

From: Jessica Malcolm  
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8 June 2023

Minister for Energy

**APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 17 JUNE 2019 TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM, LOCATED 15-22 KILOMETRES EAST OFF THE ANGUS COASTLINE**

**PRIORITY AND PURPOSE**

1. Routine priority
2. To seek your approval to vary the section 36 (“s.36”) consent granted on 17 June 2019 and subsequently varied on the 16 July 2020 and 1 July 2021 (“the Existing s.36 Consent”) for the construction and operation of the Inch Cape Offshore Wind Farm (“the Development”).

**RECOMMENDATION**

3. Recommends that you: agree to vary the Existing s.36 Consent for the Development, in accordance with s.36C of the Electricity Act 1989 and the Electricity Generating Stations (Applicant for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”).

**CONTEXT AND ISSUES**

4. An application was made on 22 November 2022 (“the Variation Application”) by Inch Cape Offshore Wind Limited (“the Company”) to vary the Existing s.36 Consent as follows:

- Vary Annex 1 of the Existing s.36 Consent, to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres.

5. Prior to receiving the Variation Application, the Scottish Ministers adopted a screening opinion on 16 September 2022 under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”) and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”). The screening opinion concluded that the Variation Application does not require Environmental Impact Assessment (“EIA”) (as defined in the 2017 EW Regulations and 2017 MW Regulations).

6. The Company has also applied for a variation to the associated generating station marine licence to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres. The marine licence variation application also seeks to update the

description of the construction works in line with the Company's preferred design scenario. The preferred design scenario is already permitted by the project description within the Existing s.36 Consent and therefore does not form part of the Variation Application.

7. The Company has also included a proposal to increase the hammer energy used to install Wind Turbine Generator ("WTG") foundations from 5,000 kilojoules ("kJ") to 5,500 kJ within the Variation Application and aforementioned marine licence variation application. However, as hammer energy is not specified in the Existing s.36 Consent or the associated generating station marine licence, the Company's proposal to increase the hammer energy used to install WTG foundations from 5,000 kJ to 5,500 kJ will not be considered as part of the Variation Application. Instead, the proposed increase in hammer energy will be controlled by the Piling Strategy. Condition 11 of the Existing s.36 Consent and condition 3.2.2.8 of the generating station marine licence require the Company to submit a Piling Strategy to the Scottish Ministers for written approval, no later than six months prior to the commencement of the Development.

8. As the Existing s.36 Consent was subject to an Appropriate Assessment ("AA"), completed on 14 March 2019, an AA validation has been carried out with regards to Variation Application. In line with the Conservation of the Habitats and Species Regulations 2017, it has been concluded that the conclusions of the original AA are valid and that the Variation Application will not result in a likely significant effect on any European offshore marine site or European site (either alone or in-combination with other plans or projects).

## **OPTIONS CONSIDERED AND ADVICE**

9. Under s.36C(4) of the Electricity Act 1989, the Scottish Ministers will exercise judgement having regard to the below criteria, in order to determine whether any variation sought is appropriate:

- (a) the applicant's reasons for seeking the variation;
- (b) the variations proposed;
- (c) any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.

10. The Variation Application seeks to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres. This will facilitate an arrangement of WTGs in an optimised border layout. There will be an increase in WTGs around the border of the Development, with the remaining WTGs arranged in a grid in the centre of the Development.

11. The Company states the following rationale for the proposed variation:

*"The variation proposed within the Variation Application, is required to allow an optimised layout of wind turbine generators to maximise wind resource capture".*

12. The variations proposed in the Variation Application do not fundamentally alter the character or scale of the Development and there will be no changes in the boundary of the Development.

13. Officials consider that you can be satisfied that, in this circumstance, the changes proposed are appropriate to be authorised (having regard to the variation proposed, the reasons for the variation, and the views of the consultees) by means of the variation procedure in line with the Electricity Act 1989, the Variation Regulations and the Scottish Government Applications for Variation of Section 36 Consents Guidance published in May 2019.

14. Consideration of any representations made concerning the proposed variation and recommendation not to cause a public inquiry are outlined in the following paragraphs.

### **ASSESSMENT OF OPTIONS**

15. Twenty four representations concerning the Variation Application were received during the consultation period. Three objections were raised from the Scottish Fishermen's Federation ("SFF"), the Inshore Fishery Group ("IFG") and the Royal Society for the Protection of Birds Scotland ("RSPB Scotland"). A full summary of the consultation responses and how they have been addressed is detailed in Annex A.

16. SFF and IFG objected to the Variation Application. The objection is based on the lack of consideration of the impacts on the ability to fish as a result of reduced turbine spacing after the wind farm is operational, navigational issues and visibility from shore. Additionally, mobile fishing gear would have great difficulty fishing within this array given the proposed reduction in turbine spacing.

17. Marine Directorate – Licensing Operations Team ("MD-LOT") has considered the points raised by SFF and IFG with regards to reduced turbine spacing and difficulty of fishing for mobile gear. Marine Scotland Science ("MSS") advised that a minimum spacing of 1,000 metres between WTGs is the general recommendation in relation to commercial fisheries. MSS advised that the minimum spacing of 1,000 metres is based on known vessel manoeuvring requirements and the space needed to operate fishing gear. This figure aligns with other existing offshore wind farms in both Scottish and UK waters and good practise developed between the offshore wind industry and commercial fisheries stakeholders. MD-LOT is therefore content with the Variation Application as the reduction in turbine spacing still exceeds the recommended minimum distance.

18. MD-LOT has considered the point raised by SFF and the IFG on reduced turbine spacing and potential impacts on navigation. The Northern Lighthouse Board raised no concerns in regards to the safety of navigation and the Maritime Coastguard Agency had no objections provided all maritime safety legislation is followed and the conditions of the Existing s.36 Consent are adhered to. Therefore, MD-LOT is content that there is unlikely to be a risk to safe navigation as a result of the Variation Application.

19. The SFF and IFG representation stated that visibility from shore was a factor ignored by the proposal to reduce turbine spacing. In addition, although they did not object, Aberdeenshire Council, Angus Council, East Lothian Council, Fife Council and the Scottish Borders Council commented on the change in appearance of the Development due to the proposed reduction in turbine spacing. NatureScot confirmed that there would be no change to the significance of effects on seascape, landscape or visual receptors. Following consideration of the representations, MD-LOT is content that there will be no significant change in impacts to seascape, landscape or visual receptors as a result of the Variation Application.

20. RSPB Scotland maintained its objection to the Development due to the cumulative impacts on seabird populations with Neart na Gaoithe and Seagreen offshore wind farms. RSPB Scotland advised that in its view impacts from the Development in isolation and in combination with these projects would constitute adverse effects on the integrity of nearby Special Protection Areas (“SPAs”), including the Forth Islands SPA and Fowlsheugh SPA. However, RSPB Scotland noted that the Variation Application is predicted to slightly reduce impacts and view this positively in the context of existing impacts.

21. NatureScot considered the Variation Application in the context of collision risk to seabird species and concluded that the risk is no worse than previously assessed for the Existing s.36 Consent. NatureScot advised that the appropriate assessment completed in March 2019 (“the Original AA”) in respect of the Existing s.36 Consent remains valid. The Original AA concluded no adverse effect on site integrity of the following SPAs: the Forth Islands SPA, Fowlsheugh SPA, Buchan Ness and Collieston Coast SPA, St Abb’s Head to Fast Castle SPA and the Outer Firth of Forth and St Andrews Complex proposed SPA. In consideration of the advice provided by NatureScot, MD-LOT has reviewed the Original AA and is content that the Variation Application will not adversely affect the site integrity of these SPAs.

22. The views of consultees were considered during the determination process and the three objections raised have been considered. In light of this consideration officials advise Scottish Ministers that the variation is appropriate, for the reasons outlined above.

23. Before determining a variation application, per the Electricity Act 1989 and the Variation Regulations, Scottish Ministers may cause a public inquiry to be held if it is deemed appropriate to do so. Having considered the representations received and all other material considerations, officials recommend that it is appropriate not to cause a public inquiry.

## **BUTE HOUSE AGREEMENT IMPLICATIONS**

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

## **FINANCIAL AND LEGAL CONSIDERATIONS**

25. The Variation Application was made in accordance with the Electricity Act 1989 and the Variation Regulations. The legislative requirements of the Variation Regulations regarding publication and notification of consultation on s.36 variation applications have been met. Further information on the legislative requirements and how these have been satisfied can be found in Annex A and B. Validation of the Appropriate Assessment undertaken in respect of the Existing s.36 Consent per the Conservation of Habitats and Species Regulations 2017 can be found at Annex D.

26. This submission has been informed by appropriate advice from Scottish Government Legal Directorate. The legislative action falls within the competence of the Scottish Government and is a legally appropriate course of action to take.

## **SENSITIVITIES**

27. RSPB Scotland objected to the original decision to grant s.36 consent for the Development as it considered that the impact on seabirds from the Development in isolation and in-combination would constitute adverse effects on integrity of nearby protected sites. RSPB Scotland subsequently brought judicial review proceedings against the Scottish Ministers, challenging the decision made on this Development (and two separate decisions to grant s.36 consents for Seagreen and Neart na Gaoithe wind farms). Although RSPB Scotland was initially successful in its challenge, the Inner House later found in favour of the Scottish Ministers' decision to award the s.36 consent for the Development.

## **QUALITY ASSURANCE**

28. This submission has been approved by Mike Palmer, Deputy Director, Offshore Wind Directorate.

## **CONCLUSION AND NEXT STEPS**

29. Should the Minister choose to approve the Variation Application, a draft decision notice is attached in Annex C, which MD-LOT will finalise and issue to the Company on the Minister's behalf.

30. Following consideration by MD-LOT of the Company's application to vary the marine licence attached to the Development, MD-LOT may exercise discretion, on behalf of Scottish Ministers, under section 30(7) of the Marine Scotland Act 2010 to vary the generating station marine licence attached to the Development as requested by the Company.

31. In order for the determination process to be fully open and transparent, MD-LOT recommends that this submission is published on [Marine Scotland Information](#), alongside the Existing s.36 Consent and the Variation Application documentation.

**Jessica Malcolm**  
MD-LOT

## **LIST OF ANNEXES**

- ANNEX A** Background and Consultation  
**ANNEX B** Legislative Requirements  
**ANNEX C** Draft Decision Notice and Proposed Variation  
**ANNEX D** Validation of Appropriate Assessment

Copy List:	For Action	For Information		
		Portfolio Interest	Consist Interest	General Awareness
Minister for Energy	X			
Cabinet Secretary for Wellbeing, Economy, Fair Work and Energy		X		
Cabinet Secretary for Rural Affairs, Land Reform and Islands		X		
Cabinet Secretary for Net Zero and Just Transition		X		
Minister for Green Skills, Circular Economy and Biodiversity		X		

DG Economy  
 DG Net Zero  
 Director, Marine Directorate  
 Mike Palmer, Deputy Director Offshore Wind Directorate  
 Iain Wallace, Deputy Director Marine Directorate  
 David Pratt, Marine Directorate  
 Zoe Crutchfield, Marine Directorate  
 Gayle Holland, Marine Directorate  
 Stephanie Morrison, Marine Directorate  
 Lauren Cowan, Marine Directorate  
 Mark Christie, Marine Directorate  
 Paul Smith, Marine Directorate  
 Jared Wilson, Marine Directorate  
 Malcolm Pentland, Deputy Directorate Marine Directorate  
 David Stevenson, Offshore Wind Directorate  
 Frances Pacitti, Deputy Director, Offshore Wind Directorate  
 Michelle Quinn, Director, Offshore Wind Directorate  
 Stewart Cunningham, Legal Directorate  
 Joanna Dingwall, Legal Directorate  
 Alison Presly, Legal Directorate  
 Angela Lawson, Legal Directorate  
 Joan McHutchison, Legal Directorate  
 David Moffat, Legal Directorate  
 Hannah Matthew, Legal Directorate  
 Callum McCaig, Special Advisor  
 Communications – Net Zero and Rural Affairs

## 1. **ANNEX A Background and Consultation**

### 1.1 **Background Information**

- 1.1.1 On 17 June 2019, the Scottish Ministers granted consent under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) to construct and operate the offshore generating station known as the Inch Cape Offshore Wind Farm (Revised Design) (“the Development”) located approximately 15-22 kilometres off the Angus coastline with a maximum generation output of around 700 megawatts (“MW”). The s.36 consent granted on 17 June 2019 was subsequently varied on 16 July 2020 to increase the maximum generating capacity from around 700 MW to up to 1000 MW, and further varied on 1 July 2020 to remove the maximum generating capacity (“the Existing s.36 Consent”).
- 1.1.2 On 22 November 2022, the Scottish Ministers received an application from Inch Cape Offshore Limited (“the Company”) under section 36C(1) of the Electricity Act in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”) to vary its Existing s.36 Consent (“the Variation Application”). The Variation Application seeks to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres on the Existing s.36 Consent. The Company stated that this is required to allow an optimised layout of Wind Turbine Generators (“WTG”) to maximise wind resource capture. The proposed variation does not fundamentally alter the character or scale of the Development and there will be no changes in the boundary of the Development.
- 1.1.3 The Company has also applied for a variation to the associated generating station marine licence to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres. The marine licence variation application also seeks to update the description of the construction works in line with the Company’s preferred design scenario. The preferred design scenario is already permitted by the project description within the Existing s.36 Consent and therefore does not form part of the Variation Application.
- 1.1.4 The Company has also included a proposal to increase the hammer energy used to install WTG foundations from 5,000 kilojoules (“kJ”) to 5,500 kJ within the Variation Application and aforementioned marine licence variation application. However, as hammer energy is not specified in the Existing s.36 Consent or the associated generating station marine licence, the Company’s proposal to increase the hammer energy used to install WTG foundations from 5,000 kJ to 5,500 kJ will not be considered as part of the Variation Application. Instead, the proposed increase in hammer energy will be controlled by the Piling Strategy. Condition 11 of the Existing s.36 Consent and condition 3.2.2.8 of the generating station marine licence require the Company to submit a Piling Strategy for written approval, no later than six months prior to the commencement of the Development.

## 1.2 **Application Documentation**

- 1.2.1 The Company submitted the following Variation Application documentation, which was issued for consultation on 15 December 2022:

- s.36 Variation Application Report; and
- Appendix A – Screening Report

1.2.2 Full details of the consultation undertaken as part of the process are set out below.

### 1.3 **Application publication, notification and consultation**

1.3.1 In accordance with Regulation 4 of the Variation Regulations, the Company:

- Placed the Variation Application documentation on the [application website](#) alongside a link to the Existing s.36 Consent; and
- Placed public notices relating to the Variation Application in the Courier for two successive weeks and for one week each in the Edinburgh Gazette, the Scotsman, Lloyds List and Fishing News.

1.3.2 Marine Directorate - Licensing Operations Team (“MD-LOT”) consulted a wide range of interested parties on the Variation Application including relevant local authorities (in this case Aberdeenshire Council, Angus Council, Dundee City Council, Fife Council, East Lothian Council (“ELC”), Scottish Borders Council), NatureScot, Maritime Coastguard Agency (“MCA”), Northern Lighthouse Board (“NLB”), Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”) and placed the Variation Application documentation on the [Marine Scotland Information website](#) alongside the Existing s.36 Consent.

### 1.4 **Summary of consultation process**

1.4.1 Several of the consultees had no representations to make, or did not provide a response to the consultation. In the case of no response, MD-LOT notified the relevant consultees that “nil returns” would be assumed.

1.4.2 Several of the consultees provided comments in relation to the generating station marine licence variation and updates to the piling methodology as described in section 1.13 and 1.14. These comments have been excluded from section 1.5 as they are not relevant to the Variation Application.

1.4.3 Three objections were raised by consultees and these are addressed in section [1.7](#) below. The local authorities did not raise any objections, however, representations were submitted. Summaries of the representations received from the consultees are presented in section [1.5](#). Section [1.8](#) lists all consultees who made no representation.

1.4.4 No representations were received from members of the public in relation to the Variation Application.



- 1.4.5 Copies of the full consultation representations received have been made available on the Development's page on the [Marine Scotland Information](#) website.
- 1.5 **Summary of consultation responses**
- 1.5.1 **The following consultees raised no objections to the Variation Application.**
- 1.5.2 **Aberdeenshire Council** confirmed that while the Variation Application would result in a change to the appearance of the Development, the impact on seascape, landscape and visual impact receptors from viewpoints within Aberdeenshire would be negligible.
- 1.5.3 **Angus Council** confirmed that it had no objection to the Variation Application. However, Angus Council raised concerns regarding the proposed reduction in turbine spacing which in its view would make the Development appear more cluttered. Angus Council was of the view that the Variation Application is not as successful in terms of seascape and visual impacts as the Existing s.36 Consent. Angus Council also commented that the submitted wirelines appear to show a more significant impact on the setting of the Bell Rock Lighthouse which is a category A listed building.
- 1.5.4 **British Telecoms ("BT")** confirmed that the Variation Application was studied with respect to the BT point-to-point radio links. BT concluded that the Variation Application should not cause interference to its current and presently planned radio network.
- 1.5.5 **Civil Aviation Authority** confirmed it had no comment to make on the Variation Application.
- 1.5.6 **Dundee City Council** confirmed it had no comment to make on the Variation Application.
- 1.5.7 **ELC** commented that the reduction in turbine spacing would lead to a visual impact that is different to, but did not appear to be significantly greater during the day, than the turbine spacing permitted by the Existing s.36 Consent. However, it advised that an increase in edge Wind Turbine Generators ("WTGs") had the potential to increase visibility at night time by increasing the impact of aviation lighting. ELC concluded that providing high intensity lighting was not required for all edge WTGs, then it would be likely that the visual impact at night would not be significantly greater than from the Existing s.36 Consent. ELC expects that discussions will be had with relevant stakeholders to ensure that lighting, especially that visible from land, is kept to a minimum. The Existing s.36 Consent includes a condition that ELC will be consulted on the Lighting and Marking Plan and therefore MD-LOT is content to consider this matter resolved for the Variation Application.
- 1.5.8 ELC identified that no information was included in the Variation Application with regards to increased climate forcing emissions in construction. It

encouraged Scottish Ministers to consider whether mitigation may be appropriate. MD-LOT does not consider that the Variation Application will result in an increase in emissions.

- 1.5.9 ELC deferred to NatureScot with regards to marine mammals, ornithology and designated sites. Overall it concluded no objection to the Variation Application.
- 1.5.10 **Ferryden and Craig Community Council** had no objection to the Variation Application.
- 1.5.11 **Fife Council** commented that the proposed reduction in turbine spacing could alter the appearance of the Development with wind turbines considered more concentrated. Fife Council requested that MD-LOT give consideration to the seascape, landscape and visual impacts of the Development when determining the Variation Application.
- 1.5.12 **HES** confirmed the Variation Application would not result in any further significant impacts on marine archaeology or the setting of designated terrestrial assets and that it had no further comment to make.
- 1.5.13 **MCA** had no objection to the Variation Application on the basis that all maritime safety legislation is followed and the Existing s.36 Consent conditions are adhered to.
- 1.5.14 **Ministry of Defence** had no objection to the Variation Application.
- 1.5.15 **NatureScot** confirmed that there would be no change to the significance of effects on seascape, landscape or visual receptors and a new Seascape, Landscape and Visual Impact Assessment (“SLVIA”) was not required. Nature Scot also commented that the Company had not produced revised wirelines and instead proposed to address SLVIA requirements through a forthcoming design statement and that MD-LOT should consider if this approach was adequate. MD-LOT informed NatureScot that revised wirelines were included in the Variation Report as an appendix. NatureScot subsequently withdrew its comments on the SLVIA aspects of the Variation Application Report.
- 1.5.16 MD-LOT sought clarity from NatureScot with regards to any Habitat Regulation Appraisal implications of the Variation Application. NatureScot confirmed that the Variation Application would not result in significant increases in risk to key marine mammal and seabird receptors and therefore it considers the conclusions from the Appropriate Assessment dated March 2019 for the Existing s.36 Consent remains valid.
- 1.5.17 **NLB** had no objection to the Variation Application.
- 1.5.18 **Royal Yachting Association** had no comment to make on the Variation Application.

- 1.5.19 **The Scottish Borders Council** commented that the changed arrangement of the wind turbines would lead generally to a denser and heightened visual impact from different viewpoints. The Scottish Borders Council however concluded that, given the distance from its area and looking at the minimal impacts from the nearest viewpoint, there would be little reason to oppose on the grounds of visual impact.
- 1.5.20 **Scottish Water** had no objection to the Variation Application.
- 1.5.21 **Seagreen Wind Energy Ltd** had no objection to the Variation Application.
- 1.5.22 **SEPA** did not provide site specific advice and had no site-specific comments to make on the Variation Application, highlighting its standing advice. MD-LOT considers that the relevant points from the standing advice on marine non-native species, good working practises, pollution prevention, the conservation of water bodies and decommissioning are addressed by the Existing s.36 Consent and therefore remain captured by the Variation Application.
- 1.5.23 **Sport Scotland** had no objection to the Variation Application.
- 1.5.24 **The UK Chamber of Shipping** had no comments to make on the Variation Application.
- 1.6 **Advice from third parties.**
- 1.6.1 **Marine Scotland Science (“MSS”)** advised that a minimum of 1,000 metres spacing between turbines is the general recommendation in relation to commercial fisheries. MSS advised that the minimum spacing of 1,000 metres is based on known vessel manoeuvring requirements and the space needed to operate fishing gear. This figure aligns with other existing offshore wind farms in both Scottish and UK waters and good practice developed between the offshore wind industry and commercial fisheries stakeholders. MSS confirmed that the reduction in turbine spacing continues to meet the recommended spacing requirements in relation to commercial fisheries and therefore is content with the Variation Application.
- 1.6.2 **Transport Scotland** confirmed it was satisfied that the conclusions of its consultation response in relation to the Existing s.36 Consent remained valid and requested the condition, regarding the construction traffic management plan, be attached to any potential consent variations. Transport Scotland confirmed that it had no further representation to make on the Variation Application.
- 1.7 **The following consultees raised objections to the Variation Application.**
- 1.7.1 **The Inshore Fishery Group (“IFG”)** confirmed its representation was included in the Scottish Fishermen’s Federation (“SFF”) representation as it made the same points.

- 1.7.2 **The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)** maintained its objection to the Development due to the cumulative impacts on seabird populations with Neart na Gaoithe and Seagreen offshore wind farms. RSPB Scotland advised that in its view impacts from the Development in isolation and in combination with the aforementioned noted projects would constitute adverse effects on the integrity of nearby Special Protection Areas (“SPAs”), including the Forth Islands SPA and Fowlsheugh SPA. However, RSPB Scotland noted that the Variation Application is predicted to slightly reduce impacts and view this positively in the context of existing impacts.
- 1.7.3 NatureScot considered the Variation Application in the context of collision risk to seabird species and concluded that the risk was no worse than previously assessed for the Existing s.36 Consent. NatureScot also concluded that the Variation Application would not result in significant increases in risk to seabird receptors and therefore the conclusions of the appropriate assessment completed in March 2019 (“the Original AA”) in respect of the Existing s.36 Consent remain valid. The Original AA concluded no adverse effect on site integrity of the following SPAs: the Forth Islands SPA, Fowlsheugh SPA, Buchan Ness and Collieston Coast SPA, St Abb’s Head to Fast Castle SPA and the Outer Firth of Forth and St Andrews Complex proposed SPA. Given the NatureScot advice, MD-LOT is content that the Variation Application will not adversely affect the site integrity of the SPAs.
- 1.7.4 **SFF** objected to the Variation Application due to the lack of consideration of the impact of reduced turbine spacing on the ability to fish after the wind farm is operational, navigational issues and visibility from shore. The SFF concluded that as a result of the reduction in turbine spacing, fishing with mobile gear will have great difficulty fishing within the array.
- 1.7.5 MD-LOT has considered the point raised by SFF and IFG with regards to reduced turbine spacing and difficulty of fishing for mobile gear. MSS advised that a minimum of 1,000 metres spacing between WTGs is the general recommendation based on known vessel manoeuvring requirements and the space needed to operate fishing gear. MD-LOT is therefore content with the Variation Application as the reduction in turbine spacing continues to exceed the recommended minimum distance.
- 1.7.6 MD-LOT has considered the point raised by SFF and the IFG on reduced turbine spacing and potential impacts on navigation. The NLB had no objections to the Variation Application and the MCA had no objections provided all maritime safety legislation is followed and the conditions of the Existing s.36 Consent are adhered to. Therefore, MD-LOT is content that there is unlikely to be a risk to safe navigation as a result of the Variation Application.
- 1.7.7 The SFF and IFG representation stated that visibility from shore was a factor ignored by the proposal to reduce turbine spacing. In addition, although they did not object, Aberdeenshire Council, Angus Council, ELC, Fife Council and

the Scottish Borders Council commented on the change in appearance of the Development due to the proposed reduction in turbine spacing.

- 1.7.8 The Company responded to the representations made with regards to the visual impact of the proposed reduction in turbine spacing. The Company reviewed the wind farm design to optimise the project. During its review, the Company considered all environmental receptors and in the case of SLVIA it concluded that there would be no change in the distribution of likely significant effects.
- 1.7.9 NatureScot confirmed that there would be no change to the significance of effects on seascape, landscape or visual receptors and the local authorities have not objected to the Variation Application. In light of these responses MD-LOT is content that there will be no significant change in impacts on seascape, landscape or visual receptors as a result of the Variation Application.
- 1.7.10 In summary, MD-LOT is content that the objections raised by RSPB Scotland, SFF and the IFG have been addressed.

**1.8 Nil responses**

- 1.8.1 The following consultees did not respond to the consultation and therefore nil responses have been assumed:

Anstruther Fisheries Office	Neart na Gaoithe
Benholm and Johnshaven Community Council	River Tweed Commission
Berwick Bank	Royal Burgh of Arbroath Community Council
Boarhills and Dunino Community Council	Royal Burgh of Crail and District Community Council
Carnoustie Community Council	Royal Burgh of Kilrenny and Anstruther, and of Cellardyke Community Council
Communities Inshore Fisheries Alliance	Royal Burgh of Montrose Community Council
Crown Estate Scotland	Royal Burgh of St Andrews Community Council
Esk District Salmon Fishery Board ("DSFB")	Scottish Canoe Association
Eyemouth Fisheries Office	Scottish Creel Fishermen's Federation
Fife Coast and Countryside Trust	Scottish Fishermen's Organisation

Fisheries Management Scotland	Scottish Surfing Federation
Forth DSFB	St Cyrus Community Council
Guardbridge and District Community Council	Surfers Against Sewage
Joint Radio Company	Scotwind E1 sites
Leuchars Community Council	Tay DSFB
Marine Planning and Policy Renewable Specialist	Tayport Ferryport-on-Craig Community Council
Marine Safety Forum	Visit Scotland
Monifieth Community Council	Whale and Dolphin Conservation
National Air Traffic Services	

## **ANNEX B Legislative Requirements**

### **1. ANNEX B Legislative Requirements**

#### **1.1 Legislative Background**

- 1.1.1 Persons holding a section 36 consent (“s.36”) under the Electricity Act 1989 (“the Electricity Act”) may apply to the appropriate authority (in Scotland this is the Scottish Ministers) for a variation of their s.36 consent under s.36C of the Electricity Act.
- 1.1.2 The application procedure for varying a s.36 consent is set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”).
- 1.1.3 The variation process is designed to apply to projects that have been consented under s.36, concerning the construction, extension or operation of electricity generating stations. This process is applied when the holder of a s.36 consent wishes to change aspects of their s.36 consent. The Scottish Government Applications for Variation of Section 36 Consents Guidance (published in May 2019) (“the Variation Guidance”) considers that the process is not intended as a way of authorising any change in a developer’s plans that would result in a generating station that would be fundamentally different in terms of character, scale or environmental impact from what is authorised by the existing consent.
- 1.1.4 Under s.36C(4) of the Electricity Act the Scottish Ministers may make variations to consents as appear to them to be appropriate, having regard in particular to the company’s reasons for seeking the variation, the variation proposed, the views of consultees, any objections made to the proposed variation and the outcome of any public inquiry.
- 1.1.5 Inch Cape Offshore Wind Limited (“the Company”) in its application to vary the section 36 consent for the Inch Cape Offshore Wind Farm (“the Variation Application”) states that the rationale behind the proposed amendments is to allow an optimised layout of wind turbine generators to maximise wind resource capture.
- 1.1.6 The variations proposed in the Variation Application do not fundamentally alter the character, nature or scale of the Inch Cape Offshore Wind Farm (“the Development”) and there will be no changes to the Development boundary. Officials consider that you can be satisfied that, in this circumstance, the changes proposed are reasonable to be authorised by means of the variation procedure in line with the Electricity Act and the Variation Regulations, and the Variation Guidance.
- 1.1.7 Objections to the Variation Application have been fully considered as set out in Annex A and Annex C. No public inquiry has been held.

#### **1.2 Environmental Impact Assessment**

## **ANNEX B Legislative Requirements**

1.2.1 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”) provide that an Environmental Impact Assessment (“EIA”) is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.

1.2.2 Prior to receiving the Variation Application, the Scottish Ministers adopted a screening opinion on 16 September 2022 under the 2017 EW Regulations and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”). The screening opinion concluded that the Variation Application does not require an EIA (as defined in the 2017 EW Regulations and 2017 MW Regulations).

### **1.3 Appropriate Assessment**

1.3.1 Regulation 48(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”) requires that before deciding to undertake, or give consent, permission or authorisation for a plan or project, a competent authority must make an Appropriate Assessment of the implications of the plan or project for the site in view of that site’s conservation objectives where conditions (a) and (b) below are met:

(a) the plan or project is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects); and

*(b) the plan or project is not directly connected with or necessary to the management of the site.*

1.3.2 An appropriate assessment under the Habitats Regulations was completed in 2019 in respect of the application for the Development (“the Original AA”). Officials have reviewed and undertaken a validation exercise on the AA and are content that no consultation responses, advice, external reports or representations have been received which would invalidate the conclusions or alter the outcome of the Original AA in respect of the Development. The AA validation confirmed that the original conclusions remained valid and can be found at Annex D.

### **1.4 Summary and conclusions**

1.4.1 MD-LOT Officials consider that the legislative requirements set out above have been complied with throughout the process of determining the Variation Application.



## ANNEX C Draft Decision Notice and Proposed Variation

### 1. ANNEX C Draft Decision Notice and Proposed Variation

[MS.MarineRenewables@gov.scot](mailto:MS.MarineRenewables@gov.scot)



Ms Sarah Arthur  
Inch Cape Offshore Ltd  
5<sup>th</sup> Floor  
40 Princes Street  
Edinburgh  
EH2 2BY

Our Reference: XXXX

**DATE**

Dear Ms Arthur,

#### **APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 17 JUNE 2019 TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, LOCATED APPROXIMATELY 15-22 KILOMETERS OFF THE ANGUS COASTLINE.**

I refer to the application to vary the consent for the Inch Cape Offshore Wind Farm (Revised Design) (“the Development”). This application (“the Variation Application”) was made by Inch Cape Offshore Limited (“the Company”) on 22 November 2022 for:

- a. a variation under section 36C of the Electricity Act 1989 (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act on 17 June 2019 for the construction and operation of the Development, which was subsequently varied on 16 July 2020 to enable a maximum generating capacity of up to 1000 megawatts and further varied on 1 July 2021 to remove the maximum generating capacity (“the Existing s.36 Consent”).

**This letter contains the Scottish Ministers’ decision to vary the Existing s.36 Consent.**

#### **1.1 Nature of the Variation Sought**

1.1.1 The Variation Application seeks to vary Annex 1 of the Existing s.36 Consent to allow the following:

- reduction in the nominal turbine spacing from 1,278 metres to 1,025 metres.

## **ANNEX C** Draft Decision Notice and Proposed Variation

### **1.2 Environmental Impacts**

1.2.1 The Scottish Ministers are satisfied that the Variation Application will not have significant effects on the environment.

1.2.2 The Scottish Ministers have considered the following:

- Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”),
- Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”),
- the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”),
- the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”), and
- the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

1.2.3 The Scottish Ministers do not consider that the proposed changes within the Variation Application will alter the conclusions of the Environmental Impact Assessment Report and the Habitats Regulation Appraisal supporting the original s.36 application submitted to the Scottish Ministers on 15 August 2018 (“the Original Application”).

1.2.4 In accordance with the requirements set out in the 2017 Electricity Works Regulations, the Scottish Ministers did not deem it necessary for a new Environmental Impact Assessment Report to be submitted in support of the Variation Application.

1.2.5 An appropriate assessment under the 2017 Habitats Regulations and the 1994 Habitats Regulations was completed in March 2019 (“the Original AA”) in respect of the Original Application. The Scottish Ministers have reviewed the Original AA, carried out an AA validation with regards to the Variation Application, and are content that the conclusions remain valid in respect of the Variation Application. The Variation Application will not result in a likely significant effect on any European offshore marine site or European site (either alone or in-combination with other plans or projects)..

### **1.3 Consultation**

1.3.1 Regulation 4 of the Variation Regulations provides that an applicant must publish a variation application relating to an offshore generating station on a website, serve a copy of the variation application on the planning authority, and also advertise the application by public notices in specified publications.

1.3.2 In line with Regulation 4, the Company published the Variation Application documentation on its [website](#), public notices were placed in the Courier for two successive weeks and for one week each in the Edinburgh Gazette, the Scotsman, Lloyds List and Fishing News.

## ANNEX C Draft Decision Notice and Proposed Variation

- 1.3.3 Marine Directorate - Licensing Operations Team (“MD-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Variation Application including: Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council (“ELC”), Fife Council, Historic Environment Scotland (“HES”), Maritime Coastguard Agency (“MCA”), NatureScot, Northern Lighthouse Board (“NLB”), Scottish Borders Council and the Scottish Environment Protection Agency (“SEPA”). The Scottish Ministers also placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 Consent.
- 1.3.4 Three objections were received, with concerns regarding the proposed reduction in turbine spacing and potential seascape, landscape and visual impacts, cumulative impacts on seabirds and impacts on mobile fishing. In addition to the objections, some representations also raised equivalent concerns regarding seascape, landscape and visual impacts of the proposed reduction in turbine spacing. A summary of the representations is provided below, including consideration of the objections received by MD-LOT. A number of organisations did not provide a response. In the case of no response, MD-LOT notified the relevant consultees that “nil response” would be assumed.
- 1.3.5 The following consultees raised no objections to the Variation Application.**
- 1.3.6 **Aberdeenshire Council** confirmed that while the Variation Application would result in a change to the appearance of the Development, the impact on seascape, landscape and visual impact receptors from viewpoints within Aberdeenshire would be negligible.
- 1.3.7 **Angus Council** confirmed that it had no objection to the Variation Application. However, Angus Council raised concerns regarding the proposed reduction in turbine spacing which would in its view make the Development appear more cluttered. Angus Council was of the view that the Variation Application would not be as successful in terms of seascape and visual impacts as the Existing s.36 Consent. Angus Council also commented that the submitted wirelines appeared to show a more significant impact on the setting of the Bell Rock Lighthouse which is a category A listed building.
- 1.3.8 **British Telecoms (“BT”)** confirmed that the Variation Application was studied with respect to the BT point-to-point radio links. BT concluded that the Variation Application should not cause interference to its current and presently planned radio network.
- 1.3.9 **Civil Aviation Authority** confirmed it had no comment to make on the Variation Application.
- 1.3.10 **Dundee City Council** confirmed it had no comment to make on the Variation Application.

## ANNEX C Draft Decision Notice and Proposed Variation

- 1.3.11 **ELC** commented that the reduction in turbine spacing would lead to a visual impact that was different to, but did not appear to be significantly greater during the day, than the turbine spacing permitted by the Existing s.36 Consent. However, it advised that an increase in edge Wind Turbine Generators (“WTGs”) had the potential to increase visibility at night time by increasing the impact of aviation lighting. ELC concluded that providing high intensity lighting was not required for all edge WTGs, then it would be likely that the visual impact at night would not be significantly greater than in the Original Application. ELC expects that discussions will be had with relevant stakeholders to ensure that lighting, especially that visible from land, would be kept to a minimum. The Existing s.36 Consent includes a condition for a the Lighting and Marking Plan that ELC will be consulted on and therefore is the Scottish Ministers are content to consider this matter resolved for the Variation Application.
- 1.3.12 ELC identified that no information was included in the Variation Application with regards to increased climate forcing emissions in construction. It encouraged Scottish Ministers to consider whether mitigation may be appropriate. The Scottish Ministers do not consider that the Variation Application will result in an increase in emissions.
- 1.3.13 ELC deferred to NatureScot with regards to marine mammals, ornithology and designated sites. Overall it concluded no objection to the Variation Application.
- 1.3.14 **Ferryden and Craig Community Council** had no objection to the Variation Application.
- 1.3.15 **Fife Council** commented that the proposed reduction in turbine spacing could alter the appearance of the Development with wind turbines considered more concentrated. Fife Council requested that the Scottish Ministers give consideration to the seascape, landscape and visual impacts of the Development when determining the Variation Application.
- 1.3.16 **HES** confirmed the Variation Application would not result in any further significant impacts on marine archaeology or the setting of designated terrestrial assets and that it had no further comment to make.
- 1.3.17 **MCA** had no objection to the Variation Application on the basis that all maritime safety legislation is followed and the Existing s.36 Consent conditions are adhered to.
- 1.3.18 **Ministry of Defence** had no objection to the Variation Application.
- 1.3.19 **NatureScot** confirmed that there would be no change to the significance of effects on seascape, landscape or visual receptors and a new Seascape, Landscape and Visual Impact Assessment (“SLVIA”) was not required. Nature Scot also commented that the Company had not produced revised wirelines and instead proposed to address SLVIA requirements through a forthcoming design statement and that MD-LOT should consider if this

## ANNEX C Draft Decision Notice and Proposed Variation

approach is adequate. MD-LOT informed NatureScot that revised wirelines were included in the Variation Report as an appendix. NatureScot subsequently withdrew its comments on the SLVIA aspects of the Variation Report.

- 1.3.20 MD-LOT sought clarity from NatureScot with regards to any Habitat Regulation Appraisal implications of the Variation Application. NatureScot confirmed that the Variation Application would not result in significant increases in risk to key marine mammal and seabird receptors and therefore it considered the conclusions from the Appropriate Assessment dated March 2019 for the Original Application remained valid.
- 1.3.21 **NLB** had no objection to the Variation Application.
- 1.3.22 **Royal Yachting Association** had no comment to make on the Variation Application.
- 1.3.23 **The Scottish Borders Council** commented that the changed arrangement of the wind turbines would lead generally to a denser and heightened visual impact from different viewpoints. The Scottish Borders Council however concluded that, given the distance from its area and looking at the minimal impacts from the nearest viewpoint, there would be little reason to oppose on the grounds of visual impact.
- 1.3.24 **Scottish Water** had no objection to the Variation Application.
- 1.3.25 **Seagreen Wind Energy Ltd** had no objection to the Variation Application.
- 1.3.26 **SEPA** did not provide site specific advice had no site-specific comments to make on the Variation Application, highlighting its standing advice. The Scottish Ministers consider that the relevant points from the standing advice on marine non-native species, good working practises, pollution prevention, the conservation of water bodies and decommissioning are covered by the Existing s.36 Consent and therefore remain captured by the Variation Application.
- 1.3.27 **Sport Scotland** had no objection to the Variation Application.
- 1.3.28 **The UK Chamber of Shipping** had no comments to make on the Variation Application.
- 1.3.29 **The following consultees raised objections to the Variation Application.**
- 1.3.30 **The Inshore Fishery Group (“IFG”)** confirmed its representation was included in the **Scottish Fishermen’s Federation (“SFF”)** representation as it made the same points.
- 1.3.31 **The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)** maintained its objection to the Development due to the cumulative impacts on seabird populations with Neart na Gaoithe and

## ANNEX C Draft Decision Notice and Proposed Variation

Seagreen offshore wind farms. RSPB Scotland advised that in its view impacts from the Development in isolation and in combination with the previously noted projects would constitute adverse effects on the integrity of nearby Special Protection Areas (“SPAs”), including the Forth Islands SPA and Fowlsheugh SPA. However, RSPB Scotland noted that the Variation Application is predicted to slightly reduce impacts and view this positively in the context of existing impacts.

- 1.3.32 NatureScot considered the Variation Application in the context of collision risk to seabird species and concluded that the risk would be no worse than previously assessed for the Original Application. NatureScot also concluded that the Variation Application would not result in significant increases in risk to seabird receptors and therefore the conclusions of the Original AA remained valid. The Original AA concluded no adverse impacts on site integrity of the following SPAs: the Forth Islands SPA, Fowlsheugh SPA, Buchan Ness and Collieston Coast SPA, St Abb’s Head to Fast Castle SPA and the Outer Firth of Forth and St Andrews Complex proposed SPA. Given the NatureScot advice, and that RSPB Scotland viewed the Variation Application positively, the Scottish Ministers are content that the Variation Application will not have an adverse impact on the site integrity of the SPAs.
- 1.3.33 **SFF** objected to the Variation Application due to the lack of consideration of the impact of reduced turbine spacing on the ability to fish after the wind farm is operational, navigational issues and visibility from shore. The SFF concluded that as a result of the reduction in turbine spacing, the mobile gear fishing would have great difficulty fishing within the array.
- 1.3.34 The Scottish Ministers have considered the points raised by SFF and IFG with regards to reduced turbine spacing and difficulty of fishing for mobile gear. Marine Scotland Science (“MSS”) advised that a minimum of 1,000 metres spacing between WTGs is the general recommendation based on known vessel manoeuvring requirements and the space needed to operate fishing gear. The Scottish Ministers are therefore content that the Variation Application still exceeds the recommended minimum distance in terms of turbine spacing.
- 1.3.35 The Scottish Ministers have considered the points raised by SFF and the IFG on reduced turbine spacing and potential impacts on navigation. The NLB had no objections to the Variation Application and the MCA had no objections provided all maritime safety legislation is followed and the conditions of the Existing s.36 Consent are adhered to. Therefore, the Scottish Ministers are content that there is unlikely to be a risk to safe navigation as a result of the Variation Application.
- 1.3.36 The SFF and IFG representations stated that visibility from shore was a factor ignored by the proposal to reduce turbine spacing. In addition, although they did not object, Aberdeenshire Council, Angus Council, ELC, Fife Council and the Scottish Borders Council commented on the change in appearance of the Development due to the proposed reduction in turbine spacing.

## **ANNEX C** Draft Decision Notice and Proposed Variation

1.3.37 NatureScot confirmed that there would be no change to the significance of effects on seascape, landscape or visual receptors and the local authorities have not objected to the Variation Application. In light of these responses the Scottish Ministers are content that there will be no significant change in impacts on seascape, landscape or visual receptors as a result of the Variation Application.

1.3.38 In summary, the Scottish Ministers are content that the objections raised by SFF and the IFG would not require consent of the Variation Application to be withheld.

### **1.3.39 Advice from third parties.**

1.3.40 **MSS** advised that a minimum of 1,000 metres spacing between turbines is the general recommendation in relation to commercial fisheries. MSS advised that the minimum spacing of 1,000 metres is based on known vessel manoeuvring requirements and the space needed to operate fishing gear. This figure aligns with other existing offshore wind farms in both Scottish and UK waters and good practice developed between the offshore wind industry and commercial fisheries stakeholders. MSS confirmed that the reduction in turbine spacing still meets the recommended spacing requirements in relation to commercial fisheries and therefore is content with the Variation Application.

1.3.41 **Transport Scotland** confirmed it was satisfied that the conclusions of its consultation response to the Original Application remained valid and requested the condition, in regard to the construction traffic management plan to be attached to any potential consent variations. Transport Scotland confirmed that it had no further representation to make on the Variation Application.

## **1.4 Public Representations**

1.4.1 No representations were received from members of the public in relation to the Variation Application.

## **1.5 The Scottish Ministers' Determination**

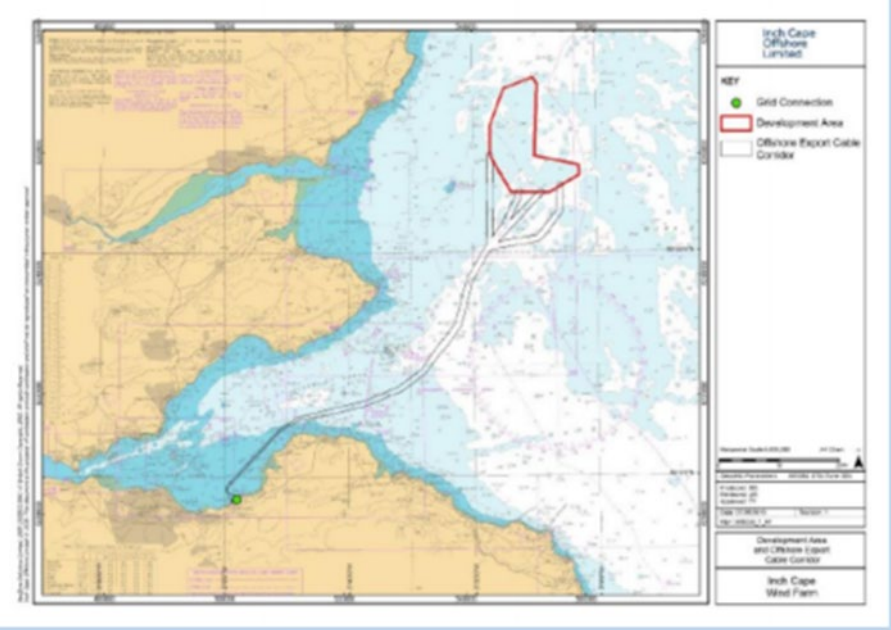
1.5.1 The Scottish Ministers have considered the Variation Application documentation and all responses from consultees and advice from MSS and Transport Scotland. Having granted consent for the Development on 17 June 2019 and subsequent variations on the 16 July 2020 and 1 July 2021 ("the Existing s.36 Consent") and provided their reasons for doing so in the decision letters associated with that consent, and being satisfied that the changes proposed in the Variation Application do not fundamentally alter the character or scale of the Development, the Scottish Ministers are content to vary the Existing s.36 Consent.

## **ANNEX C** Draft Decision Notice and Proposed Variation

- 1.5.2 The Scottish Ministers consider that the proposed variation is appropriate, having regard to the variation proposed, the reasons for the variation, and the views of consultees.
- 1.5.3 Accordingly, the Scottish Ministers hereby vary the Existing s.36 Consent as set out in the table below.



## ANNEX C Draft Decision Notice and Proposed Variation

Annex or Condition	Variation
<p><b>In Annex 1 of the Inch Cape Offshore Wind Farm s.36 Consent</b></p>	<p><b>for:</b></p> <p><b>DESCRIPTION OF THE DEVELOPMENT</b></p> <p>An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below. The offshore energy generating station shall be comprised of:</p> <ol style="list-style-type: none"> <li>1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:             <ol style="list-style-type: none"> <li>a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));</li> <li>b) A maximum rotor diameter of 250 metres;</li> <li>c) A minimum blade tip clearance of 27.4 metres (measured from LAT);</li> <li>d) A maximum blade width of 7.8 metres; and</li> <li>e) A nominal turbine spacing of 1,278 metres</li> </ol> </li> <li>2. No more than 72 substructures and foundations and ancillary equipment.</li> <li>3. No more than 190km of inter-array cabling;</li> </ol> <p>The total area within the Development site boundary is 150km<sup>2</sup></p> 

**substitute:**

**DESCRIPTION OF THE DEVELOPMENT**

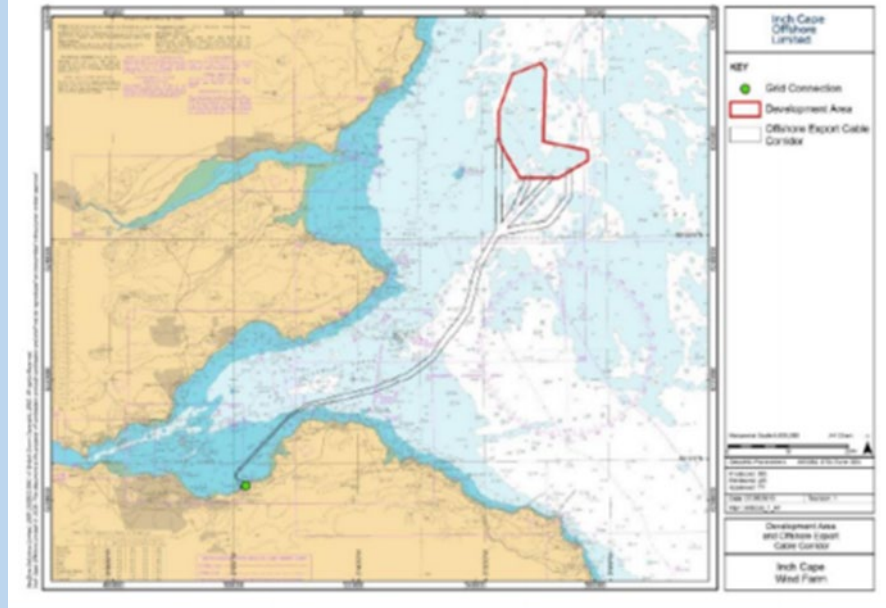
An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below. The offshore energy generating station shall be comprised of:

1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
  - a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
  - b) A maximum rotor diameter of 250 metres;
  - c) A minimum blade tip clearance of 27.4 metres (measured from LAT);
  - d) A maximum blade width of 7.8 metres; and
  - e) A nominal turbine spacing of 1,025 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling.

The total area within the Development site boundary is 150km<sup>2</sup>.

The Development must be constructed in accordance with that specified in the Application, the 2022 Variation Application and by the conditions imposed by the Scottish Ministers.

References to “the Development” in this consent must be construed accordingly.



In Annex 2 of the Inch Cape Offshore Wind Farm s.36 Consent

for:

## 2. Commencement of Development

The Commencement of the Development must be no later than five years from the date of this consent, or in substitution such other later period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of Development to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council no later than one calendar month before that date.

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

substitute:

## 2. Commencement of Development

The Commencement of the Development must be no later than five years from the date of the original consent (dated 17 June 2019), or in substitution such other later period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of Development to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council no later than one calendar month before that date.

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

**for:**

**7. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application and any other documentation lodged in support of the Application.

**Reason: To ensure that the Development is carried out in accordance with the approved details.**

**substitute:**

**7. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application (taking into account amendments or updates made by the 2022 Variation Application), supporting documentation, including the Environmental Impact Assessment Report (“EIA Report”) submitted by the Company on 15 August 2018, related documents lodged in support of the Application, and the 2022 Variation Application submitted by the Company on 22 November 2022.

**Reason: To ensure that the Development is carried out in accordance with the approved details.**

- 1.5.4 Revised copies of Annexes 1, 2 and 3 of the Existing s.36 Consent for the Development are issued together with this decision letter.
- 1.5.5 Copies of this letter have been sent to onshore planning authorities: Aberdeenshire Council, Angus Council, Dundee City Council, ELC, Fife Council and the Scottish Borders Council. This letter has also been published on [Marine Scotland Information](#).
- 1.5.6 The Scottish Ministers’ decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for variation of a s.36 consent.

## **ANNEX C** Draft Decision Notice and Proposed Variation

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

Yours sincerely,

Gayle Holland  
Section Head (Consenting), Marine Directorate - Licensing Operations Team  
A member of the staff of the Scottish Ministers

**DEFINITIONS AND GLOSSARY OF TERMS - In the decision letter attached at Annex C**

“BT” mean British Telecoms;  
“ELC” means East Lothian Council;  
“HES” means Historic Environment Scotland;  
“IFG” means Inshore Fishery Group;  
“MCA” means Maritime and Coastguard Agency;  
“MD-LOT” means Marine Directorate - Licensing Operations Team;  
“MSS” means Marine Scotland Science;  
“NLB” means Northern Lighthouse Board;  
“RSPB Scotland” means Royal Society for the Protection of Birds Scotland;  
“s.36” means section 36 (Consent required for construction etc. of generating stations) of the Electricity Act 1989;  
“SEPA” means Scottish Environment Protection Agency;  
“SFF” means Scottish Fishermen Federation;  
“SLVIA” means Seascape, Landscape and Visual Impact Assessment;  
“SPAs” means Special Protection Areas;  
“the 1994 Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994;  
“the 2017 Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017;  
“the Company” means Inch Cape Offshore Limited (Company Number SC373173), a Private Limited Company, having its registered address at 5th Floor, 40 Princes Street, Edinburgh, EH2 2BY;  
“the Development” means the Inch Cape Offshore Wind Farm, located 15-22 kilometres off the Angus coastline;  
“the Electricity Act” means the Electricity Act 1989 (as amended);  
“the Existing s.36 Consent” means the s.36 consent granted by the Scottish Ministers on 17 June 2019 for the construction and operation of the Inch Cape Offshore Wind Farm, subsequently varied on 16 July 2020 and 1 July 2021;  
“the Original AA” means the appropriate assessment completed in March 2019 in respect of the Original Application;  
“the Original Application” means the s.36 consent application submitted to the Scottish Ministers on 15 August 2018 by the Company;  
“the Variation Application” means the application to vary the Existing s.36 Consent submitted to the Scottish Ministers on 22 November 2022 by the Company;  
“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013;  
“WTGs” means wind turbine generators.

## **ANNEX C Draft Decision Notice and Proposed Variation**

### **ANNEX 1 of the Inch Cape Offshore Wind Farm Consent**

#### **DESCRIPTION OF THE DEVELOPMENT**

An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below. The offshore energy generating station shall be comprised of:

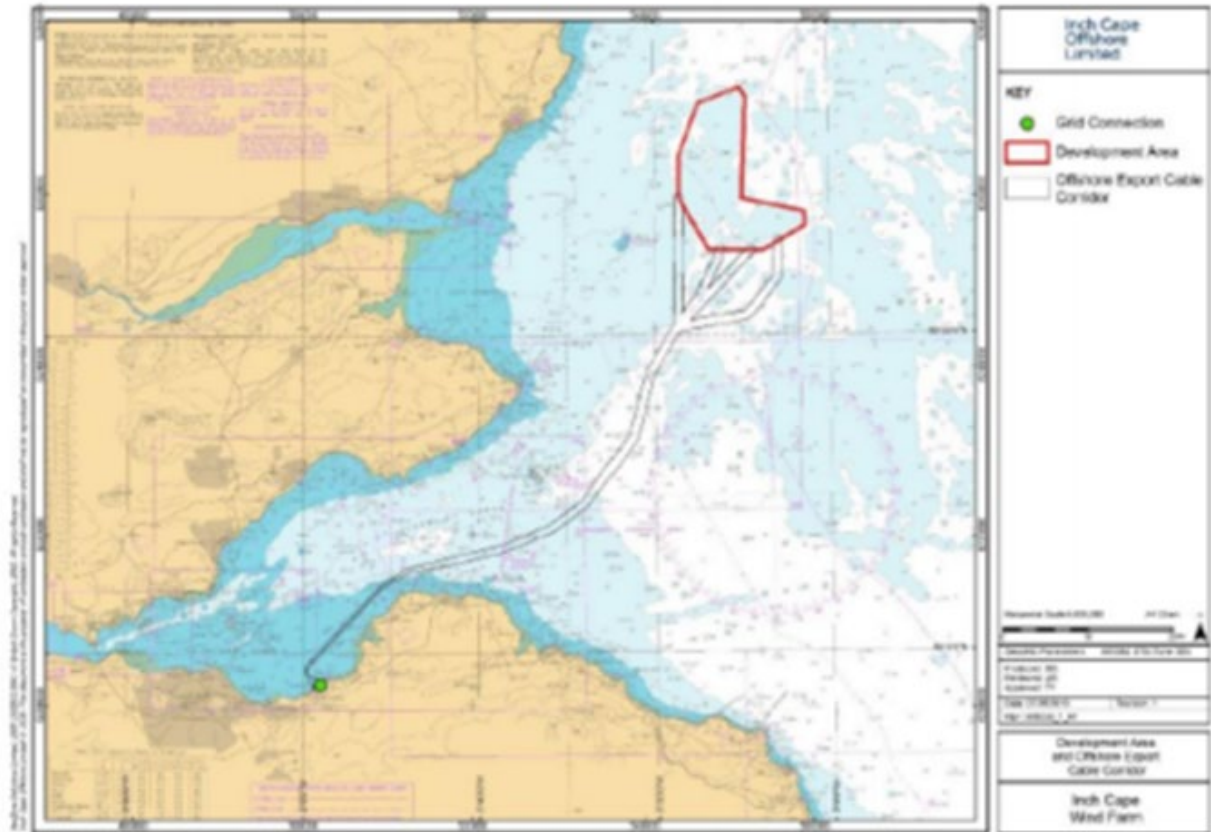
1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
  - a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
  - b) A maximum rotor diameter of 250 metres;
  - c) A minimum blade tip clearance of 27.4 metres (measured from LAT);
  - d) A maximum blade width of 7.8 metres; and
  - e) A nominal turbine spacing of 1,025 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling.

The total area within the Development site boundary is 150km<sup>2</sup>.

The Development must be constructed in accordance with that specified in the Application, the 2022 Variation Application and by the conditions imposed by the Scottish Ministers.

References to “the Development” in this consent must be construed accordingly.

## ANNEX C Draft Decision Notice and Proposed Variation



**Figure 1.** Inch Cape Offshore Wind Farm Site and Export Cable Corridor to Shore at Cockenzie, East Lothian



**ANNEX 2 of the Inch Cape Offshore Wind Farm Consent**

**SECTION 36 CONSENT CONDITIONS**

**The consent granted under Section 36 of the Electricity Act 1989 is subject to conditions 1-30 as narrated in Annex 2 to the Existing s.36 Consent and which are hereby amended as follows:**

The Company must submit the requested plans as detailed in the conditions prior to the Commencement of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with any such advisors or organisations as detailed in the conditions or as may be required at the discretion of the Scottish Ministers.

The Development must, at all times, be constructed in accordance with the approved plans as updated or amended.

Any updates or amendments made to the approved plans must be submitted, in writing, to the Scottish Ministers for their prior written approval.

The Company must satisfy itself that all contractors or sub-contractors are aware of the extent of the Development for which this consent has been granted, the activity which is consented and the terms of the conditions attached to this consent. All contractors and sub-contractors permitted to engage in the Development must abide by the conditions set out in this consent.

The Company must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code, where appropriate, during all installation, operation and maintenance activities.

**Part 1 – Conditions Attached to Section 36 Consent**

**1. Duration of the Consent**

The consent is for a period of 50 years from the date of Final Commissioning of the Development.

Written confirmation of the dates of First Commissioning of the Development and Final Commissioning of the Development must be provided by the Company to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council, Scottish Borders Council and Scottish Ministers no later than one calendar month after these respective dates.

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

**2. Commencement of Development**

The Commencement of the Development must be no later than five years from the date of the original consent (dated 17 June 2019), or in substitution such other later period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of Development

## ANNEX C Draft Decision Notice and Proposed Variation

to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council no later than one calendar month before that date.

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

### 3. Decommissioning

There must be no Commencement of Development unless a Decommissioning Programme (“DP”) has been submitted to and approved in writing by the Scottish Ministers. The DP must outline measures for the decommissioning of the Development, restoration of the seabed and will include without limitation, proposals for the removal of the Development, the management and timing of the works and, environmental management provisions.

The Development must be decommissioned in accordance with the approved DP, unless otherwise agreed in writing in advance with the Scottish Ministers.

**Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner, and in the interests of safety and environmental protection.**

### 4. Assignment

This consent must not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent (with or without conditions) or refuse assignment as they may see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the assignment procedure as directed by Scottish Ministers.

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

### 5. Redundant turbines

If one or more turbine fails to generate electricity for a continuous period of 12 months, then unless otherwise agreed in writing by the Scottish Ministers, the Company must: (i) by no later than the date of expiration of the 12 month period, submit a scheme to the Scottish Ministers setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the sea bed restored; and (ii) implement the approved scheme within six months of the date of its approval, or such other date as agreed in writing by the Scottish Ministers, all to the satisfaction of the Scottish Ministers.

**Reason: To ensure that any redundant wind turbine(s) is/are removed from the site, in the interests of safety, amenity and environmental protection.**

### 6. Incident Reporting

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In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company must provide written notification of the nature and timing of the incident to the Scottish Ministers within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Scottish Ministers within a period of time to be agreed by the Scottish Ministers.

**Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest.**

### **7. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application (taking into account amendments or updates made by the 2022 Variation Application), supporting documentation, including the Environmental Impact Assessment Report (“EIA Report”) submitted by the Company on 15 August 2018, related documents lodged in support of the Application, and the 2022 Variation Application submitted by the Company on 22 November 2022.

**Reason: To ensure that the Development is carried out in accordance with the approved details.**

### **8. Transportation for site inspections**

As far as reasonably practicable, the Company must, on being given reasonable notice by the Scottish Ministers (of at least 72 hours), provide transportation to and from the site for any persons authorised by the Scottish Ministers to inspect the site.

**Reason: To ensure access to the site for the purpose of inspecting compliance with this consent.**

### **9. Construction Programme**

The Company must, no later than six months prior to the Commencement of the Development, submit a Construction Programme (“CoP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Scottish Natural Heritage (“SNH”), Maritime and Coastguard Agency (“MCA”) and Northern Lighthouse Board (“NLB”), and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CoP must set out:

- a. The proposed date for Commencement of Development;
- b. The proposed timings for mobilisation of plant and delivery of materials, including details of onshore lay-down areas;
- c. The proposed timings and sequencing of construction work for all elements of the Development infrastructure;
- d. Contingency planning for poor weather or other unforeseen delays; and
- e. The scheduled date for Final Commissioning of the Development.

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The final CoP must be sent to Aberdeenshire Council, Angus Council, East Lothian Council, Fife Council and Dundee City Council for information only.

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

#### 10. Construction Method Statement

The Company must, no later than six months prior to the Commencement of the Development submit a Construction Method Statement (“CMS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, NLB and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CMS must include, but not be limited to:

- a. Details of the commencement dates, duration and phasing for the key elements of construction, the working areas, the construction procedures and good working practices for installing the Development.
- b. Details of the roles and responsibilities, chain of command and contact details of company personnel, any contractors or sub-contractors involved during the construction of the Development.
- c. Details of how the construction related mitigation steps proposed in the Application are to be delivered.

The CMS must adhere to the construction methods assessed in the Application. The CMS also must, so far as is reasonably practicable, be consistent with the Design Statement (“DS”), the Environmental Management Plan (“EMP”), the Vessel Management Plan (“VMP”), the Navigational Safety Plan (“NSP”), the Piling Strategy (“PS”), the Cable Plan (“CaP”) and the Lighting and Marking Plan (“LMP”).

The final CMS must be sent to Aberdeenshire Council, Angus Council, East Lothian Council, Fife Council and Dundee City Council for information only.

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

#### 11. Piling Strategy

The Company must, no later than six months prior to the Commencement of the Development, submit a Piling Strategy (“PS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, Fisheries Management Scotland (“FMS”), Whale and Dolphin Conservation (“WDC”) and any such other advisors as may be required at the discretion of the Scottish Ministers.

The PS must include, but not be limited to:

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- a. Details of expected noise levels from pile-drilling/driving in order to inform point d below;
- b. Full details of the proposed method and anticipated duration of piling to be carried out at all locations;
- c. Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- d. Details of any mitigation such as Passive Acoustic Monitoring (“PAM”), Marine Mammal Observers (“MMO”), use of Acoustic Deterrent Devices (“ADD”) and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the Application and must also reflect any monitoring or data collection carried out after submission of the Application. The PS must demonstrate how the exposure to and/or the effects of underwater noise have been mitigated in respect to harbour porpoise, minke whale, bottlenose dolphin, harbour seal, grey seal and Atlantic salmon.

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

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

### 12. Development Specification and Layout Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Development Specification and Layout Plan (“DSLPL”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MCA, NLB, SNH, the Ministry of Defence (“MOD”), Civil Aviation Authority (“CAA”), Scottish Fishermen’s Federation (“SFF”), Aberdeenshire Council, Dundee City Council, East Lothian Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a. A plan showing the location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification/numbering, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the site;
- b. A list of latitude and longitude co-ordinates accurate to three decimal places of minutes of arc for each WTG. This should also be provided as a Geographic Information System (“GIS”) shape file using WGS84 format;
- c. A table or diagram of each WTG dimensions including - height to blade tip (measured above Lowest Astronomical Tide (“LAT”)) to the highest point, height to hub (measured above LAT to the centreline of the generator shaft), rotor diameter and maximum rotation speed;
- d. The generating output of each WTG used on the site (Figure 1) and a confirmed generating output for the site overall;
- e. The finishes for each WTG (see condition 20 on WTG lighting and marking); and
- f. The length and proposed arrangements on the seabed of all inter-array cables.

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The final DSLP must be sent to Angus Council and Fife Council information only.

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

### 13. Design Statement

The Company must, no later than six months prior to the Commencement of the Development, submit a Design Statement ("DS"), in writing, to the Scottish Ministers. The DS, which must be signed off by at least one qualified landscape architect, as instructed by the Company prior to submission to the Scottish Ministers, must include representative wind farm visualisations from key viewpoints as agreed with the Scottish Ministers, based upon the final DSLP as approved by the Scottish Ministers as updated or amended. The Company must provide the DS, for information only, to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council, SNH, MCA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

**Reason: To ensure that the Development is carried out in accordance with the approved details, and to inform interested parties of the final wind farm scheme proposed to be built.**

### 14. Environmental Management Plan

The Company must, no later than six months prior to the Commencement of the Development, submit an Environmental Management Plan ("EMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, Royal Society for the Protection of Birds Scotland ("RSPB Scotland"), WDC, FMS and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a. All construction as required to be undertaken before the Final Commissioning of the Development; and
- b. The operational lifespan of the Development from the Final Commissioning of the Development until the cessation of electricity generation (environmental management during decommissioning is addressed by the Decommissioning Programme provided for by condition 3).

The EMP must be in accordance with the Application insofar as it relates to environmental management measures. The EMP must set out the roles, responsibilities and chain of command for the Company personnel any contractors or sub-contractors in respect of environmental management for the protection of environmental interests during the construction and operation of the Development. It must address, but not be limited to, the following over-arching requirements for environmental management during construction:

- a. Mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the Application and pre-consent and pre-construction

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- monitoring or data collection, and include reference to relevant parts of the CMS (refer to condition 10);
- b. A pollution prevention and control method statement, including contingency plans;
  - c. Management measures to prevent the introduction of invasive non-native marine species;
  - d. A site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged; and
  - e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The EMP must be regularly reviewed by the Company and the Scottish Ministers or Forth and Tay Regional Advisory Group (“FTRAG”), at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

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

**Reason: To ensure that all construction and operation activities are carried out in a manner that minimises their impact on the environment, and that mitigation measures contained in the Application, or as otherwise agreed are fully implemented.**

### 15. Vessel Management Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Vessel Management Plan (“VMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, WDC, FP, MCA, NLB, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a. The number, types and specification of vessels required;
- b. How vessel management will be coordinated, particularly during construction but also during operation;
- c. Location of working port(s), the routes of passage, how often vessels will be required to transit between port(s) and the site and indicative vessel transit corridors proposed to be used during construction and operation of the Development; and

The confirmed individual vessel details must be notified to the Scottish Ministers in writing no later than 14 days prior to the Commencement of the Development, and

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thereafter, any changes to the details supplied must be notified to the Scottish Ministers, as soon as practicable, prior to any such change being implemented in the construction or operation of the Development.

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

### **Reason: To mitigate the impact of vessels.**

#### **16. Operation and Maintenance Programme**

The Company must, no later than three months prior to the Commissioning of the first WTG, submit an Operation and Maintenance Programme (“OMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the SNH, MCA, NLB, SFF, WDC, East Lothian Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The OMP must set out the procedures and good working practices for operations and the maintenance of the WTG’s, substructures, and inter-array cable network of the Development. Environmental sensitivities which may affect the timing of the operation and maintenance activities must be considered in the OMP.

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

The final OMP must be sent to Aberdeenshire Council, Angus Council, Dundee City Council and Fife Council for information only.

### **Reason: To safeguard environmental interests during operation and maintenance of the Development.**

#### **17. Navigational Safety Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit a Navigational Safety Plan (“NSP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with MCA, NLB and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a. Navigational safety measures;
- b. Construction exclusion zones;
- c. Notice(s) to mariners and radio navigation warnings;
- d. Anchoring areas;
- e. Temporary construction lighting and marking;
- f. Buoyage.

The Company must confirm within the NSP that they have taken into account and adequately addressed all of the recommendations of the MCA in the current Marine



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Guidance Note (“MGN”) 543, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede this guidance prior to approval of the NSP.

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

### **18. Emergency Response Co-operation Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit an Emergency Response Co-operation Plan (“ERCoP”) for the construction, operation, maintenance and decommissioning phases of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MCA and NLB and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers. The ERCoP should follow the MCA template and guidance. The ERCoP must be developed in discussion with the MCA and be in accordance with condition 3.2.2.9 of the marine licence.

**Reason: For emergency response planning relating to the Development and requirements for Search And Rescue (“SAR”) helicopter operations.**

### **19. Cable Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit a Cable Plan (“CaP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, SFF, East Lothian Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CaP must be in accordance with the Application.

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

- a. The vessel types, location, duration and cable laying techniques for the inter array cables;
- b. The results of monitoring or data collection work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing;
- c. Technical specification of inter array cables, including a desk based assessment of attenuation of electro-magnetic field strengths and shielding;
- d. A burial risk assessment to ascertain burial depths and where necessary alternative protection measures;
- e. Methodologies for surveys (e.g. over trawl) of the inter array cables through the operational life of the wind farm where mechanical protection of cables laid on the sea bed is deployed; and
- f. Methodologies for inter array cable inspection with measures to address and report to the Scottish Ministers any exposure of inter array cables.

Any consented cable protection works must ensure existing and future safe navigation is not compromised. The Scottish Ministers will accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum. Any greater reduction in depth must be agreed in writing by the Scottish Ministers.

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

## 20. Lighting and Marking Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Lighting and Marking Plan (“LMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, NLB, CAA, MOD, East Lothian Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The LMP must provide that the Development be lit and marked in accordance with the current CAA and MOD aviation lighting policy and guidance that is in place as at the date of the Scottish Ministers approval of the LMP, or any such other documents that may supersede this guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in the International Association of Marine Aids to Navigation and Lighthouse Authorities (“IALA”) Recommendation O-139 or any other documents that may supersede this guidance prior to approval of the LMP.

The final LMP must be sent to Aberdeenshire Council, Angus Council, Dundee City Council and Fife Council for information only.

**Reason: To ensure navigational safety and the safe marking and lighting of the Development.**

## 21. Aviation Radar

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

The ATC Scheme is a scheme designed to mitigate the impact of the Development upon the operation of the Primary Surveillance ATC Radar at Leuchars Station (“the Radar”) and the air traffic control operations of the MOD which is reliant upon the Radar.

The ATC Scheme must set out the appropriate measures to be implemented to mitigate the impact of the Development on the Radar and must be in place for the operational life of the Development provided the Radar remains in operation.

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

**Reason: To mitigate the adverse impacts of the Development on the Air Traffic Control Radar.**

## 22. Air Defence Radar

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The Company must, prior to the Commencement of the Development, submit an Air Defence Radar Mitigation Scheme (“ADR Scheme”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation of the ADR Scheme with the MOD.

This proposal must address the impacts on the Air Defence Radar at Remote Radar Head (“RRH”) Buchan and RRH Brizlee Wood.

**Reason: To mitigate the adverse impacts of the Development on the Air Defence Radar.**

### **23. Charting requirements**

The Company must, prior to the Commencement of the Development, and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition 12), provide the positions and maximum heights of the WTGs and construction equipment to the United Kingdom Hydrographic Office (“UKHO”) for aviation and nautical charting purposes. The Company must, within one month of the Final Commissioning of the Development, provide the coordinates accurate to three decimal places of minutes of arc for each WTG and the position and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

**Reason: For aviation and navigational safety.**

### **24. Project Environmental Monitoring Programme**

The Company must, no later than six months prior to the Commencement of the Development, submit a Project Environmental Monitoring Programme (“PEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, RSPB Scotland, WDC, SFF, FMS and any other environmental advisors or organisations as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the Application as it relates to environmental monitoring.

The PEMP must set out measures by which the Company must monitor the environmental impacts of the Development. Monitoring is required throughout the lifespan of the Development where this is deemed necessary by the Scottish Ministers. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing and, where appropriate, in consultation with the FTRAG referred to in condition 25 of this consent.

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

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

- a. Pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring or data collection as relevant in terms of the Application, and any subsequent monitoring or data collection for:
  1. Birds ;
  2. Marine Mammals;
  3. Commercial Fisheries;
  4. Marine fish;
  5. Diadromous fish;
  6. Benthic communities; and
  7. Seabed scour and local sediment deposition.
- b. The participation by the Company to contribute to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers.

Due consideration must be given to the Scottish Marine Energy Research (“ScotMER”) programme, or any successor programme formed to facilitate these research interests.

Any pre-consent monitoring or data collection carried out by the Company to address any of the above issues may be used in part to discharge this condition subject to the written approval of the Scottish Ministers.

The PEMP is a live document which will be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the FTRAG require the Company to amend the PEMP and submit such an amended PEMP, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation with the FTRAG and any other environmental, or such other advisors as may be required at the discretion of the Scottish Ministers.

The Company must submit written reports and associated raw and processed data of such monitoring or data collection to the Scottish Ministers at timescales to be determined by them. Consideration should be given to data storage, analysis and reporting and be to Marine Environmental Data and Information Network standards.

Subject to any legal restrictions regarding the treatment of the information, the results are to be made publicly available by the Scottish Ministers, or by such other party appointed at their discretion.

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

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

### **25. Regional Advisory Group**

The Company must participate in the Forth and Tay Regional Advisory Group (“FTRAG”) or any successor group, established by the Scottish Ministers for the

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purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, marine mammals, diadromous and commercial fish. The extent and nature of the Company's participation in the Regional Advisory Group is to be agreed by the Scottish Ministers.

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

### **26. Fisheries Management and Mitigation Strategy**

The Company must no later than six months prior to the Commencement of the Development, submit a Fisheries Management and Mitigation Strategy ("FMMS"), in writing, to the Scottish Ministers for their written approval in consultation with SFF and other fisheries representatives. Commencement of the Development cannot take place until such approval is granted. The FMMS must be defined and finalised in consultation with the Forth and Tay Commercial Fisheries Working Group ("FTCFWG").

In order to inform the production of the FMMS, the Company must monitor or collect data as relevant and agreed with Scottish Ministers.

The FMMS must include a transit plan, which must lay out guidelines to address potential interactions with fishing activity, for vessels operating in and around the Development and transiting to the Development.

As part of any finalised FMMS, the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they would be adversely affected by the Development. The Company must implement all mitigation measures committed to be carried out by the Company within the FMMS. Any contractors, or sub-contractors working for the Company, must co-operate with the fishing industry to ensure the effective implementation of the FMMS. The Company must remain a member of the FTCFWG or any successor group formed to facilitate commercial fisheries dialogue.

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

### **27. Environmental Clerk of Works**

Prior to the Commencement of the Development, the Company must at its own expense, and with the approval of the Scottish Ministers in consultation with SNH, appoint an independent Environmental Clerk of Works ("ECoW"). The ECoW must be appointed in time to review and approve the draft version of the first plan or programme submitted under this consent to Scottish Ministers, in sufficient time for any preconstruction monitoring requirements, and remain in post until agreed by the Scottish Ministers. The terms of appointment must also be approved by the Scottish Ministers in consultation with SNH.

The terms of the appointment must include, but not be limited to:

- a. Quality assurance of final draft versions of all plans and programmes required under this consent;

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- b. Responsible for the monitoring and reporting of compliance with the consent conditions and the environmental mitigation measures for all wind farm infrastructure;
- c. Provision of on-going advice and guidance to the Company in relation to achieving compliance with consent conditions, including but not limited to the conditions relating to and the implementation of the CMS, the EMP, the PEMP, the PS, the CaP and the VMP;
- d. Provision of reports on point b & c above to the Scottish Ministers at timescales to be determined by the Scottish Ministers;
- e. Induction and toolbox talks to onsite construction teams on environmental policy and procedures, including temporary stops and keeping a record of these;
- f. Monitoring that the Development is being constructed in accordance with the plans and this consent, the Application and in compliance with all relevant regulations and legislation;
- g. Reviewing and reporting incidents/near misses and reporting any changes in procedures as a result to the Scottish Ministers; and
- h. Agreement of a communication strategy with the Scottish Ministers.

**Reason: To ensure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.**

### **28. Fisheries Liaison Officer**

Prior to the Commencement of the Development, a Fisheries Liaison Officer (“FLO”), must be appointed by the Company and approved, in writing, by the Scottish Ministers following consultation with SFF and the FTCTFWG. The FLO must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The identity and credentials of the FLO must be included in the EMP (referred to in condition 14). The FLO must establish and maintain effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

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

- a. Establishing and maintaining effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea concerning the overall Development and any amendments to the CMS and site environmental procedures;
- b. The provision of information relating to the safe operation of fishing activity on the site of the Development; and
- c. Ensuring that information is made available and circulated in a timely manner to minimise interference with fishing operations and other users of the sea.

Reason: To facilitate engagement with the commercial fishing industry.

### **29. Protocol for Archaeological Discoveries**

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The Company must, no later than six months prior to the Commencement of the Development submit a Protocol for Archaeological Discoveries (“PAD”) which sets out what the Company must do on discovering any marine archaeology during the construction, operation, maintenance and monitoring of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may be given only following consultation by the Scottish Ministers with Historic Environment Scotland (“HES”) and any such advisors as may be required at the discretion of the Scottish Ministers. The Reporting Protocol must be implemented in full, at all times, by the Company.

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

### **30. Construction Traffic Management Plan**

In the event that major offshore components require onshore abnormal load transport, the Company must, no later than six months prior to the Commencement of the Development, submit a Construction Traffic Management Plan (“CTMP”) in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Transport Scotland and any such other advisors as may be required at the discretion of the Scottish Ministers.

The CTMP must include but not be limited to:

- a. A mitigation strategy for the abnormal loads on the trunk road network including any accommodation measures required, incorporating the removal of street furniture, junction widening, or traffic management of road based traffic and transportation associated with the construction of the Development. All construction traffic associated with the Development must conform to the approved CTMP; and
- b. Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered as a result of the Development.

**Reason: To maintain the free flow and safety of the trunk road network.**

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### **ANNEX 3 of the Inch Cape Offshore Wind Farm Consent**

#### **DEFINITION AND GLOSSARY OF TERMS**

In this decision letter and in Annex 1 and 2:

“2014 Application” means the Application letter and Environmental statement and marine licence applications submitted to the Scottish Ministers by Inch Cape Offshore Limited on 1 July 2013;

“2022 Variation Application” means the application and supporting documentation submitted to the Scottish Ministers by Inch Cape Offshore Limited on 22 November 2022;

“AA” means the Appropriate Assessment;

“ADD” means Acoustic Deterrent Devices;

“ADR” means Air Defence Radar;

“AGLV” means Areas of Great Landscape Value;

“Application” means the EIA Report, HRA Report and supporting documents submitted by the Company on 15 August 2018 to construct and operate an offshore generating station and transmission works;

“ATC” means Air Traffic Control;

“Commencement of the Development” means the date on which the first construction activity occurs in accordance with the EIA Report submitted by the Company on 15 August 2018;

“the Company” means Inch Cape Offshore Limited (Company Number SC373173), a Private Limited Company, having its registered address at 5th Floor, 40 Princes Street, Edinburgh, EH2 2BY;

“CRM” means collision risk modelling;

“dSPA” means draft Special Protection Area;

“Development” means the Inch Cape Offshore Wind Farm, approximately 15-22km east of the Angus coastline, at Arbroath;

“ECoW” means Environmental Clerk of Works;

“EIA” means Environmental Impact Assessment;

“EIA Report” means Environmental Impact Assessment Report;

“EOWDC” means European Offshore Wind Deployment Centre;

“EPS” means European Protected Species;

“Final Commissioning of the Development” means the date on which the last wind turbine generator constructed forming the Development has supplied electricity on a commercial basis to the National Grid, or such earlier date as the Scottish Ministers deem the Development to be complete;

“FIR” means Fishing Industry Representatives;

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

“FLO” means Fisheries Liaison Officer;

“Forth and Tay Developments” means combination of the previous and existing consents for Neart na Gaoithe Offshore Wind Farm (granted October 2014 and December 2018), the existing consent for Inch Cape offshore wind farm (granted October 2014) and the application for new consent (submitted August 2018), the existing consents for the Seagreen Alpha and Seagreen Bravo offshore wind farms



## **ANNEX C** Draft Decision Notice and Proposed Variation

(granted October 2014) and the applications for new consents (submitted September 2018);

“FTE” means full-time equivalent;

“GHG” means greenhouse gas;

“GIS” means Geographic Information System;

“GVA” means Gross Value Added;

“HDD” means Horizontal Direct Drilling;

“HRA Report” means Habitat Regulations Appraisal;

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

“iPCoD” means interim Population Consequences of Disturbance;

“LAT” means Lowest Astronomical Tide;

“LSE” means Likely Significant Effect;

“MMO” means marine mammal observer;

“MW” means megawatt;

“OEC” means Offshore Export Cable;

“OFLO” means Offshore Fisheries Liaison Officers;

“OfTI” means Offshore Transmission Infrastructure;

“PAM” means passive acoustic monitoring;

“PAR” means Precision Approach Radar;

“PEXA” means military Practice and Exercise Areas;

“PLI” means Public Local Inquiry;

“PAR” means Precision Approach Radar;

“pSPA” means Proposed Special Protection Areas;

“PSR” means Primary Surveillance Radar;

“PTS” means Permanent Threshold Shift;

“PVA” means population viability analysis;

“the Radar” means the Primary Surveillance Radar at Leuchars Airfield;

“RRH” means Remote Radar Head;

“SAC” means Special Area of Conservation;

“SAR” means Search and Rescue;

“ScotMER” means Scottish Marine Energy Research Programme;

“SeabORD” means Seabird Offshore Renewable Development tool;

“SLVIA” means Seascape, Landscape and Visual Impact Assessment;

“SLA” means Special Landscape Area;

“SNCBs” means statutory nature conservation bodies;

“SPA” means Special Protection Area;

“s.36” means section 36 of the Electricity Act 1989;

“s.36A” means section 36A of the Electricity Act 1989;

“the Original Consent” means the s.36 consent and marine licences (which the Scottish Ministers granted in October 2014) for an offshore wind farm development within the same boundary as the current Application that the Company currently holds;

“TMZ” means Transponder Mandatory Zone;

“the 2013 ES” means Environmental Statement submitted by the Company on 1 July 2013 for the application made for the Original Consent;

“WTG” means wind turbine generators; and

“ZTV” means Zone of Theoretical Visibility.

### Organisations and Companies

## **ANNEX C** Draft Decision Notice and Proposed Variation

“AIA” means Aberdeen International Airport;  
“BT” means BT Radio Network Protection;  
“CAA” means the Civil Aviation Authority;  
“CFWG” means Commercial Fisheries Working Group;  
“DFA” means Dunbar Fishermen’s Association;  
“EU” means European Union;  
“FMS” means Fisheries Management Scotland;  
“FTCFWG” means the Forth and Tay Commercial Fisheries Working Group;  
“FTRAG” means Forth and Tay Regional Advisory Group;  
“HES” means Historic Environment Scotland;  
“ICOL” means Inch Cape Offshore Limited;  
“MAU” means Marine Analytical Unit;  
“MD-LOT” means Marine Directorate - Licensing Operations Team;  
“MSS” means Marine Scotland Science;  
“MCA” means the Maritime and Coastguard Agency;  
“MOD” means the Ministry of Defence;  
“NATS” means National Air Traffic Service Safeguarding;  
“NERL” means NATS (En Route) Public Limited Company;  
“NLB” means the Northern Lighthouse Board;  
“PSF” means Port Seton Fishermen;  
“RAF” means the Royal Air Force;  
“RAG” means Regional Advisory Group;  
“RTC” means River Tweed Commission;  
“RSPB Scotland” means The Royal Society for the Protection of Birds Scotland;  
“SEPA” means The Scottish Environment Protection Agency;  
“Seagreen” means Seagreen Wind Energy Limited;  
“SFF” means The Scottish Fishermen’s Federation;  
“SNH” means Scottish Natural Heritage;  
“Tay DSFB” means Tay District Salmon Fishery Board;  
“TS” means Transport Scotland;  
“UKHO” means United Kingdom Hydrographic Office; and  
“WDC” means Whale and Dolphin Conservation.

### Plans and Programmes

“the 2017 Aberdeenshire LDP” means the Aberdeenshire Local Development Plan 2017;  
“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme;  
“CaP” means Cable Plan;  
“CMS” means Construction Method Statement;  
“CoP” means Construction Programme;  
“CTMP” means Construction Traffic Management Plan;  
“DP” means Decommissioning Programme;  
“DS” means the Design Statement;  
“DSLDP” means Development Specification and Layout Plan;  
“ELLDP” means East Lothian Local Development Plan;  
“EMP” means Environmental Management Plan;  
“ERCoP” means Emergency Response Co-operation Plan;  
“FMMS” means Fisheries Management and Mitigation Strategy;

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“LMP” means Lighting and Marking Plan;  
“MGN” means Marine Guidance Note;  
“NMP” means the National Marine Plan;  
“NPF3” means Scotland’s National Planning Framework 3;  
“NRA” means Navigation Risk Assessment;  
“NRIP” means National Renewables Infrastructure Plan;  
“NSP” means Navigational Safety Plan;  
“OMP” means Operation and Maintenance Programme;  
“PAD” means Protocol for Archaeological Discoveries;  
“PEMP” means Project Environmental Monitoring Programme;  
“Policy E1” means Aberdeenshire Policy E1 Natural Heritage;  
“PS” means Piling Strategy;  
“SPP” means Scottish Planning Policy 2014;  
“Transit Plan” means a plan which sets out measures to be taken to avoid or reduce the impact of vessel movement on the local fishing industry and to promote a sustainable coexistence. It will include indicative transit routes for vessels operating in and around the development and transiting to the site from relevant ports;  
“VMP” means Vessel Management Plan; and  
“WSI” means Written Scheme of Investigation.

### Legislation

“the Birds Directive” means Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended and as codified by Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009;  
“the Electricity Act” means the Electricity Act 1989;  
“the Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994;  
“the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora;  
“the 1994 Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994;  
“the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017; and  
“the 2010 Act” means the Marine (Scotland) Act 2010.



## LICENCE/CONSENT VARIATION – VALIDATION OF APPROPRIATE ASSESSMENT

### 1 Licence Details

<u>Licensee/Developer Name:</u>	Inch Cape Offshore Limited
<u>Site Details:</u>	Inch Cape Offshore Wind Farm, in the Firth of Forth
<u>Date Existing Licence/Consent Issued:</u>	Original: 17 June 2019 (Revised Design) Varied: 1 July 2021 (section 36 consent only)
<u>Date of Existing Appropriate Assessment (“AA”):</u>	14 March 2019

### 2 Summary of proposed variation application:

On 22 November 2022, Inch Cape Offshore Limited (“ICOL”) requested to vary its section 36 consent and generating station marine licence (06781/19/0) for the revised design of the Inch Cape Offshore Windfarm project in the Firth of Forth.

ICOL has requested to vary its section 36 consent to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres.

ICOL has also requested to vary its associated generating station marine licence to reduce the nominal turbine spacing from 1,278 metres to 1,025 metres and to change the wording of section 2.1 of the marine licence to bring it in line with the existing section 36 consent and ICOL’s preferred design scenario. No other changes have been proposed.

Section 2.1 of the marine licence currently states:

*“Where the final design agreed through the Development Specification and Layout Plan (“DSL P”) falls between A and B, the collision risk to birds must be no greater than assessed in the Appropriate Assessment. If required by the Licensing Authority the Licensee must provide evidence of this using the best available science.”*

## ANNEX D Validation of Appropriate Assessment

ICOL proposes to change the wording to:

*“Where the final design agreed through the Development Specification and Layout Plan (“DSLPL”) includes a combination of parameters from A and B, the collision risk to birds must be no greater than assessed in the Appropriate Assessment. If required by the Scottish Ministers the Licensee must provide evidence of this using the best available science.”*

As part of its application, ICOL submitted a report containing collision risk estimates for key seabird species at Inch Cape Offshore Windfarm. The report concluded that the collision estimates associated with ICOL’s preferred design scenario are lower than the worst-case collision mortality assessed at the time of the original application.

### **3 Summary of consultation responses – in relation to European protected sites:**

MD-LOT consulted NatureScot, operating name of Scottish Natural Heritage, on 15 December 2022 and NatureScot provided a response on 1 February 2023. NatureScot provided no specific advice in relation to European protected sites or Habitats Regulation Appraisal (“HRA”), however it stated it is content that the Variation Report demonstrates that collision risk to key seabird species is no worse than that previously assessed in the 2018 EIAR scenarios.

MD-LOT followed up with NatureScot regarding HRA aspects of the proposed variation on 27 February 2023 and NatureScot provided a response on 9 March 2023. NatureScot stated that the proposed changes to layout and hammer energies would not result in significant increases in risk to key marine mammal and seabird receptors, nor would impacts to fish receptors be materially different. NatureScot also advised that the new conservation objectives for the Outer Firth of Forth and St Andrews Bay Complex SPA do not require a revision of the existing Appropriate Assessment. NatureScot concluded that the Appropriate Assessment dated 14 March 2019 remains valid. For completeness, NatureScot confirmed that assessment of fish receptors is not required under HRA.

MD-LOT consulted Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) on 15 December 2022 and RSPB Scotland provided a response to MD-LOT on 25 January 2023. RSPB Scotland reiterated its objection to the original projects as the impact on seabirds from the project in isolation and in-combination with the Neart na Gaoithe and Seagreen Offshore wind farms would constitute adverse effects on integrity of nearby Special Protection Areas (“SPAs”), including the Forth Islands SPA and Fowlsheugh SPA. RSPB Scotland noted that the proposed changes are predicted to slightly reduce impacts and viewed this positively in the context of the existing impacts. RSPB Scotland maintained its objection due to the in-combination impacts of the developments on designated sites.

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### 4 Summary of other information in relation to European protected sites (MSS responses, external reports).

MSS was consulted on commercial fisheries aspects only and provided no advice in relation to European protected sites.

### 5 Updated in-combination assessment:

- a) *Detail new plans or projects since date of existing AA.*
- b) *List plan or project titles for which licences/consents have expired since date of existing AA.*
- c) *Update assessment.*

a)

#### **Forth Islands SPA**

00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

Expansion and improvement of Outer Berth at Port of Leith.

Defence Infrastructure Organisation - Remediation and construction works - Dalgety Bay, Fife

The physical works required to address the radium contamination primarily comprise of a robust geotextile membrane of approximately 13,000 m<sup>2</sup> held in place and protected by a new revetment consisting of 9,500 m<sup>3</sup> of rock armour. The existing Dalgety Bay Sailing Club slipway and jetty structures will also be removed and replaced with a single slipway and jetty structure. The work will involve excavation of the foreshore and will include the removal of 7,500 m<sup>3</sup> of beach material to provide foundations for these structures and also to remove contamination at specific areas across the bay. The project will take place over 2 years with works only permitted between April and September.

#### **Fowlsheugh SPA**

Aberdeen Bay Offshore Wind Farm

An offshore wind powered electricity generating station and deployment centre, known as the European Offshore Wind Deployment Centre, with a maximum generating capacity of up to 100 MW, comprising of up to 11 offshore wind turbine generators ('WTG') All construction works have been completed for this project which is now in the

## **ANNEX D Validation of Appropriate Assessment**

operational stage, a variation was granted in 2020, extending the operational life until 2032.

### **Buchan Ness to Collieston Coast SPA**

#### 00009943 - SHET - Eastern Green Link 2 (EGL2)

Scottish Hydro Electric Transmission in collaboration with National Grid Electricity Transmission are developing a submarine High Voltage Direct Current (“HVDC”) link between Peterhead in Aberdeenshire and Drax in North Yorkshire, referred to as the Eastern Green Link 2 Project (“EGL2”). EGL2 falls within both Scottish territorial waters within 12 nautical miles (“nm”) and in Scottish offshore waters (> 12 nm). From the landfall at Sandford Bay south of Peterhead EGL2’s Installation Corridor heads initially southeast, then broadly south towards the Scottish/English waters border and further in to English territorial waters. 3.2 EGL2 comprises approximately 436 kilometres of submarine HVDC cable, comprising 150 km in Scottish waters. 3.3 EGL2 is a submarine cable system made up of two HVDC single core metallic conductors and a fibre optic (“FO”) cable, providing 2 Giga Watts of transmission reinforcement.

#### Aberdeen Bay Offshore Wind Farm

See above.

#### Moray West Offshore Wind Farm

The wind farm is located 22.5 km southeast off the Caithness coastline. The operational lifespan of the project is expected to be 25 years. The project covers a total area of approximately 225 km<sup>2</sup> and will be comprised of no more than 85 wind turbines with a maximum generating capacity of around 850 MW, along with associated offshore transmission infrastructure. The wind farm is currently under construction.

### **Outer Firth of Forth and St Andrews Bay Complex SPA**

#### 00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

See above.

#### Dalgety Bay Sailing Club - Moorings - Dalgety Bay

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Dalgety Bay Sailing Club are increasing the number of moorings in Dalgety Bay from 50 mooring to 80 moorings for private pleasure boating activities. The moorings will be in use from April to September each year.

### Defence Infrastructure Organisation - Remediation and construction works - Dalgety Bay, Fife

See above.

### Scottish Hydro Electric Power Distribution ("SHEPD") - Geophysical Surveys - Forth and Tay and Moray Regions

SHEPD are proposing to undertake geophysical surveys in the Moray Firth Marine Region and the Forth and Tay Marine Region along a number of cable routes. The proposal includes the use of Ultra-Short Baseline ("USBL") and Sub-Bottom Profiler ("SBP"). The proposal is due to commence once the licence is issued and is expected to be completed by 31 March 2023. Vessel presence and survey activities on all cables across the Moray Firth Marine Region and the Forth and Tay Marine Region are expected to take 7.22 days in total, with an additional 12 hours allowed for equipment calibrations for each survey mobilisation.

### SEGL 1 HVDC Cable and Cable Protection

National Grid Electricity Transmission (NGET) and Scottish Power Transmission (SPT) are jointly developing a subsea High Voltage Direct Current (HVDC) link between Torness in East Lothian and Hawthorn Pit in County Durham.

### **Moray Firth SAC**

#### EPS licence – geophysical surveys of ScotWind E1 East export cable corridor

Geophysical survey work using sub-bottom profiler, ultra-short base line and seismic equipment.

#### EPS licence – UXO clearance of Moray West wind farm and export cable corridor

Unexploded Ordnance Clearance of up to a maximum of 30 and the use of PAM and ADD equipment.



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### 00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

See above.

### Aberdeen Bay Offshore Wind Farm

See above.

### Ardersier Port Development

The Ardersier Port Development is located at the former McDermott Fabrication Yard, which lies approximately 7.5 km to the west of Nairn, 3 km northeast of the village of Ardersier and is bounded by the Moray Firth to the north. The site extends to 307 hectares in total (including marine and terrestrial aspects) and features an existing harbour which is protected by a naturally occurring sand and shingle spit known locally as Whiteness Head. The works involve port entrance/inner channel dredging, quay wall construction/realignment and quayside (berthing) dredgings and are scheduled to start in 2019 taking up to 5 years to complete. A dredge of 2,300,000 m<sup>3</sup> of sand will be required to deepen the port entrance to -6.5 m chart datum. A cutter suction dredger will be used. An area of the inner channel will be dredged to -3 m chart datum by either plough dredging, backhoe dredger or land based equipment. Once dredging has been completed, the new 464 m sheet pile wall will be constructed alongside the existing quayside.

### BEAR Scotland - Bridge Maintenance Works - Kessock Bridge, Inverness-shire

This licence covers routine maintenance activities to be carried out on the bridge over a period of 5 years. All works will be highly localised and take place within the immediate vicinity of the bridge. With the exception of scour repairs and fender replacement, all maintenance activities will take place above MHWS. In most cases, activity duration is likely to be less than three months and for several activities, duration will be less than a few weeks. The exception being the painting of the superstructure which will take approximately 4 years to complete.

### Beatrice Offshore Windfarm - Geophysical surveys, benthic surveys and visual inspections

The works involve geophysical surveys at the site of Beatrice Offshore Windfarm transmission infrastructure and turbine sub structures, located in the Outer Moray Firth approximately 13.5 km from the Caithness coastline, off the North East of Scotland and comprised of 84 fixed wind turbines, two offshore transformer modules, inter-array cables

## **ANNEX D** Validation of Appropriate Assessment

and two subsea export cables. The survey operations are scheduled to be undertaken between June 2020 and December 2023. There will be numerous survey campaigns within this period, with a total duration of 365 days.

### Caledonia Export Cable Corridor Geotechnical Surveys

Geotechnical surveys to assess the conditions within the Caledonia Offshore Wind Farm export cable corridor area.

### Installation of new long sea outfall, Spey Bay

Construction of a long sea outfall of approximately 1.9 km in length to discharge effluent from a distillery into the Moray Firth. The pipe is made of High Density Polyethylene and will be fitted with 2 discharge diffusers, one at the midline and one at the end of the outfall. This will be protected with approximately 300 tonnes of cobbles and 1500 tonnes of boulders. Land based trenching will be carried out in the nearshore intertidal section and the subtidal section will be trenched using marine plant, likely a back-hoe dredger. Material removed during trenching will be stockpiled adjacent to the trench to be used as backfill once the pipe and diffusers are installed. Anti-scour rock mattresses will be used to protect the diffusers. A temporary mooring buoy will be used to attach to the pipes in a storage area until they are required during the construction process. This buoy will be removed at the end of the construction process.

### MarramWind Offshore Windfarm - Geophysical surveys of export cable corridor

The works involve geophysical surveys of the offshore export cable corridor for MarramWind offshore windfarm. The surveys are scheduled to take place between 1 March 2023 and 30 September 2023, with noise-generating activity occurring for a maximum of 100 days during this period.

### Moray West Offshore Wind Farm

See above.

### Peterhead Port Authority - Revetment Works, Alexandra Parade, Peterhead

The works are part of a larger project to strengthen the existing, circa 330 m long, sea defence revetment at Alexandra Parade, Peterhead. The project will be completed in two phases between April 2020 and December 2022. The project includes re-profiling of the existing revetment, formation of a toe trench and placement of various sizes of rock armour and pre-cast concrete units within the toe trench to create a toe mound. Re-

## **ANNEX D** Validation of Appropriate Assessment

profiling of the existing rock armour revetment will be undertaken by removing existing concrete elements and rock armour. Remaining sections of the concrete pitched revetment will then be broken up to improve porosity using an excavator mounted rock breaker. A rock embankment will be constructed using 1-3 Tonne ("T") rockfill to overlay the existing revetment. Pre-cast concrete armour base units (Xbloc units) will then be placed in the newly developed toe trench and overlaid with 10 T rock armour to create a toe mound. Xbloc units will be placed on the rock embankment slope, extending from the toe structure to the crest of the revetment.

### Seagreen Wind Energy Limited - Geophysical Surveys - Seagreen 1A Cable Route

Seagreen proposes to install a further export cable to enable the subsequent build out of the Seagreen Alpha and Bravo Offshore Wind Farms. This export cable is to be known as Seagreen 1A and will make landfall at Cockenzie in the Firth of Forth. Seagreen propose to undertake geophysical surveys of the planned Seagreen 1A cable route. This will include the use of multi-beam echo sounder, side-scan sonar, sub-bottom profiler, magnetometer, sparker boomer and ultra-short base line. The total survey area covers approximately 548 square kilometres.

### **Firth of Tay and Eden Estuary SAC**

#### EPS licence – geophysical surveys of ScotWind E1 East export cable corridor

See above.

#### 00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

See above.

#### Scottish Hydro Electric Power Distribution ("SHEPD") - Geophysical Surveys - Forth and Tay and Moray Regions

See above.

#### Seagreen Wind Energy Limited - Geophysical Surveys - Seagreen 1A Cable Route

See above.

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### **Berwickshire and North Northumberland Coast SAC**

EPS licence – geophysical surveys of ScotWind E1 East export cable corridor

See above.

00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

See above.

Aberdeen Bay Offshore Wind Farm

See above.

### **Isle of May SAC**

EPS licence – geophysical surveys of ScotWind E1 East export cable corridor

See above.

00009818/ 00009819 - Forth Ports Ltd (Per RHDHV) - Construction and Dredge and Deposit - Port of Leith Outer Berth

See above.

Aberdeen Bay Offshore Wind Farm

See above.

Seagreen Wind Energy Limited - Geophysical Surveys - Seagreen 1A Cable Route

See above.

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**Dredging operations identified as having a likely significant effect on a designated site/designated sites also affected by the ICOL proposal.**

<b>Location of Dredge</b>	<b>Amount of Dredge Material</b>	<b>Dredge Spoil Deposit Area</b>	<b>Dates of Licence</b>	<b>Designated Site</b>
Aberdeen North and South Harbour	North – 139,500 wet tonnes from navigation channel; 45,500 from the River Dee; 110,500 from berths and docks. South – 133,000 wet tonnes.	Aberdeen	01/02/2023-31/02/2026	Moray Firth SAC
Arbroath Harbour	20,640 wet tonnes per year	Arbroath	13/07/2022-12/07/2024	Moray Firth SAC
Banff Harbour	10,000 wet tonnes	Either 80% to Macduff and 20% for beach nourishment project, or 100% Macduff	16/12/2022-15/12/2023	Moray Firth SAC
Boddam Harbour	8,000 wet tonnes per year	Buchan Ness	01/10/2021-30/09/2024	Moray Firth SAC and Buchan Ness to Collieston Coast SAC
Buckie	16,665 wet tonnes per year	Buckie	16/03/2021-15/03/2024	Moray Firth SAC
Burghead	30,800 wet tonnes per year	Burghead	16/03/2021-15/03/2024	Moray Firth SAC
Cullen Harbour	10,000 wet tonnes over three year period	Buckie	02/07/2020-02/06/2023	Moray Firth SAC
Port of Inverness	9,750 wet tonnes over three years	Cromarty	01/07/2022-30/06-2025	Moray Firth SAC

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Port of Kirkcaldy	63,000 wet tonnes over three years	Kirkcaldy	22/12/2021-21/12/2024	Moray Firth SAC and Outer Firth of Forth and St Andrews Bay Complex SPA
Montrose Harbour	246,000 wet tonnes	Either Montrose Bay Trial site, or Lunan Bay	24/09/2022-23/09/2023	Moray Firth SAC

b)

### **Isle of May SAC and Moray Firth SAC**

#### Aberdeen Harbour Expansion Project

#### **Moray Firth SAC**

#### Port of Cromarty Firth – Phase 4 – construction, dredging, sea disposal and land reclamation

#### **Firth of Tay and Eden Estuary SAC**

#### University of St Andrews – Guardbridge, Fife – seawall repairs

c)

There are no new plans or projects likely to have a significant effect on the St Abb's Head to Fast Castle SPA. MD-LOT therefore concludes that there will be no adverse effect on the site integrity of St Abb's Head to Fast Castle SPA as a result of the ICOL proposal in-combination with other plans or projects.

There are several new plans or projects likely to have a significant effect on each of the other designated sites for which the original AA was undertaken. MD-LOT concludes that, providing the above new plans or projects are carried out in accordance with any conditions in their respective AAs, there will be no adverse effect on the site integrity of the Forth Islands SPA, Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, Moray Firth SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland Coast SAC and Isle of May SAC from the ICOL proposal in-combination with other projects.

## **6 Conclusion - Consideration of whether AA completed for the original decision is still valid:**

## ANNEX D Validation of Appropriate Assessment

No consultation responses or representations have been received which would invalidate the conclusions or alter the outcome of the AA completed on 14 March 2019.

MD-LOT concludes that the proposed variation to ICOL's section 36 consent and generating station marine licence is not likely to have an adverse effect on the site integrity of St Abb's Head to Fast Castle SPA, Forth Islands SPA, Fowlsheugh SPA, Buchan Ness to Collieston Coast SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, Moray Firth SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland Coast SAC and Isle of May SAC either alone or in-combination with other plans and projects, provided the conditions of the original AA are adhered to.

<b>Name</b>	<b>Assessor or Approver</b>	<b>Date</b>
Lauren Cowan	Assessor	03 March 2023
Naomi Gibson	Approver	30 March 2023