA has concluded adverse effects on site integrity ("AEOSI") for (or been unable to conclude no AEOSI for), subject to such conditions or restrictions relating to the compensatory measures as he may specify.

The Seabird Compensation Plan must set out compensatory measures which are sufficient to compensate for the Development's impacts on SPAs, as identified and quantified within Tables 76 and 77 of the AA where conclusions of AEOSI or being

unable to conclude no AEOSI have been drawn. Furthermore, the Seabird Compensation Plan must include the following:

a) a timetable of implementation and maintenance of the compensatory measures;
b) the location of the compensatory measures;
c) a description of the characteristics of the proposed compensatory measures;
d) the predicted outcomes of each compensatory measure, including timescales of when those outcomes will be achieved;
e) details of monitoring and reporting of the effectiveness of the compensatory measures including:
   i) survey methods;
   ii) survey programmes;
   iii) success criteria;
   iv) timescales for monitoring reports to be submitted to the Scottish Ministers;
   v) reporting of meeting success criteria, and
   vi) measures to adapt, and where necessary increase, compensatory measures and the criteria used to trigger any adaptation of compensatory measures.

Commencement of the Development cannot take place without written approval of the Seabird Compensation Plan by the Scottish Ministers. The Scottish Ministers may require that certain elements of the Seabird Compensation Plan must be fulfilled prior to Commencement of the Development. In this instance, the Scottish Ministers will notify the Developer, in writing, of what is required. The Developer must not initiate Commencement of the Development until the Scottish Ministers have confirmed, in writing, that they are content and any such elements have been fulfilled.

The Developer must implement the approved Seabird Compensation Plan in full. Any requests for amendments to the approved Seabird Compensation Plan must be submitted, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following:

(a) consultation by the Scottish Ministers with NatureScot, Natural England and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers, which may include a compensatory measures steering group; and

(b) written agreement by the Secretary of State in relation to compensatory measures concerning the English SPAs that the AA has concluded AEOSI for (or been unable to conclude no AEOSI for), subject to such conditions or restrictions relating to the compensatory measures as he may specify.

The Developer must make such alterations to the approved Seabird Compensation Plan as directed by the Scottish Ministers and submit the updated Seabird Compensation Plan to the Scottish Ministers for approval within such a period as

directed in writing by the Scottish Ministers. If those directions make alterations to compensatory measures relating to the English SPAs that the AA has concluded AEOSI for (or been unable to conclude no AEOSI for), this will be subject to written agreement from the Secretary of State.

The Developer must notify the Scottish Ministers, NatureScot and Natural England of the completion of any compensatory measures set out in the Seabird Compensation Plan.

Reason: To ensure that the adverse impacts on site integrity of the Special Protection Areas are sufficiently compensated for.