

1. ANNEX B Legislative Requirements

1.1 Legislative Background

1.1.1 Section 36 of the Electricity Act 1989 (“The Electricity Act”) provides that an electricity generating station shall not be constructed at a relevant place (which includes the territorial sea and the renewable energy zone), and such a station may not be extended or operated except in accordance with a consent granted by the appropriate authority, which in Scotland is the Scottish Ministers.

1.1.2 Section 36C (“s.36C”) of the Electricity Act enables persons with a section 36 (“s.36”) consent to apply to the Scottish Ministers to vary that consent. The procedures for varying a s.36 consent are set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), which include provisions for making, publicising, and consideration of applications to vary s.36 consents.

1.1.3 The variation process applies to projects that have been consented under s.36, where the operator wishes to carry out construction, extension and operation of electricity generating stations. This process is also applied when the operator of a generating station wishes to change any other aspects of its proposals in a way that is inconsistent with an existing s.36 consent. Scottish Government guidance on s.36 consent variations highlights 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 section 36C(4) of the Electricity Act the Scottish Ministers may make variations to s.36 consents as appear to them to be appropriate, having regard in particular to: the company’s reasons for seeking the variation; the variation proposed; any objections made to the proposed variation, the views of consultees, and the outcome of any public inquiry.

1.2 Environmental Impact Assessment

1.2.1 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”) and the Marine Works (Environmental Impact Assessment) Regulations 2007, provide that an Environmental Impact Assessment is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.

1.3 Appropriate Assessment

Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 and regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (collectively referred to as “the Habitats Regulations”).require that before deciding to undertake, or give consent,

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permission or authorisation for a plan or project which is likely to have a significant effect on a European site or European Offshore marine site (either alone or in combination with others plans or projects) and where not directly connected with or necessary to the management of that site, a competent authority must make an Appropriate Assessment (“AA”) of the implications for that site in view of that site’s conservation objectives. An AA under the Habitats Regulations dated 26 April 2019 was completed in respect of the application for the Existing s.36 consent. Officials have reviewed the AA and having considered the updated environmental information, are content that the conclusions remain valid and no further assessment is required for the Variation Application (see Annex D).

1.4 Marine Licence Variation

- 1.4.1 If the Variation Application is granted, Scottish Ministers will exercise their discretion under section 72(3)(d) of the Marine and Coastal Access Act 2009 to vary the offshore generating station marine licence attached to this Development to ensure consistency between the s.36 consent and the marine licences for the Development.

1.5 Summary and conclusions

- 1.5.1 MS-LOT considers that the legislative requirements set out above have been complied with throughout the process of determining the Variation Application.