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Cabinet Secretary for Transport, Infrastructure and Connectivity

APPLICATIONS FOR CONSENTS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF TWO OFFSHORE GENERATING STATIONS, THE SEAGREEN ALPHA OFFSHORE WIND FARM, AND THE SEAGREEN BRAVO OFFSHORE WIND FARM.

1 Purpose

- 1.1 To seek your determination on the applications submitted on 14 September 2018 by Seagreen Wind Energy Ltd. (Company Number 06873902) (“the Company”) on behalf of Seagreen Alpha Wind Energy Limited (Company Number 07185533) and Seagreen Bravo Wind Energy Limited (Company Number 07185543) for consents under section 36 (“s.36”) of the Electricity Act 1989 (as amended) (“the Electricity Act 1989”) to construct and operate two offshore generating stations comprising up to 70 wind turbine generators (“WTGs”) on each site, with a maximum of 120 WTGs across the two sites (“the Applications”).
- 1.2 Scottish Natural Heritage (“SNH”) has objected to the Applications due to predicted impacts upon the qualifying interests of the St. Abb’s Head to Fast Castle Special Protection Area (“SPA”), which is within Mr. Wheelhouse’s constituency. In circumstances where such a conflict of interest could be perceived, based on advice from the Cabinet, Parliament and Governance Division, the Applications require your determination.

2 Priority

- 2.1 Routine.

3 Background

- 3.1 The Company currently holds s.36 consents (“the Original Consents”) and marine licences (which the Scottish Ministers granted in October 2014) for two offshore wind farm developments within the same boundaries as the Applications.
- 3.2 The Company has made the Applications in order to take advantage of new developments in relation to offshore wind technology, meaning turbine numbers can be reduced, leading to a reduction in the associated environmental impacts (when compared with the Original Consents).

4 Description of the Applications and Sites

- 4.1 On 14 September 2018, the Company submitted the Applications to construct and operate the Seagreen Alpha Offshore Wind Farm (“the Alpha Development”), approximately 27km east of the Angus coastline and the Seagreen Bravo Offshore Wind Farm (“the Bravo Development”), approximately 38km east of the Angus coastline, collectively referred to as (“the Seagreen Developments”). The Applications were supported by an Environmental Impact Assessment Report (“EIA Report”) which included a Habitat Regulations Appraisal Report (“HRA Report”). An addendum of additional information to the EIA Report (“EIA Addendum Report”) was submitted by the Company on 15 May 2019 to address comments on impacts upon birds.
- 4.2 The Applications are for consent to construct and operate two offshore generating stations, comprising up to 70 WTGs on each site, with a maximum of 120 WTGs across the two sites. A description and location of the Alpha Development and the Bravo Development is set out in Annex C and D respectively.
- 4.3 The locations were selected based upon: wind resources and energy yield, environmental receptors (birds, marine mammals and landscape/seascape), grid connectivity, suitable port availability, geotechnical conditions and foundation design options.
- 4.4 A marine licence for the construction of the offshore substation platforms (“OSP”), high voltage power cables between the platforms and up to six trenched export cables from the OSP to land (the “Offshore Transmission Asset”) was granted on 10 October 2014 and remains in place. The Company intends to use this marine licence for the Offshore Transmission Asset for either the Original Consent or the projects subject to the Applications.

5 Key considerations

- 5.1 Key considerations covering the supporting information submitted as part of the EIA Report and the EIA Addendum Report, the legislative background, the results of the consultation exercise and in relation to the determination of these Applications are set out in Annex A, C and Annex D of this submission.
- 5.2 The Appropriate Assessment (“AA”), as set out in Annex B, concluded that the Seagreen Developments will not adversely affect the integrity of any European offshore marine site or European protected site, either in isolation or in combination with other plans or projects.
- 5.3 These Applications should be considered in the context of the Original Consents and the existing s.36 consents in relation to offshore wind farms within the Firth of Forth and Firth of Tay region. These are: the Original Consents; the previous s.36 consent for Neart na Gaoithe Offshore Wind Farm (granted October 2014) and the s.36 consent for the Neart na Gaoithe Offshore Wind Farm (Revised Design) (granted December 2018, varied June 2019); the previous s.36 consent for the Inch Cape Offshore Wind Farm (granted October 2014) and the s.36

consent for the Inch Cape Offshore Wind Farm (Revised Design) (granted June 2019). Combinations of these consents are referred to as the “Forth and Tay Developments” within this submission. For the in-combination assessment of the effects on birds in the AA, the Worst Case Scenario (“WCS”) is considered to be the Seagreen Developments in-combination with the s.36 consents granted in 2014 for the Neart na Gaoithe Development and the Inch Cape Development.

- 5.4 Marine Scotland – Licensing Operations Team (“MS-LOT”) considers that the key issues have been resolved, mitigated or addressed through the use of conditions. All legislative requirements in terms of the granting of the s.36 consent have been complied with and policy documents identified are considered to be broadly supportive of the Seagreen Developments.

6 Key Issues raised by consultees

- 6.1 A full summary of the consultation exercise is set out in Annex C and Annex D at sections 4, 5 and 6. The key issues raised by consultees were as follows:

- Potential impacts on seabirds, and in particular the qualifying interests of the Forth Islands SPA, Fowlsheugh SPA and St Abb’s Head to Fast Castle SPA as a result of the Seagreen Developments in-combination with the s.36 consents granted for the Neart na Gaoithe Offshore Wind Farm and the Inch Cape Offshore Wind Farm;
- Potential impacts on marine mammals;
- Potential impacts on commercial fisheries;
- Seascape, landscape and visual potential impacts arising as a result of the Seagreen Developments, particularly in-combination with the other Forth and Tay Developments;
- Potential impacts on Air Traffic Control (“ATC”);
- Potential impacts on Air Defence Radar (“ADR”).

7 Maintained objections

- 7.1 SNH maintains its objection in relation to the impacts of the Seagreen Developments in-combination with the 2014 s.36 consents granted for the other Forth and Tay Developments in respect of collision mortality of gannet at Forth Islands SPA and kittiwake at Forth Islands SPA, Fowlsheugh SPA and St Abb’s Head to Fast Castle SPA. SNH did however advise that for the Seagreen Developments in-combination with the 2018/2019 s.36 consents granted for the other Forth and Tay Developments in this respect, would have no adverse effect on site integrity of any SPA.
- 7.2 Scottish Fishermen’s Federation (“SFF”) maintains its objection to the Seagreen Developments. SFF objects on the basis of the potential impacts on commercial fisheries and in particular the view of the SFF is that the EIA Report underestimates the impacts on commercial fisheries and is not compliant with

Scotland's National Marine Plan. However, SFF welcomes conditions related to the monitoring of the impact of the Seagreen Developments on commercial fisheries.

- 7.3 The Royal Society for the Protection of Birds Scotland ("RSPB Scotland") maintains its objection due to its concerns regarding the predicted impacts on the protected seabird populations both in isolation and in-combination with the Forth and Tay Developments specifically in respect of the Forth Islands SPA and Fowlsheugh SPA. RSPB Scotland disagrees with the conclusions reached in the EIA Report.
- 7.4 The Ministry of Defence ("MOD") maintains its objections regarding unacceptable interference to the primary surveillance ATC radar used at Leuchars Station (formerly RAF Leuchars) and interference by the Seagreen Developments with military low flying training activities.
- 7.5 The MOD also maintains its objections regarding unacceptable interference to the ADR at Remote Radar Head ("RRH") Brizlee Wood and unacceptable interference to the ADR at RRH Buchan. However, MOD accepts that conditions attached to the s.36 consents will address its objections.
- 7.6 Further detail on the means by which the concerns and objections have been considered and addressed are set out in Annex C and Annex D.

8 Advice on whether to cause a Public Local Inquiry ("PLI") to be held

- 8.1 The circumstances of the case are such that there is no statutory requirement under paragraph 2(2) of Schedule 8 to the Electricity Act 1989 for the Scottish Ministers to cause a PLI to be held. The decision to hold a PLI in this case is entirely at the discretion of the Scottish Ministers. Such discretion must always be exercised in accordance with the general principles of public law.
- 8.2 Before you can make a decision on the Applications, you must determine whether it is appropriate to cause a PLI to be held by considering any objections, together with all other material considerations. In doing so, you may have regard to whether:
 - 1) You have been provided with sufficient information to enable you to weigh up all of the conflicting issues and, without a public inquiry, whether you can properly weigh any such issues;
 - 2) Those parties with a right to make representations have been afforded the opportunity to do so; and
 - 3) You have sufficient information on which to take your decision such that a public inquiry would not provide any further factual evidence which would cause you to change your view on the Applications.
- 8.3 MS-LOT consulted a number of Local Authorities with an adjacent coastline or other interest in respect of the Seagreen Developments. Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council were consulted and did not raise any objections to the Applications.

- 8.4 If, having considered the Applications, the EIA Report and the EIA Addendum Report, the objections received, as summarised above, together with other material considerations set out in Annex C and Annex D, you determine that it would not be appropriate for a PLI to be held, then it remains for you to grant or refuse consent under s.36, having regard to the considerations set out in this documentation.
- 8.5 MS-LOT is satisfied that sufficient information to weigh up the various competing considerations is available and has been properly taken into account, and that all interested parties have had sufficient opportunity to make representations on the Applications. MS-LOT is further satisfied that any inquiry would not be likely to provide any factual information to assist the Scottish Ministers to resolve the issues of risk and planning judgment raised by the Applications or to take a different view on the substantive issues on the Applications. Accordingly you may conclude that it is not appropriate to cause a PLI to be held into these matters.
- 8.6 MS-LOT has fully considered matters raised in representations from statutory and non-statutory consultees, as well as the EIA Report including the HRA Report, and the EIA Addendum Report. In addition, officials have completed an AA and concluded that the Seagreen Developments will not adversely affect the integrity of any European offshore marine site or European protected site, either alone or in-combination with other plans or projects.
- 8.7 Officials have weighed the impacts of the Seagreen Developments, and the degree to which these can be mitigated against the economic and renewable energy benefits which would be realised. Officials have undertaken this exercise in the context of national and local policies.
- 8.8 MS-LOT considers that where any adverse environmental impacts cannot be prevented, adequate mitigation can be put in place. An obligation has been placed on the Company to give effect to all the mitigation through the attachment of conditions to the s.36 consents.
- 8.9 MS-LOT is of the view that in considering the characteristics and location of the Seagreen Developments and the potential impacts, you may be satisfied that the Applications have complied with paragraph 3 of Schedule 9 to the Electricity Act 1989.
- Paragraph 3(1)(a) of Schedule 9 requires the Company in formulating such proposals to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest.
 - Paragraph 3(1)(b) requires the Company to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
 - Under paragraph 3(3) of that Schedule, the Company must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

You may be satisfied that you will have discharged your responsibilities in terms of paragraph 3 of Schedule of the Electricity Act 1989 to the Electricity Act 1989 in this respect, if you decide to grant consents.

9 Recommendation

MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry to be held, and to grant consents under section 36 of the Electricity Act 1989 for the Alpha Development and the Bravo Development, subject to the imposition of conditions.

Please note that marine licence applications under the Marine and Coastal Access Act 2009 for the Alpha Development and the Bravo Development are being considered alongside the Applications. These will be determined by MS-LOT and, if granted, these licences will be forwarded to you for information. The marine licence for the OTA was granted on 10 October 2014 and is still extant. The OTA does not form part of the current Applications.

10 Publicity

10.1 Officials will liaise with Communications once a determination has been made on these Applications to agree the appropriate means of announcing the decision.

10.2 In order for the determination process to be fully open and transparent, MS-LOT recommend that this submission is published on the Marine Scotland Information website, alongside the key documentation relating to the Applications.

11 List of Annexes

ANNEX A Legislative Requirements

ANNEX B Appropriate Assessment

ANNEX C The Alpha Development Decision Notice and Conditions

ANNEX D The Bravo Development Decision Notice and Conditions

Copy List:	For Action	For Comment	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Transport, Infrastructure and Connectivity	x	x			
Minister for Energy, Connectivity and the Islands			x	x	
Cabinet Secretary for the Rural Economy			X		

Cabinet Secretary for Environment, Climate Change and Land Reform			X		
Minister for Rural Affairs and the Natural Environment			X		
<p>DG Economy Director of Marine Scotland, Marine Scotland Tim McDonnell, Marine Scotland Science Ian Davies, Marine Scotland Science Zoe Crutchfield, Licensing Operations Team, Marine Scotland Gayle Holland, Licensing Operations Team, Marine Scotland Mark Christie, Marine Planning and Policy, Marine Scotland Michael Bland, Licensing Operations Team, Marine Scotland Nicola Bain, Licensing Operations Team, Marine Scotland Phil Gilmour, Marine and Offshore Renewable Energy, Marine Scotland David Pratt, Marine Planning and Strategy, Marine Scotland Jared Wilson, Renewables and Energy, Marine Scotland Science Andronikos Kafas, Renewables and Energy, Marine Scotland Science Mike Palmer, Head of Acre, Marine Scotland Allan Gibb, Sea Fisheries Policy, Marine Scotland Helena Gray, Energy and Climate Change Directorate Kersti Berge, Energy and Climate Change Directorate Neal Rafferty, Energy Industries, Energy and Climate Change Directorate David Stevenson, Energy Supply Chain, Energy and Climate Change Directorate Debbi Ramsay, Energy Industries, Energy and Climate Change Directorate Lord Advocate Colin Troup, Legal Secretariat to the Lord Advocate Joanna Dingwall, Legal Services Directorate David Moffat, Legal Services Directorate Kenneth Hannaway, Legal Services Directorate Fiona McClean, Legal Services Directorate Callum McCaig, Special Advisor Leanne Dobson, Special Advisor Paul O'Brien – Communications, Ministerial Support and Facilities Directorate Aileen MacArthur – Communications, Ministerial Support and Facilities Directorate Communications – Economy</p>					