

From: Giulia Agnisola
Marine Scotland Licensing Operations Team
Marine Scotland
13th March 2018

Minister for Business, Innovation and Energy

APPLICATIONS TO VARY ANNEX 1 OF THE MACCOLL OFFSHORE WINDFARM AND ANNEX 2 (CONDITION 7) OF THE TELFORD OFFSHORE WINDFARM, THE STEVENSON OFFSHORE WINDFARM, AND THE MACCOLL OFFSHORE WINDFARM SECTION 36 CONSENTS UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 (AS AMENDED) IN ACCORDANCE WITH THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013 (AS AMENDED)

1.1 Purpose

1.1.1 To seek your approval to grant an application to vary the existing consents for the Telford, the Stevenson, and the MacColl Offshore Wind farms (“the Developments”). This application was made by Moray Offshore Windfarm (East) Limited (“Moray East”) on the 18th December 2017 on behalf of the Telford Offshore Windfarm Limited, the Stevenson Offshore Windfarm Limited, and the MacColl Offshore Windfarm Limited (“the Companies”) and relates to the section 36 (“s.36”) consents granted on 19th March 2014 for the construction and operation of the wind farms located offshore in the Moray Firth. Moray East owns 100% of the wind farm Companies.

1.2 Priority

1.2.1 Routine.

1.3 Nature of the Variation Sought

1.3.1 The variation application seeks to amend the s.36 consents granted on 19th March 2014 to make the following variations:

(1) Vary Annex 1 of the MacColl Offshore Windfarm s.36 consent to allow the maximum installed capacity to increase from 372 MW to a maximum of 500 MW. (The maximum total installed capacity of the Developments will continue to be limited to 1116 MW)

(2) Vary Annex 2 (Condition 7) of all three s.36 consents for the Developments, to allow an increase in the maximum rated turbine capacity from 8 MW to 10 MW.

The original text for the application for s.36 consents can be found on the [Moray East webpage](#) (Decision Letter and Conditions under Telford, Stevenson and MacColl Offshore Wind Farm respectively), and the proposed changes are shown in Annex C.

1.4 Publication of Application and Consultation

- 1.4.1 Regulation 4 of the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”) provides that an applicant must publish a variation application relating to an offshore generating station on a website and also publish a notice of the variation application in a local newspaper, the Edinburgh Gazette, a national newspaper, Lloyd’s List and in at least one appropriate fishing trade journal in circulation.
- 1.4.2 The Variation Regulations also require copies of the application to be served on the planning authority. Scottish Ministers directed that the same planning authorities be served a copy of the variation application as those who were served a copy of the original application, in this case, Aberdeenshire Council (“AC”), Moray Council (“MC”), The Highland Council (“THC”). These requirements have been met.
- 1.4.3 Moray East does not propose changes to the size or the maximum number of turbines. The only proposed changes concern increases in the turbine’s rated capacity which will not influence the environmental assessments including the appropriate assessment previously completed when the s.36 consents were granted in 2014. It is considered that the proposed changes are not likely to have a significant effect on a European offshore marine site or a European site. On this basis an appropriate assessment is not required under regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“2017 Regulations”).
- 1.4.4 For the reasons listed in paragraph 1.4.3, in accordance with The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”), the Company was not required to submit a new environmental impact assessment.
- 1.4.5 Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Application and the Offshore Consents Variation Application Report including: AC, MC, THC, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”), the Maritime and Coastguard Agency (“MCA”), Historic Environment Scotland (“HES”), and the Northern Lighthouse Board (“NLB”).
- 1.4.6 Scottish Ministers received no representations from members of the public in relation to this application, and none of the statutory consultees objected to the variation. Scottish Fishermen Federation and the Royal Society for the Protection of Birds (“RSPB”) maintained their objection from the original s.36 consent applications. Moreover, RSPB cited some concern around the decision not to carry out further Environmental Impact Assessment.

1.4.7 In order for the determination process to be fully open and transparent, MS-LOT recommend that this submission is published on the Marine Scotland Licensing page of the Scottish Government website, alongside the key documentation relating to the application.

1.5 Recommendation

Having taken into account the statutory and non-statutory consultation responses, and the objections received, and being satisfied that all legislative requirements have been met, MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary the wording of Annex 1 of the MacColl Offshore Windfarm section 36 consent, and the wording of Annex 2 of Telford, Stevenson and MacColl section 36 consents, in terms of section 36C of the Electricity Act 1989 (as amended) and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (as amended).

A draft decision letter is attached at Annex C.

1.6 List of Annexes

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| Copy List: | For Action | For Comment | For Information | | |
|---|------------|-------------|--------------------|------------------|-------------------|
| | | | Portfolio Interest | Consist Interest | General Awareness |
| Cabinet Secretary for Economy, Jobs and Fair Work | | | X | | |
| Cabinet Secretary for Rural Economy and Connectivity | | | X | | |
| Cabinet Secretary for Environment, Climate Change and Land Reform | | | X | | |
| <p>DG Economy</p> <p>Director of Marine Scotland, Marine Scotland</p> <p>Helena Gray, Marine Scotland</p> <p>Jim McKie, Marine Scotland</p> <p>Gayle Holland, Marine Scotland</p> <p>Mark Christie, Marine Scotland</p> <p>Nicola Bain, Marine Scotland</p> <p>Phil Gilmour, Marine Scotland</p> <p>Ian Davies, Marine Scotland</p> <p>Joanna Dingwall, SGLD</p> <p>Alan Williams, SGLD</p> <p>Fiona McClean, SGLD</p> <p>David Miller, Special Advisor</p> <p>Communications - Economy, Rural Economy, and Environment</p> | | | | | |

2 ANNEX A Legislative Requirements

2.1 Legislative Background

2.1.1 Section 36C of the Electricity Act 1989 (as amended) (“the Electricity Act”), has since 1st December 2013, enabled persons who are entitled to the benefit of a s.36 consent to apply to the appropriate authority (in Scotland this is the Scottish Ministers) for a variation of such s.36 consents. The procedure is set out in the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”). The Variation Regulations provide for a consistent and transparent process for making, publicising, and consideration of applications to vary s.36 consents.

2.1.2 The variation process is designed to apply to projects that have been consented under s.36, where the operator wishes to carry out development or operation or any other aspects of their proposals as set out in the s.36 consent in a way that is inconsistent with the existing s.36 consent. Scottish Government guidance on s.36 consent variations considers that the process is not intended as a way of authorising any change in a developer’s plans that would result in development that would be fundamentally different in terms of character, scale or environmental impact from what is authorised by the existing consent.

2.1.3 Under section 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 applicant’s reasons for seeking the variation, the variations proposed, the consultation process and any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.

2.2 Environmental Impact Assessment

2.2.1 The process to vary a s.36 consent is primarily governed by the Variation Regulations. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”) amend the Variation Regulations and provide that an EIA is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.

2.2.2 Officials consider that the proposed changes will likely have no significant effects on the environment and therefore no EIA report is required in support of the variation applications. This decision is based on the fact that no change is proposed to the maximum number of turbines nor to the physical characteristics of the turbines. All the significant effects resulting from the development were already included in the environmental statement (“ES”) submitted in support of the original application in 2014, and were fully considered prior to the s.36 consents being granted by Scottish Ministers to Moray East.

2.3 Appropriate Assessment

2.3.1 Regulation 28(1)(2) of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“2017 Regulations”) requires that “(1) *Before deciding to undertake, or give any consent, permission or other authorisation for, a*

Annex A – Legislative Requirements

relevant 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.

- (2) *In paragraph (1), a “relevant plan or project” is a plan or project which—*
- (a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation;*
 - (b) 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*
 - (c) is not directly connected with or necessary to the management of the site.”*

2.3.2 Officials considered that an appropriate assessment is not required under the 2017 regulations on the basis that the variations will not result in any likely significant effects on a European offshore marine site or a European site.

2.4 Marine Licences Variation

2.4.1 If the variations are granted, under section 72(3) of the Marine and Coastal Access Act 2009, the Scottish Ministers may vary the marine licences attached to these developments to ensure consistency between the s.36 consents and the marine licences for the MacColl, Telford and Stevenson Offshore Wind Farms.

2.5 Summary and conclusions

2.5.1 MS-LOT considers that the legislative requirements set out above have been complied with throughout the process of varying the s.36 consents.

3 ANNEX B Background, Consultation and Advice to Ministers

3.1 Background information

- 3.1.1 On the 19th March 2014, consent was granted under section 36 (“s.36”) of the Electricity Act 1989 (as amended) (“the Electricity Act”) by the Scottish Ministers to construct and operate offshore generating stations known as the Telford Offshore Wind Farm, the Stevenson Offshore Wind Farm and the MacColl Offshore Wind Farm (“the Developments”) offshore from the Highland and Moray coastline for a total installed capacity of 1,116 MW.
- 3.1.2 In addition to being granted s.36 consent, Moray East on behalf of the Telford Offshore Windfarm Limited, the Stevenson Offshore Windfarm Limited, and the MacColl Offshore Windfarm Limited (“the Companies”), has also been awarded a Contract for Difference (“CfD”) through a competitive process. The CfD includes certain milestones and commits the project to a specific development programme. Moray East is progressing with the project design work and due to technological advances in wind turbine design and efficiency a variation to the original consent is being sought.
- 3.1.3 On 18th December 2018, Moray East on behalf of the Companies, submitted a variation application to the Scottish Ministers under section 36C(1) of The Electricity Act 1989 (Variation of Section 36 Consents) in accordance with The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”), seeking the variation of Annex 1 of the MacColl Offshore Windfarm s.36 consent and Annex 2 (Condition 7) of all 3 consents.

3.2 Application – Supporting information

- 3.2.1 To support the variation application, the Company submitted an “Offshore Consents Variation Application Report” depicting the consented developments, need for a variation of the consents, and Environmental Impact Assessment (“EIA”) and Appropriate Assessment (“AA”) considerations.

3.3 Notification and Consultation

- 3.3.1 The Scottish Ministers directed that the same local planning authorities be served a copy of the variation as those who were served a copy of the original application. These were AC, MC, THC. Notifications were placed in accordance with the Variation Regulations with the advertisement by public notices in specified publications as set out in Regulation 4 of the Variation Regulations, in Lloyd’s List and in at least one appropriate fishing trade journal in circulation. Public notices were placed in the Press and Journal for two weeks and for one week each in the Edinburgh Gazette, the Scotsman, Lloyd’s List and the Fishing News.
- 3.3.2 The original s.36 consent decision letter was placed on the Marine Scotland website alongside the new supporting information in relation to the variation. MS-LOT consulted a wide range of relevant organisations on the application and

Offshore Consents variation Application Report including AC, MC, THC, SNH, SEPA, the MCA, HES, and the NLB.

3.3.3 Officials confirm that the requirements of the Variation Regulations have been met.

3.4 Summary of consultation exercise

3.4.1 Full details of the consultation undertaken as part of the process is set out below. Most of the consultees had no comments, or did not forward any comments in response to the consultation invitation. In case of no response, MS-LOT notified the participants that “nil returns” would be assumed. Statutory consultees and local authorities did not raise any objections, however, comments have been submitted. In section 3.5 and 3.6 a summary of comments and how the company has addressed these is presented. Two consultees maintained their past objections to the development, these responses and concerns raised by other consultees are summarised in section 3.7 including the actions undertaken by the company to resolve the issues. In section 3.8, responses by other consultees are depicted.

3.4.2 The full consultation responses are available to view on [the Moray East Scottish Government Webpage](#).

3.5 Summary of responses from statutory consultees

3.5.1 The statutory consultees and local authorities had no objections to the variation proposal.

3.5.2 **Historic Environment Scotland (“HES”)** confirmed that alteration to the existing scheme should not result in any significant additional impact to cultural heritage sites and confirmed they had no comments to make on the variation.

3.5.3 The **Maritime and Coastguard Agency (“MCA”)** stated that as the variation is for the turbine related capacity, with no changes to the physical parameters, they had no further comments to make.

3.5.4 The **Northern Lighthouse Board (“NLB”)** had no objections to the variation and confirmed that their original recommendations (from original application and s.36 consent remain unchanged).

3.5.5 **Scottish Environment Protection Agency (“SEPA”)** noted that no changes are proposed to the physical parameters of the turbines and had no objections to the application to vary the s.36 consent.

3.5.6 **Scottish Natural Heritage (“SNH”)** reviewed the additional information provided by the company (Offshore Consents Variation Application Report) and concluded that as there are no changes to the existing turbine parameters there are no additional issues requiring further assessment to those already assessed and approved as part of the original application process. They had no comments regarding the variation of the marine licences.

3.6 Summary of responses from local authorities

- 3.6.1 **Aberdeenshire Council (“AC”)** did not raise any objection to the variation and stated that they were satisfied that the proposal would retain the same physical parameters as previously approved and that the variation relates to allowing for increased output values from individual wind turbines at the MacColl Wind Farm. They noted that the total output from the entire development would remain within the overall 1,116 MW consented limit.
- 3.6.2 **The Highland Council (“THC”)** did not raise any objections to the variation. However, they underlined the need for the developer to consult with THC prior to the commencement of the work on the design, layout and lighting requirements of the projects, as well as on the TV and Radio reception mitigation plan. THC reiterated the issues which were raised at the time of the first consent application, and THC feels that these are still relevant.
- 3.6.3 Moray East noted that THC comments are in line with those provided as part of the Moray East 2012 applications (for the wind farms) and that the agreed process is the one explained in the original submission to ministers from 2014 (Annex C).
- 3.6.4 **Moray Council (“MC”)** did not raise any objections to the variation and stated that the variation proposal was discussed at their Planning and Regulatory Services Committee meeting in February 2018 and it was agreed they have no objections to the proposed variation.

3.7 Summary of responses from non-statutory consultees

- 3.7.1 **Highlands and Islands Airports Limited (“HIAL”)** had no objections to the change in rated capacity, however, as there are a number of options for the proposed heights of the turbines, HIAL asks that the developer would provide evidence that the instrument approach procedures would not be affected, and if affected the developer would bear the cost of mitigation.
- 3.7.2 Moray East agreed to inform HIAL once the wind farm layout has been finalised so that HIAL can identify any requirement for amendment to instrument approaches for Wick. Following the discussion, the final layout will be then included in the Development Specification and Layout Plan (“DSLPL”).
- 3.7.3 **The Ministry of Defence (“MoD”)** raised no objections provided no change would occur to condition 19 of the s.36 consent – *“Lighting and Marking Plan”* and condition 20 of the s.36 consent – *“Air Traffic Control Radar Mitigation”*. In response to the MoD concerns, the developer confirmed that they have no intention to vary conditions 19 and 20 of the s.36 consent. Please see Appendix C – Draft Decision Letter and Conditions.
- 3.7.4 **The North & East Coast Regional Inshore Fisheries Group (“NECRIFG”)**, stated that its remit does not include taking any responsibility for any type of notices, and that said notices would not be passed to inshore fishermen. Following the statement they ask to be unsubscribed from the consultation list.

- 3.7.5 **The Royal Society for the Protection of Birds (“RSPB”)**, Although encouraged by the potential reduction to the predicted impacts on protected seabird populations RSPB maintained their objections raised in 2014 in respect of the original s.36 consent. The RSPB feels that a change in technology to increase the rated capacity, could enable turbines to operate in lower and/or higher wind speeds, and consequentially increase the proportion of time each turbine operates over any given year, potentially increasing the collision risk for seabirds. The RSPB requested clarity on this point before dismissing the necessity of a new Environmental Impact Assessment.
- 3.7.6 Moray East underlined that there will not be changes to the physical parameters as set out in the design envelope contained in the ES provided with the initial application in 2014. Moreover, the changes as highlighted in the variation application report relate to the range of the turbine rated capacity. No other physical or non-physical parameters have been proposed for variation and no further assessment is required.
- 3.7.7 **The Scottish Fishermen’s Federation (“SFF”)**, had maintained past objections to the variation but submitted the following comments. They accepted the variation could potentially result in a 40% decrease in the number of the turbines built, however did raise some issues. The SFF believes that the developer has avoided addressing the following issues: quantitative impact assessment to the fisheries industry; underwater noise impacts; fishing prohibition; developers are trying to ensure that previous consent conditions on commercial fisheries working group fall. A solution proposed by the SFF suggests that the developer provides reassurance on the above matters, as well as consultation with the SFF on the Construction Programme (“CoP”), Vessel Management Plan (“VMP”), Cable Plans (“CaP”), Development Specification and Layout Plan (“DSL P”), Construction Method Statement (“CMS”), the Operation and Maintenance Programme (“OMP”), the Traffic and Transportation Plan (“TTP”) and the Decommissioning Plan (“DP”). Finally, the SFF underlined the need to agree on a Commercial Fisheries Mitigation Strategy (“CFMS”) in conjunction with the appointment of a Fisheries Liaison Officer (“FLO”) and the creation of a fully resourced alternative to the Commercial Fisheries Working Group to assure the future of the fishing industry in the Moray Firth.
- 3.7.8 All concerns raised by the SFF had already been included in the original s.36 consent via the following conditions: 18c – *“Cable Plan (“CaP”)*; 26 – *“Fisheries Liason Officer (“FLO”)*”; and 31 – *“Moray Firth Offshore Wind Developers Group – Commercial Fisheries Working Group (“MFOWDG – CFWG”) and Commercial Fisheries Mitigation Strategy (“CFMS”)*”. The wording of these conditions will not be changed as a result of the variation (please see Annex C). The company has been working closely with the fishing industry, by creating the draft for the CFMS and by including contractual obligations for compliance with consents and approved plans by contractors within all the Project's EPCI contracts. In addition, project procedures have been introduced which focus on specific project activities highlighting interfaces with consent conditions, such as the role of the FLO during construction. The FLO role will be discussed within regular toolbox talks with contractors. The company has offered to continue this cooperation and have meetings to reassure the SFF.

3.7.9 Moray East confirms that it has written to the SFF in response to concerns set out in their letter to seek a meeting and agree the next steps to agree the final form of the CFMS.

3.7.10 **Transport Scotland (“TS”)** did not raise any objections, however emphasised that in case of abnormal loads, a separate report would need to be submitted to assess the suitability of the route chosen.

3.7.11 A Traffic and Transportation Plan (“TTP”) will be produced as part of the s.36 consent condition requirements. The plan will provide details on the predicted transportation of any goods/materials associated with the construction of the offshore wind farm through the national road network. The plan will also include a mitigation strategy for the impact on the road based traffic and transportation as required through the condition.

3.8 Summary of other consultees responses

3.8.1 **Beatrice Offshore Windfarm Ltd (“BOWL”), Joint Radio Company NATS Safeguarding, Royal Yachting Association, Scottish Canoe Association, UK Chamber of Shipping, Whale & Dolphin Conservation,** did not raise any objections nor comments to the application.

3.8.2 **British Telecom (Radio Network Protection Team), Civil Aviation Authority, Cromarty Firth Port Authority, Crown Estate, Fisheries Management Scotland (previously Association of Salmon Fishery Boards), Highlands and Islands Enterprise, Marine Safety Forum, Marine Scotland Compliance, Buckie Fisheries Office, Marine Scotland Compliance, Fraserburgh Fisheries Office, Marine Scotland Compliance, Scrabster Fisheries Office, Marine Scotland Science, Moray Firth Partnership, Planning, Ports & Harbours, Scottish Enterprise, Scottish Fisherman's Organisation, Scottish Surfing Federation, Scottish Wildlife Trust, Sport Scotland, Surfers Against Sewage, Visit Scotland** did not respond to the consultation and therefore nil results have been assumed.

3.9 Consideration of the Application

3.9.1 The Scottish Ministers will exercise judgment on two distinct questions in order to determine whether any variation sought is “appropriate”:

- (a) whether the change proposed to the generating stations (or proposed generating stations) concerned is of a kind that it would be reasonable to authorise by means of the variation procedure (regardless of its merits in planning / energy policy terms);
- (b) if the answer to question (a) is positive, whether (from a planning / energy policy point of view) the variation should in fact be made, thereby authorising whatever development the making of the variation will permit to be carried out.

3.9.2 On the first question, 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.

3.9.3 As for the second question, due to technological advances in turbine design since granting of the s.36 consent in March 2014 and the present time. By increasing the turbine capacity this allows the Developments to use fewer, higher rated turbines in their plans and layout.

3.9.4 The variations proposed in the application do not fundamentally alter the character or scale of the Developments whilst allowing a potential reduction of environmental impacts. This is due to the proposed reduction in turbine number and the slower turbine rotation speeds that come with using higher capacity turbines.

3.10 Conclusion

3.10.1 You can be satisfied that the regulatory requirements regarding consultation and public engagement have been met and all responses received have been taken into consideration.

3.10.2 Where matters have arisen, Moray East has proactively attempted to resolve these issues. MS-LOT has been provided with evidence that Moray East has engaged with SFF to cooperate on the future plans, as well as providing a response to RSPB. Officials confirm that the information provided is satisfactory.

3.11 Recommendation

3.11.1 Having taken into account the statutory and non-statutory consultation responses, and the maintained objections received, and being satisfied that all legislative requirements have been met, MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary the wording of Annex 1 of the MacColl Offshore Windfarm section 36 consent, and the wording of Annex 2 of Telford, Stevenson and MacColl section 36 consents, in terms of section 36C of the Electricity Act 1989 (as amended) and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (as amended). A draft decision letter is attached at Annex C.

4 ANNEX C Draft Decision Notice and Proposed Variation

marinescotland

MS.MarineRenewables@gov.scot

Mr Dan Finch
Project Director
Moray Offshore Windfarm (East)Limited
1st Floor, 14/18 City Road
Cardiff
CF24 3DL



22nd March 2018

Dear Mr Finch,

APPLICATIONS UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENTS GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 19TH MARCH 2014 TO CONSTRUCT AND OPERATE THE TELFORD OFFSHORE WINDFARM, THE STEVENSON OFFSHORE WINDFARM , AND THE MACCOLL OFFSHORE WINDFARM IN THE OUTER MORAY FIRTH.

I refer to the variation application made by Moray Offshore Windfarm (East) Limited (on 18th December 2017), on behalf of the Telford Offshore Windfarm Limited, Stevenson Offshore Windfarm Limited, and MacColl Offshore Windfarm Limited for:

- a) variation under section 36C of the Electricity Act 1989 (as amended) to the consents granted under section 36 ("s.36") of the Electricity Act 1989 (as amended) ("the Electricity Act") on 19th March 2014 for construction and operation of the Telford Offshore Windfarm, Stevenson Offshore Windfarm, and MacColl Offshore Windfarm in the outer Moray Firth ("the relevant s.36 consents").

This letter contains the Scottish Ministers' decision to grant the application and to vary the relevant section 36 consents.

Nature of the Variation Sought

- Vary Annex 1 of the MacColl Offshore Windfarm s.36 consent to allow the maximum installed capacity to increase from 372 MW to a maximum of 500 MW. (The maximum total installed capacity of the developments will continue to be limited to 1116 MW)

- Vary Annex 2 (Condition 7) of the three s.36 consents for the developments, to allow an increase in the maximum rated turbine capacity from 8 MW to 10 MW.

Environmental Impacts

The Scottish Ministers are satisfied with the supporting information provided, that include details on why an Environmental Impact Assessment (“EIA”) and Appropriate Assessment (“AA”) were not required for the variation. The proposed variation of changing the rated capacity of the turbines will not result in any physical changes to the developments. Scottish Ministers have considered regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“2017 Regulations”), the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended) (“the Variation Regulations”), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”).

The Scottish Ministers consider that the proposed changes will likely have any no significant effects on the environment and therefore no new EIA Report is needed in support of this application. As there will be no likely significant effects from the proposed changes on any European offshore marine site or European protected sites an AA is not required.

Consultation

The Variation Regulations set out that an applicant must publish the application on a website, serve a copy of the variation application on any planning authority, and advertise by public notices in specified publications as set out in regulation 4 of the Variation Regulations. These requirements have been met. Public notices were placed in the Press and Journal for two weeks and for one week each in the Edinburgh Gazette, the Scotsman, Lloyd's List and the Fishing News.

Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the application and “Offshore Consents Variation Application Report” including; Scottish Natural Heritage, Scottish Environment Protection Agency, the Maritime and Coastguard Agency, Historic Environment Scotland, and the Northern Lighthouse Board. MS-LOT also consulted Aberdeenshire Council, Moray Council, and the Highland Council.

The Royal Society of the Protection of Birds maintained the objections made in respect of the application for the s.36 original consent in 2014, while the SFF underlined their past position and concerns, however concerning this variation request, only comments were filed and no new objection was made. Moray Offshore Windfarm (East) Limited has addressed these issues.

Public Representations

There were no representations made on the application to vary the s.36 consents from

members of the public.

The Scottish Ministers' Determination

The Scottish Ministers have considered the application documentation and all responses from consultees. Having consented the Telford Offshore Windfarm, Stevenson Offshore Windfarm, and MacColl Offshore Windfarm on 19th March 2014, and set out their reasons for doing so in the decision letter associated with those consents, and being satisfied that the variations proposed in this variation application do not fundamentally alter the character or scale of the Development, whilst allowing a potential reduction of environmental impacts of the development, the Scottish Ministers are supportive of the proposed variation, on the basis that such a variation will allow the Moray Offshore Windfarm (East) Limited the opportunity to utilize most up to date commercially available technology.

The Scottish Ministers consider that amendment to the existing s.36 consents, will provide opportunities to potentially reduce the environmental impacts of the project by permitting a reduced number of turbines to be constructed through the increase the maximum rated turbine capacity from 8 MW to 10 MW.

The Scottish Ministers consider that the amended s.36 consents are both reasonable and enforceable.

Accordingly, the Scottish Ministers **hereby vary the relevant s.36 consents as set out in the table below.**

| Annex or Condition | Amendment |
|---|--|
| In Annex 1 of MacColl Offshore Wind Farm s.36 Consent | <p>In the Description of the Development substitute the generating capacity allowed from 372 MW to 500MW:</p> <p>“The Development, located as shown on Figure 1 below, shall have a permitted generating capacity not exceeding 500 MW and shall comprise a wind-powered electricity generating station in the Outer Moray Firth, including:”</p> |

In Annex 2, Condition 7 of the Telford Offshore Wind Farm, Stevenson Offshore Wind Farm, and MacColl Offshore

Substitute full text with:

“The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES, the Additional Ornithological Information, the Section 36 Consents Variation Application Report for Telford, Stevenson and MacColl Offshore Wind Farms dated December 2017 and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.”

For illustrative purposes a consolidated version of the relevant s.36 consents (with variations shown in tracked changes for ease of reference) is provided.

Copies of this letter have been sent to the nearest onshore planning authorities; Aberdeenshire Council, Moray Council and The Highland Council. This letter has also been published on the MS-LOT website, [Submission to Ministers](#).

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.

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

Yours sincerely

Nicola Bain

Marine Renewables Section Leader

Marine Scotland Licensing Operations Team

For and on behalf of the Scottish Ministers

A member of the staff of the Scottish Government

MACCOLL OFFSHORE WIND FARM

COPY OF THE DECISION LETTER ISSUED ON 19th MARCH 2014, WITH TRACKED CHANGES SHOWING CONSOLIDATED VERSION OF THE LETTER – WITH VARIATIONS TO THE CONSENT HIGHLIGHTED

marinescotland

T: +44 (0)1224 295579 F: +44 (0)1224 295524
E: MS.MarineLicensing@Scotland.gsi.gov.uk

Mr Dan Finch
MORL Project Director
MacColl Offshore Windfarm Limited
1st Floor, 14/18 City Road
Cardiff
CF24 3DL



19th March 2014

Dear Mr Finch,

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE MACCOLL OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, IN THE OUTER MORAY FIRTH.

Defined Terms used in this letter and Annex 1 & 2 are contained in **Annex 3**.

The following applications have been made to the Scottish Ministers for:

- i. A consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) by Telford Offshore Windfarm Limited (Company Number 07386810) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Telford Offshore Wind Farm in the Outer Moray Firth;
- ii. A consent under section 36 of the Electricity Act by Stevenson Offshore Windfarm Limited (Company Number 07386838) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Stevenson Offshore Wind Farm in the Outer Moray Firth;
- iii. A consent under section 36 of the Electricity Act by MacColl Offshore Windfarm Limited (Company Number 07386891) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the

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construction and operation of MacColl Offshore Wind Farm in the Outer Moray Firth;

- iv. A marine licence to be considered under the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”) by Telford Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Telford Offshore Wind Farm;
- v. A marine licence to be considered under the 2009 Act by Stevenson Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Stevenson Offshore Wind Farm;
- vi. A marine licence to be considered under the 2009 Act by MacColl Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the MacColl Offshore Wind Farm; and
- vii. A marine licence to be considered under the Marine (Scotland) Act 2010 (“the 2010 Act”) and the 2009 Act by Moray Offshore Renewables Limited (“MORL”) to deposit any substance or object and to construct, alter or improve any works in relation to the Offshore Transmission Infrastructure (“OfTI”) within the Scottish marine area and Scottish offshore region.

THE APPLICATION

I refer to the application at iii above made by MacColl Offshore Windfarm Limited (“the Company”), received on 2nd August 2012 for consent under section 36 of the Electricity Act for the construction and operation of MacColl Offshore Wind Farm in the Outer Moray Firth with a maximum generating capacity of **500 megawatts** (“MW”) (“the Application”).

The generating capacity has been reduced during the consultation process due to concerns raised by consultees with respect to potential impacts to birds. This consent is now granted for a maximum generating capacity of up to **372 MW**.

In this letter, ‘the Development’ means the proposed MacColl Offshore Wind Farm electricity generating station as described in **Annex 1** of this letter.

In this letter, ‘the Proposal’ means the whole proposed MORL development, consisting of all three wind farms; Telford, Stevenson and MacColl, and the OfTI (applications i to vii above), for a maximum generating capacity of up to 1,116 MW.

STATUTORY AND REGULATORY FRAMEWORK

The Scotland Act 1998, The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 and The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved section 36 consent functions under the Electricity Act (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of section 36 consent functions as provided under the 1999 Order and then, one day later, re-transferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in the Scottish offshore region (12-200 nautical miles (“nm”) from the shore) with a generation capacity in excess of 50 MW requires consent under section 36 of the Electricity Act. Section 93 of the Energy Act 2004 extends the requirement for section 36 consent to the construction, extension or operation of a generating station situated in the Renewable Energy Zone (12 -200 nm). A consent under section 36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in or determined by or under the consent.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on licence holders or persons authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 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. Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

Paragraph 3 of Schedule 9 to the Electricity Act also provides that the Scottish Ministers must have regard to the desirability of preserving natural beauty etc. and the extent to which the person by whom the proposals were formulated has complied with their duty to mitigate the effects of the proposals. When exercising any relevant functions, a licence holder, a person authorised by an exemption to generate or supply electricity, and the Scottish Ministers, must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

Under section 36B of the Electricity Act, the Scottish Ministers may not grant a consent in relation to any particular offshore generating activities if they consider that

interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities, and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of or danger to navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this consent, the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already the subject of section 36 consent or activities for which it appears likely that such consents will be granted.

Under Schedule 8 to the Electricity Act and the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations"), notice of applications for section 36 consent must be published by the applicant in one or more local newspapers and in the Edinburgh Gazette to allow representations to be made to the application. Under Schedule 8 to the Electricity Act, the Scottish Ministers must serve notice of any application for consent upon any relevant planning authority.

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

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

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

The Scottish Ministers are satisfied that they have considered and applied all the necessary tests set out within the Electricity Act when assessing the Application. The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the Application for consent. The Minister and his officials have, from the date of the Application for

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consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company.

The approach taken has been endorsed by the Outer House of the Court of Session where Lord Doherty in *Trump International Golf Club Scotland Limited and The Trump Organization against The Scottish Ministers and Aberdeen Offshore Wind Farm Limited* [2014] CSOH 22 opines that the Electricity Act and regulations made under it contemplate and authorise consent being granted to persons who need not be licence holders or persons with the benefit of an exemption. In addition, the Company is, in any event, required to consider the protection of the environment under statutory regulations which are substantially similar to Schedule 9 to the Electricity Act, namely the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations"), whether or not the Company is among the categories of persons described in Schedule 9, paragraph 3(1).

Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009

The 2010 Act regulates the territorial sea adjacent to Scotland in terms of marine environment issues. Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act, licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

As this application lies outwith the Scottish Territorial Sea, i.e. beyond the 12 nm limit, it falls to the 2009 Act to regulate marine environmental issues in this area. Other than for certain specified matters, the 2009 Act executively devolved marine planning, marine licensing and nature conservation powers in the Scottish offshore region to the Scottish Ministers.

The 2009 Act transferred certain functions in issuing consents under section 36 of the Electricity Act from the Secretary of State to the Marine Management Organisation ("MMO"). The MMO does not exercise such functions in Scottish waters or in the Scottish part of the renewable energy zone, as that is where the Scottish Ministers perform such functions.

Where applications for both a marine licence under the 2009 Act and consent under section 36 of the Electricity Act are made then, in those cases where they are the determining authority, the Scottish Ministers may issue a note to the applicant stating that both applications will be subject to the same administrative procedure. Where that is the case then that will ensure that the two related applications may be considered at the same time.

Climate Change (Scotland) Act 2009

Under Part 2 of the 2010 Act, the Scottish Ministers must, when exercising any function that affects the Scottish marine area under the Climate Change (Scotland) Act 2009 (as amended), act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned. Under the Climate

Change (Scotland) Act 2009 (as amended), annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions

The Scottish Ministers are satisfied that in assessing the Application, they have acted in accordance with their general duties, and they have exercised their functions in compliance with the requirements of the Climate Change (Scotland) Act 2009 (as amended).

Environmental Impact Assessment Directive; The Electricity (Applications for Consent) Regulations 1990 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)

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

The proposal for the Development has been publicised, to include making the Environmental Statement ("ES") available to the public, in terms of the 2000 Regulations. The Scottish Ministers are satisfied that an ES has been produced and the applicable procedures regarding publicity and consultation all as laid down in the 1990 Regulations, the 2000 Regulations and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) have been followed.

The Scottish Ministers have, in compliance with the 2000 Regulations consulted with the Joint Nature Conservation Committee ("JNCC"), Scottish Natural Heritage ("SNH"), the Scottish Environment Protection Agency ("SEPA"), the Planning Authorities most local to the Development, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the Application in accordance with the regulatory requirements. The Scottish Ministers have taken into consideration the environmental information, including the ES and Additional Ornithology Information, and the representations received from the statutory consultative bodies and from all other persons.

The Scottish Ministers have, in compliance with the 2000 Regulations, obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 8th October 2012.

The Scottish Ministers have also consulted a wide range of relevant organisations, including colleagues within the Scottish Government on the Application, on the ES, and as a result of the issues raised, upon the required Additional Ornithology Information.

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

The Habitats Directive and the Wild Birds Directive

The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna in the Member States' European territory, including offshore areas such as the proposed site of the developments. It promotes the maintenance of biodiversity by

requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation (“SACs”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

The Wild Birds Directive applies to the conservation of all species of naturally occurring wild birds in the member states’ European territory, including offshore areas such as the proposed site of the developments and it applies to birds, their eggs, nests and habitats. Under Article 2, Member States are obliged to “take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level”. Article 3 further provides that “[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1”. Such measures are to include the creation of protected areas: article 3.2.

Article 4 of the Wild Birds Directive provides *inter alia* as follows:

- “1. The species mentioned in Annex I [of that Directive] shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. [...]
2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I [of that Directive], bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.
[...]
4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

Articles 6 & 7 of the Habitats Directive provide *inter alia* as follows:

- “6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
- 6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of

the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

- 6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.
7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

The Habitats Directive and the Wild Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (“the 1994 Regulations”) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (“the 2007 Regulations”). As the Development is to be sited in the Scottish offshore region, it is the 2007 Regulations which are, in the main, applicable in respect of this application for section 36 consent. The 1994 Regulations do, however, apply to those parts of the associated transmission infrastructure which lie inside the Scottish Territorial Sea (i.e. within 12 nm from the shore).

The 1994 and the 2007 Regulations (“the Habitats Regulations”) clearly implement the obligation in article 6(3) & (4) of the Habitats Directive, which by article 7 applies in place of the obligation found in the first sentence of article 4(4) of the Wild Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an appropriate assessment of the implications for the site in view of the site’s conservation objectives” (hereafter an “AA”). Such authority is also obliged to consult SNH and, for the purpose of regulation 48 of the 1994 Regulations, to have regard to any representations made by SNH. The nature of the decision may be taken for present purposes from the provision in regulation 25(4) & (5) of the 2007 Regulations:

- “(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).
- (5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given.”

Developments in or adjacent to, European protected sites, or in locations which have the potential to affect such sites, must undergo what is commonly referred to as a Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages which are set out as follows:

- Stage 1 - Where a project is not connected with or necessary to the site’s management and it is likely to have a significant effect thereon (either individually or in combination with other projects), then an AA is required.
- Stage 2 - In light of the AA of the project’s implications for the site in view of the site’s conservation objectives, the competent authority must ascertain to the requisite standard that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

The JNCC and SNH were of the opinion that the Proposal is likely to have a significant effect on the qualifying interests of certain Special Protected Areas (“SPAs”) and SAC sites, therefore an AA was required. The AA which has been undertaken has considered the combined effects of the Proposal and the Beatrice Offshore Wind Farm (by Beatrice Offshore Windfarm Limited (“BOWL”)). This is because the BOWL development, the application for which was submitted to the Scottish Ministers in April 2012, is proposed to be sited immediately adjacent to the Proposal.

The Scottish Ministers, as a competent authority, have complied with European Union (“EU”) obligations under the Habitats Directive and the Wild Birds Directive in relation to the Development. Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect site integrity of any of the identified European protected sites assessed to have connectivity with the Development, and have imposed conditions on the grant of this consent ensuring that this is the case. The test in the *Waddenzee* judgement formed the basis for the approach taken (CJEU Case C-127/02 [2004] ECR I-7405), and the Scottish Ministers are certain that the Development will not adversely affect site integrity of the sites “where no reasonable scientific doubt remains as to the absence of such effects”. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

APPLICABLE POLICIES AND GUIDANCE

Marine Area

The UK Marine Policy Statement 2011

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

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

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

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

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

Draft National Marine Plan

A draft National Marine Plan developed under the 2010 Act and the 2009 Act was subject to consultation which closed in November 2013. Marine Scotland Planning & Policy are now considering the responses and undertaking a consultation analysis exercise. When formally adopted, the Scottish Ministers must take authorisation and enforcement decisions which affect the marine environment in accordance with the Plan.

The draft National Marine Plan sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. It also contains specific policies relating to the mitigation of impacts on habitats and species; and in relation to treatment of cables.

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

Offshore Renewable Policy

Published in September 2010, Scotland's Offshore Wind Route Map sets out the opportunities, challenges and priority recommendations for action for the sector to realise Scotland's full potential for offshore wind. The refreshed version of this

document, published in January 2013, highlighted the progress that has been made but pointed to the continuing challenges that need to be overcome. The Scottish Ministers remain fully committed to realising Scotland's offshore wind potential and to capture the biggest sustainable economic growth opportunity for a generation.

This Development, will contribute significantly to Scotland's renewable energy targets via its connection to the National Grid. It will also provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Route Map and the National Renewables Infrastructure Plan.

Terrestrial Area

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application.

In addition to high level policy documents regarding the Scottish Government's policy on renewables (2020 Renewable Route Map for Scotland - Update (published 30th Oct 2012)), the Scottish Ministers have had regard to the following documents:

Scottish Planning Policy

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

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

National Planning Framework 2

Scotland's National Planning Framework 2 ("NPF2") sets out strategic development priorities to support the Scottish Government's central purpose, namely sustainable economic growth. Relevant paragraphs to the Application are paragraphs 65, 144, 145, 146, 147 and 216. NPF2 provides strong support for the development of renewable energy projects to meet ambitious targets to generate the equivalent of 100% of our

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gross annual electricity consumption from renewable sources and to establish Scotland as a leading location for the development of the renewable offshore wind sector.

National Planning Framework 3

Scotland's National Planning Framework 3 ("NPF3") is the national spatial plan for delivering the Government Economic Strategy. The Main Issues Report sets out the ambition for Scotland to be a low carbon country, and emphasises the role of planning in enabling development of renewable energy onshore and offshore. NPF3 includes a proposal for national development to support onshore infrastructure for offshore renewable energy, as well as wider electricity grid enhancements. NPF3 also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

The Main Issues Report was published for consultation in April 2013 and the Proposed NPF3 was laid in the Scottish parliament on 14th January 2014. This will be subject to sixty (60) day Parliamentary scrutiny ending on 22nd March 2014. The Scottish Government expect to publish the finalised NPF3 in June 2014.

Aberdeen City and Shire Structure Plan, August 2009

The purpose of the Aberdeen City and Shire Structure Plan ("the Structure Plan") is to set a clear direction for the future development of the North East. All parts of the Structure Plan fall within strategic growth areas, local growth and diversification areas or regeneration priority areas. Relevant objectives of the Structure Plan to the proposed Development or Proposal are:-

- To provide opportunities which encourage economic development and create new employment in a range of areas;
- To be a city region which takes the lead in reducing the amount of carbon dioxide released into the air, adapts to the effects of climate change and limits the amount of non-renewable resources it uses;
- To encourage population growth;
- To make sure new development maintains and improves the region's important built, natural and cultural assets; and
- To make sure that new development meets the needs of the whole community, both now and in the future, and makes the area a more attractive place for residents and businesses to move to.

The Scottish Ministers consider that the Development can draw support from the objectives regarding economic development and new employment opportunities, the challenges of climate change, and to some extent improving the quality of the environment.

The Development can also draw support from the Structure Plan objective for the region to increase the supply of energy from renewable resources. MORL estimates the Development could potentially save between 0.9 and 1.18 million tons of CO₂ per year when compared to coal fired electricity generation and, between 0.4 and 0.52 million tons of CO₂ when compared to gas fired electricity generation, from being released into the atmosphere.

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The Scottish Ministers consider that the Structure Plan is broadly supportive of the Development.

The Aberdeenshire Local Development Plan, June 2012

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

The Development is not located within the boundaries of Aberdeenshire Council. Only the export cable where it is situated onshore between Fraserburgh Beach and the National Grid connection at Peterhead power station is within the boundaries of Aberdeenshire Council. An application for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended) regarding the ancillary onshore infrastructure will be made to Aberdeenshire Council.

The Scottish Ministers consider that the ALDP is broadly supportive of the Development.

Aberdeen City and Shire Strategic Development Plan, proposed and published online in February 2013

The purpose of the Aberdeen City and Shire Strategic Development Plan (“ACSSDP”) is to set a clear direction for the future development of the North East – recognising the importance of improving links and connections, adding to the quality of life and providing the opportunities for high-quality sustainable growth, towards which the public and private sectors can work to deliver the vision for the region. The ACSSDP has been developed from the previous Aberdeen City and Shire Structure Plan (August 2009) and reflects the widespread support that plan received.

The northern end of the Energetica corridor, where the Proposal is due to connect to the National Grid, has the potential to be an important hub for the transmission of renewable energy, both within the UK and more widely as part of a European network.

The ACSSDP acknowledges that Peterhead Port has been identified in the National Renewables Infrastructure Plan as having the potential to transform into a port that could aid in the decommissioning of oil and gas as well as a port for offshore renewables.

The Scottish Ministers consider that the ACSSDP is broadly supportive of the Development.

Highland Renewable Energy Strategy and Planning Guidelines, May 2006

The Highland Renewable Energy Strategy and Planning Guidelines (“HRESPG”) supplement the existing policies of The Highland Council and aims to provide guidance and direction for Planning Authority decisions and developers plans.

The HRESPG notes that the optimal area for prospective offshore wind development is considered to be the Outer Moray Firth and that offshore wind is viewed as an important potential renewable energy technology for the Highland region. The key aspect of a renewables vision for the Highland region involves setting a balance between social, economic and environmental interests whilst utilising the high calibre energy resources available in the region. The vision also recognises the need for cleaner forms of energy within the existing energy network to help reduce CO₂ emissions.

Within the HRESPG, Strategic Topic E12 (within the Action Plan to implement objectives) states that The Highland Council will prioritise the few offshore wind areas for commercial development that have energy and grid potential with a medium term aim of 1 gigawatt (“GW”) capacity by 2020 and long term aim of 2 GW capacity by 2050 in the Moray Firth.

Although the Development is located outside 12 nm from the Highland coastline and thus out with the jurisdiction of The Highland Council, the Scottish Ministers consider that the HRESPG is broadly supportive of the Development which will contribute to the aims for offshore renewable wind development in the Highland region.

The Highland – wide Local Development Plan, April 2012

The purpose of the Highland – wide Local Development Plan (“HwLDP”) is to set out a balanced strategy to support the growth of all communities across the Highlands ensuring that development is directed to places with sufficient existing or planned infrastructure and facilities to support sustainable development. Relevant policies within this plan can be applied to the Development.

The Vision chapter of the HwLDP makes a commitment to ensuring that the development of renewable energy resources are managed effectively including guidance on where harnessing renewable sources is appropriate or not. There is also a commitment to provide new opportunities to encourage economic development and create new employment across the Highland area focusing on key sectors including renewable energy whilst at the same time improving the strategic infrastructure necessary to allow the economy to grow in the long term.

The Scottish Ministers consider that the HwLDP is broadly supportive of the Development.

The Moray Structure Plan, April 2007

The Moray Structure Plan (“MSP 2007”) sets out the strategic framework for the way in which Moray Council intend to develop the region over the next 15 – 20 years. The central pillar of the development strategy is to promote economic growth whilst safeguarding and enhancing the natural and built environment, and promoting overall

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sustainability. Promoting the sensitive development of renewable energy (Policy 2) has been identified as a key strategic issue which the MSP 2007 must address.

The Scottish Ministers consider the MSP 2007 is broadly supportive of the Development. The Development offers an opportunity for the region to contribute towards renewable energy targets, tackle the effects of climate change, increase energy security and contribute to the local and regional economies of Moray.

The Moray Local Plan, November 2008

The Moray Local Plan ("MLP") interprets the strategic direction provided by the MSP 2007 into detailed policies and proposals for use in the determining of planning policies. The MLP states that Moray has a wealth of natural resources including opportunities for renewable energy, particularly wind energy. The MLP provides a framework to optimise the benefits of these natural resources to the area.

The Scottish Ministers consider that the MLP is broadly supportive of the Development.

Moray Economic Strategy, October 2012

The recently published Moray Economic Strategy ("MES"), produced by the Moray Community Planning Partnership provides the long term economic diversification strategy for the area. The MES recognises that the engineering and fabrication base, which at the moment mainly services the oil, gas, and distillation industries, lends itself to development and diversification into the renewable energy supply chains. The MES recognises the potential offered by renewable energy as well as the opportunity for infrastructure in the Moray region to support the development of a world leading and diversified renewable energy sector. Buckie Harbour is specifically identified as having the potential to act as an operations and maintenance base to service the offshore wind farms proposed for the Moray Firth.

CONSULTATION

In accordance with the statutory requirements of the 1990 Regulations and the 2000 Regulations, notices of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Notice of the Application for section 36 consent is required to be served on any relevant Planning Authority under Schedule 8 to the Electricity Act.

Notifications were sent to Aberdeenshire Council, as the onshore Planning Authority where the OfTI export cable comes ashore at Fraserburgh Beach, as well as to Highland Council and Moray Council. Notifications were also sent to the JNCC, SNH and SEPA.

The formal consultation process that was undertaken by the Scottish Ministers consulted on the whole MORL development (the Proposal - which consists of applications i to vii and the ES). This was conducted in August, September and October 2012. The second consultation, which related to Additional Ornithology Information, was conducted in June and July 2013.

MORL was asked by the Scottish Ministers to re-work their Population Viability Analysis (“PVA”) models for key bird species connected with the East Caithness Cliffs (“ECC”) and North Caithness Cliffs (“NCC”) SPAs to present a common output. As this work was a re-working of information already contained within the ES, the Scottish Ministers did not request a Supplementary Environmental Information Statement (“SEIS”) from MORL. Additional Ornithology Information was submitted by MORL and as such, the Scottish Ministers notified all original consultees that this information was available if they wished to provide comment. The Scottish Ministers instructed MORL to place notices in the local press to notify the public that Additional Ornithology Information had been received, and further representation could be made. This procedure is in compliance with regulation 14A of the 2000 Regulations.

Representations and Objections

A total of fifteen (15) valid public representations were received by the Scottish Ministers during the course of the public consultation exercise. Of these, five (5) representations were in support; and ten (10) representations objected to the Development and the Proposal.

Of the five (5) representations in support of the Development and the Proposal, two (2) were received from Members of the Scottish Parliament (“MSPs”), one (1) was received from Highlands and Islands Enterprise, one (1) from Fraserburgh Harbour Commissioners, and one (1) from a member of the public.

These representations considered that the Development and the Proposal would help to reduce Scotland’s carbon footprint, allow Scotland to become a world leader in the (offshore) renewables sector and highlighted the potential for job creation and positive economic impact in the area, particularly through the opportunity for developing a local supply chain.

Of the ten (10) representations objecting to the Development and the Proposal, six (6) were received from members of the public, three (3) from Salmon Fishery Boards (Helmsdale District, Caithness District, Northern District) and one (1) was received from the Moray and Pentland Firth Salmon Protection Group (“MPFSPG”).

Objections to the Development and the Proposal cited concerns regarding: effects on marine life including birds and disturbance of marine mammals; effects on Atlantic salmon and sea trout; hazards to fishing; hazards to Defence Infrastructure Organisation (“DIO”) (Ministry of Defence) nautical and aeronautical activities in the area; visual and aural pollution; cumulative presence in the Moray Firth with the BOWL development; alternative technologies to wind power being available; and the failure to meet the requirements of the Aarhus convention.

Other concerns raised included issues such as the repowering of the wind farm (which involves the replacement of the turbines with new turbines), the future cost of electricity, the sustainability of offshore renewable energy developments, concerns over the safety of construction, the lack of jobs being created and no establishment of localised manufacturing.

During the consultation, objections were also received from the Association of Salmon Fishery Boards (“ASFB”), DIO, National Air Traffic Services (“NATS”), the Royal

Society for the Protection of Birds Scotland (“RSPB Scotland”) and the Moray Firth Sea Trout Project (“MFSTP”).

Following further discussions between the Company and the DIO and NATS, both consultees removed their objections subject to conditions being applied to any consent.

Objections from members of the public, the ASFB, RSPB Scotland and the MFSTP are being maintained. In light of these concerns, the Company has reduced their design envelope for the Development from 500 MW to 372 MW and the Scottish Ministers have applied conditions for monitoring and mitigation to this consent (**Annex 2**).

The Scottish Ministers have considered and had regard to all representations and objections received.

Material Considerations

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

The Scottish Ministers consider that no further information is required to determine the Application.

Public Local Inquiry

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

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

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

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The Scottish Ministers have received objections to the Development and the Proposal as outlined above, raising a number of issues. In summary, and in no particular order, the objections were related to the following issues:

- Effects on marine life, including birds;
- Effects on Atlantic salmon and sea trout;
- Hazards to fishing;
- Hazards to DIO nautical and aeronautical activities in the area;
- Visual and aural pollution;
- Cumulative presence in the Moray Firth with other wind farms;
- Alternative technologies to wind power are available;
- Failure to meet the requirements of the Aarhus Convention;
- Construction safety;
- Future cost of electricity and repowering; and
- New jobs and manufacturing created in Scotland.

Effects on marine life, including birds

Eight (8) public representations were received concerning effects on marine life. Through the consultation process the Scottish Ministers consulted Marine Scotland Science ("MSS"), the JNCC, SNH, SEPA, Whale and Dolphin Conservation ("WDC"), the MFSTP and the ASFB (see comments below on Atlantic salmon and sea trout regarding the ASFB). The Scottish Ministers are confident that through the consultation process the main effects on the marine environment have been identified. The Scottish Ministers recognise that there is an outstanding objection from RSPB Scotland due to the potential impacts on several seabird species (most notably great black-backed gull, herring gull, gannet, kittiwake and puffin). MSS, JNCC and SNH, however, are in agreement that predicted impacts are within acceptable levels for all species in terms of both the 2000 Regulations and the Habitats Regulations. An AA completed by MS-LOT, concluded that the Development or the Proposal will not adversely affect site integrity of any SAC or SPA considered to have connectivity with the Development or the Proposal. Conditions to mitigate and monitor the effects on marine life, including birds, form part of this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential effects of the Development on marine life, including birds, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Effects on Atlantic salmon and sea trout

Objections relating to potential effects on Atlantic salmon and sea trout were received through the public consultation exercise from three (3) Salmon Fishery Boards and the MPFSPG. These are in addition to the objections that are being maintained from the ASFB and the MFSTP on the ES consultation.

Uncertainty around the assessments of these species has been recognised by MORL in their ES submitted in support of the Application. The ASFB and MFSTP also recognise these uncertainties and believe they can only be overcome through strategic research. A strategy is being developed by MSS to address monitoring requirements for Atlantic salmon and sea trout at a national level. MORL has engaged with MS-LOT, MSS, the ASFB and the MFSTP to address this issue. A condition for the Company to

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engage at a local level (the Moray Firth) to the strategic salmon and trout monitoring strategy is contained within this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that sufficient steps, including the development of national strategic monitoring, have been taken to address the uncertainties regarding the potential effects of the Development on Atlantic salmon and sea trout, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to fishing

Two (2) representations were received from members of the public concerning hazards to fishing. Through the consultation process MS-LOT consulted MSS and the Scottish Fisherman's Federation ("SFF"). It was recognised at an early stage that fishing would be of key concern, and as a result MORL, in conjunction with neighbouring wind farm developers, have formed the Moray Firth Offshore Wind Developers Group – Commercial Fisheries Working Group ("MFOWDG-CFWG"). This group has representation for all commercial fishing interests in the area and provides a forum to discuss any issues and potential mitigation in relation to the wind farm developments in the Moray Firth. Conditions for the Company to continue in the MFOWDG-CFWG and mitigate hazards to navigation for the commercial fishing industry are contained in this consent (**Annex 2**). Notices to Mariners and notices placed through the Kingfisher Fortnightly Bulletins, is to be considered as a condition as part of the marine licences, applications for which are to be determined in due course.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to fishing, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to DIO nautical and aeronautical activities in the area

Two (2) representations were received from members of the public concerning hazards to DIO nautical and aeronautical activities in the area. The DIO was consulted on the application and the ES, and whilst the DIO initially objected, a mitigation solution was reached and the objection was withdrawn subject to a condition forming part of any consent. This condition has been included in this consent (**Annex 2**).

The Civil Aviation Authority ("CAA") was also consulted on the application and the ES, and raised no objection to the Development. Conditions are placed on this consent to ensure the 'as built' wind farm is marked and lit as per DIO and CAA requirements, and communicated to the UK Hydrographic Office ("UKHO") for aviation and maritime charting (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to DIO nautical and aeronautical activities, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Visual and aural pollution

Two (2) representations were received from members of the public concerning visual and aural pollution. No statutory consultee objected to the Development or the Proposal on matters regarding visual or aural pollution. The JNCC and SNH stated that

the Development, alone and in combination with the other developments in the Moray Firth, will form a prominent new feature on the skyline from the Caithness coast but not significant enough to merit an objection. The most affected area will be a core area consisting of a 39 km stretch from Noss Head in the North, to Dunbeath in the South. The JNCC and SNH recommended that landscape consultants continue to be involved post-consent to work with the project and engineering teams to iterate and finalise the wind farm design. No consultees raised any concerns regarding aural pollution. Positioning the Development more than 12 nm away from land, has helped mitigate the visual and aural pollution elements of the wind farm.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential visual and aural pollution the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Cumulative presence in the Moray Firth with other wind farms

Two (2) representations were received from members of the public concerning cumulative developments in the Moray Firth. The cumulative effects of concern were not specified within their representations, but for offshore wind farms, MS-LOT has conducted and assessed cumulative impacts on all receptors (including but not limited to; visual, marine life, birds, commercial fisheries and shipping and navigation) of the Development alone, and in combination with the Proposal and the BOWL development which lies adjacent. These assessments show that the Development in combination with the Proposal and the BOWL development will not give rise to any unacceptable impacts.

There will be limited cumulative impact of onshore and offshore wind farm development on settlements in the core area (Noss Head, Wick to Dunbeath). Cumulative effects will arise at Sarclet and Lybster from the Burn of Whilk wind farm (consented) together with the offshore proposals, and at Dunbeath, the operational Buolfruch wind farm will also give rise to cumulative effects. These cumulative effects are however not considered by the Scottish Ministers to be significant.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the cumulative presence of wind farm developments in the Moray Firth, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Alternative technologies to wind power are available

A member of the public expressed an opinion that there is no need for the Development as alternative technologies to wind power are available. The Scottish Government's commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. The Scottish Government's Electricity Generation Policy Statement states we believe that Scotland has the capability and the opportunity to generate a level of electricity from renewables by 2020 that would be the equivalent of 100% of Scotland's gross annual electricity consumption. The target will require the market to deliver an estimated 14-16 GW of installed capacity. It does not mean or require an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's desire to remain a net exporter of electricity. Due to the intermittent nature of much renewables generation, we will need a balanced energy mix to ensure security of supply.

The technology to be used in this Development is one of a number of commercial developments being proposed in the renewables mix to help achieve 2020 targets for renewable electricity generation.

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

Failure to meet the requirements of the Aarhus Convention

A concern was raised from a member of the public that, in August 2013, the United Nations Economic Commission for Europe (“UNECE”) declared that the UK Government's National Renewable Energy Action Plan (“NREAP”) violated the laws that transpose the Aarhus Convention into the UK legal framework. In particular, it was stated that the public had not been given full access to information on the impacts on people and the environment, nor had they been given decision-making powers over their approval.

The Aarhus Convention is an international convention which protects the rights of individuals in relation to environmental matters in gaining access to information, public participation in decision-making, and access to justice. The UK is a signatory to the Convention, as is the EU.

On the single accusation relating to the UK Government – public participation in the Renewables Roadmap – the UK Government was found to be in breach of the Convention, as it had not conducted a Strategic Environmental Assessment (“SEA”) or other public consultation. However, on the four accusations for which the Scottish Government had lead responsibility, including public participation in the preparation of plans, programmes and policies in Scotland, and public participation in relation to the section 36 consent of a wind farm proposal, the Scottish Government's position was upheld. The ruling confirmed that Scotland is in compliance with this international obligation.

The Scottish Ministers consider that proper assessments have been undertaken for the Development and the Proposal and proper opportunity was afforded for consultation with stakeholders and members of the public, in compliance with the Public Participation Directive, to reach a conclusion on the matter. The Scottish Ministers are committed to applying strict environmental assessment procedures. The Scottish Ministers, therefore, do not consider it appropriate to cause a public inquiry to be held to further investigate this.

Construction safety

One (1) representation was received from a member of the public concerning safe access and working conditions on offshore wind farm developments. MORL is committed to a formal safety assessment process where risks are identified at an early stage and are addressed as the Development or Proposal progresses. The Development or the Proposal also has to meet the requirements of the applicable safety legislation. Regarding Site access, a formal Navigational Risk Assessment (“NRA”) has been undertaken by MORL and extensive engagement between MORL and navigational stakeholders has been undertaken both prior to, and during the

application process. The Scottish Ministers have included a condition requiring the Company to submit plans on navigational safety (Navigational Safety Plan) for approval is included in this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding concerns over safety of construction, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Future cost of electricity and repowering

One (1) representation was received from a member of the public concerning the future cost of electricity and repowering of the wind farm. The Scottish Ministers are granting this section 36 consent for 25 years (see condition 1 at **Annex 2**) ensuring that repowering of the Development cannot occur without further assessment from the Company and consideration of that assessment by the Scottish Ministers. The cost of electricity, following the 25 year lifespan of the Development, would be difficult to predict at this time, therefore, the Company has indicated it will make a decision on whether to repower the Development based on a number of factors at an appropriate time in the future.

The Scottish Ministers, therefore, consider that they have sufficient information regarding future costs of electricity and repowering of the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

New jobs and manufacturing created in Scotland

One (1) representation was received from a member of the public concerning the creation of new jobs and turbine manufacturing in Scotland. The Socio-economic sections of the ES provided details on the benefits the Development will bring, and while no guarantees are made as to the exact number of jobs created, or what manufacturing facilities will be located in Scotland, the base case and high case has been estimated and assessed.

Further information on the economic assessment can be found under the Scottish Ministers' consideration of the Application.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the creation of new jobs and manufacturing in Scotland, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Summary

In addition to the issues raised by the objections, as discussed above, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers' consideration of the application. The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES, the Additional Ornithology Information and in the consultation

responses received from the closest onshore Planning Authorities, SEPA, the JNCC, SNH and other relevant bodies, together with all other objections and representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that-

1. they possess sufficient information upon which to determine the Application;
2. an inquiry into the issues raised by the objectors would not be likely to provide any further factual information to assist Ministers in determining the Application;
3. they have had regard to the various material considerations relevant to the Application, including issues raised by objections; and
4. the objectors have been afforded every opportunity to provide information and to make representations.

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

The Scottish Ministers are satisfied that an ES has been produced in accordance with the 2000 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES, Additional Ornithology Information, and the representations received from the consultative bodies, including JNCC, SNH, SEPA, Aberdeenshire Council, Highland Council, Moray Council and from all other persons.

The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the application for consent. The Scottish Ministers have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company. The Scottish Ministers have also, as per regulation 4(2) of the 2000 Regulations, taken into account all of the environmental information and are satisfied the Company has complied with their obligations under regulation 4(1) of those Regulations.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE

When considering an application for section 36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether a development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

With regards to the Development, the JNCC and SNH advised that the Development or the Proposal is likely to have a significant effect upon the qualifying interests of a number of sites, both SACs and SPAs. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA. On the basis of the AA, MS-LOT concluded that the Development or the Proposal would not adversely affect the integrity of any of the designated sites if the mitigation measures outlined were implemented by means of enforceable conditions attached to this consent (**Annex 2**). Under the Habitats Regulations the relevant statutory nature conservation bodies must be consulted. This has been carried out and the JNCC and SNH agreed with all the conclusions reached in the AA.

In the case of this Development the key decision for the Scottish Ministers has been the test laid down under article 6(3) of the Habitats Directive (and transposed by the Habitats Regulations) which applies to the effects of projects on both SACs and SPAs. The Scottish Ministers and their statutory nature conservation advisers are satisfied that the test in article 6(3) is met, and that the relevant provisions in the Habitats Directive, the Wild Birds Directive and the Habitats Regulations are being complied with. The precautionary principle, which is inherent in article 6 of the Habitats Directive and is evident from the approach taken in the AA, has been applied and complied with.

The Scottish Ministers are convinced that, by the attachment of conditions to the consent, the Development will not adversely affect site integrity of the European protected sites included within the AA. The Scottish Ministers are satisfied that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

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

For the reasons already set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also satisfied that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of any European protected site.

Impacts on fish and shellfish

The consultation responses from the ASFB and the MFSTP confirmed objections to the Development and the Proposal from each. Both organisations raised concerns regarding the uncertainty over the potential impacts on migratory fish. The key issues included the potential impacts associated with subsea noise during construction and operation, electromagnetic fields (“EMF”), degradation of the benthic environment, impact on prey species, unknown aggregation effects at the turbines and the fact that the transmission infrastructure cable landfall is close to the small river; Water of Philorth. Both organisations were concerned at the lack of biological information to make a wholly accurate assessment of possible impacts from the Development or the Proposal and both requested monitoring and mitigation measures be put in place. A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish which the Company will contribute to at a local level (the Moray Firth).

The JNCC and SNH identified SACs where the Development or the Proposal is likely to have a significant effect on the qualifying interests. This required MS-LOT, on behalf of the Scottish Ministers, to undertake an AA in view of the conservation objectives for each SAC. The AA concluded that subject to certain conditions, including appropriate mitigation and monitoring, the Development could be implemented without adversely affecting site integrity. Such conditions have been included by the Scottish Ministers within this consent (**Annex 2**).

The JNCC, SNH and MSS raised some concerns over the potential impacts on cod, herring and sandeels. The Company has already carried out pre-construction baseline surveys for cod and sandeels in the Moray Firth; using methodologies approved by MSS. Post consent surveys for cod and sandeel are conditioned in this consent (**Annex 2**). In the case of herring, this will be used to inform and determine appropriate mitigation to be used during sensitive spawning periods when piling activity is taking place.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on fish species and shellfish that would require consent to be withheld.

Impacts on birds

The JNCC, SNH and the RSPB Scotland expressed concerns about the potential impact of the Proposal, on its own, and in combination with the adjacent proposed BOWL development, on several bird species using the Moray Firth. The species of most concern were great black-backed gull, herring gull, gannet, puffin, razorbill and guillemot. Concerns over great black-backed gull and herring gull were mainly in relation to collision risk with the wind turbine generators (“WTGs”) during operation. Concerns over the auk species (puffin, razorbill and guillemot) were in relation to displacement from the wind farm site. Potential displacement effects are; the loss of feeding grounds and increased energy costs that could lead to breeding failure. Concerns over gannet related to both collision and displacement.

Of the species above, all except gannet are considered in the AA as gannet is not a qualifying feature of the nearby Troup, Pennan and Lion's Head SPA. However as part of the Gamrie and Pennan Coast Site of Special Scientific Interest ("SSSI"), the gannet colony at Troup Head is a notified feature and therefore required consideration. The JNCC and SNH advised that the colony at Troup Head has been increasing in numbers and concluded that the Development and the Proposal, in combination with the BOWL development would not have a significant adverse impact on the SSSI gannet population.

The AA requires to assess the implications of the Proposal (in combination with BOWL and including mitigation measures) for each European protected site in view of the site's conservation objectives. The JNCC and SNH have advised that in the case of bird species the relevant conservation objective in the present case is to ensure the long-term maintenance of the population of the relevant qualifying bird species as a viable component of the relevant SPA. This is because that objective not only encompasses direct impacts to the species, such as significant disturbance when birds are outwith the SPA, but it can also address indirect impacts, such as the degradation or loss of supporting habitats which are outwith the SPA but which help maintain the population of the species of the SPA in the long-term. Such an assessment requires the use of data and scientific methods to estimate two key values: first, to predict the impact of the Proposal (in combination with BOWL and including mitigation measures) on the population of the qualifying species; and second, to quantify the level of impact that such populations could sustain without there being an adverse effect on the population of the species as a viable component of the site (i.e. an acceptable level of population change or "impact threshold", whether caused by increased mortality or decreased productivity). In the case of offshore wind farms, such impacts on bird species principally occur by virtue of two key effects, namely (i) increased mortality by direct collision of birds with a WTG and/or (ii) decreased productivity by displacement of birds from their foraging area (full details are provided in the AA).

Concerns from the JNCC and SNH regarding impacts on great black-backed gull, herring gull, puffin, razorbill and guillemot led to the development of a common currency approach for fixing the first key value, the predicted impact of the MORL Proposal and BOWL. This approach involved MORL and BOWL, the JNCC, SNH, and MSS agreeing the parameters which were most appropriate when predicting the levels of impact that the MORL Proposal and BOWL development were likely to have on the bird populations. This common currency approach allowed numbers to be generated and agreed for collision and displacement effects for each species of concern giving a cumulative impact from the MORL Proposal and BOWL development.

The JNCC, SNH and MSS also advised on what the acceptable levels of population change were for each affected qualifying species. The methods used for determining this figure varied between the JNCC, SNH, and MSS. The JNCC and SNH used a calculation called Potential Biological Removal ("PBR") and MSS used both MORL and BOWL's PVA modelling work augmented by the Acceptable Biological Change ("ABC") tool, which was developed by MSS as a means of estimating acceptable levels of biological change.

Following the common currency exercise the JNCC, SNH and MSS agreed in October 2013 that there would be no adverse effect on site integrity at ECC SPA in respect of Herring Gull, Guillemot and Razorbill, and at NCC SPA in respect of Puffin. There was

however some disagreement over the acceptable levels of impact on 1.) great black-backed gull from ECC SPA, and 2.) puffin from ECC SPA.

1.) Great black-backed gull (collision risk) – The JNCC and SNH advised on the 29th October 2013 that for great black-backed gull from ECC SPA, using PBR, the acceptable level of impact was a cumulative mortality of no more than 6 birds a year. The impact thresholds which were predicted by MSS using the ABC tool were 20 if the MORL's model was used and 15 if the BOWL's model was used. Taking into account the fact that the JNCC and SNH had advised a figure of 6, MSS concluded that there would be no adverse effect on site integrity at ECC SPA for great black-backed gull, if cumulative collision risk mortality from MORL and BOWL is no greater than approximately 10 birds per annum. This precautionary figure was recommended in order to more closely align with the figure advised by the JNCC and SNH. It was later realised that the figure of 6 birds advised by the JNCC and SNH refers to adult breeding birds as this is the metric which their PBR method calculates. On the 22nd November 2013 agreement was reached between the JNCC, SNH and MSS that there would be no adverse effect on site integrity for great black-backed gull from ECC SPA based on the common currency which predicted an in-combination total impact of 3.95 collision mortalities for breeding adults or 14.82 collision mortalities including birds of all ages.

The AA, which concluded that there would be no adverse impact on the integrity of great black-backed gull from the ECC SPA, was completed using all advice received from the JNCC, SNH and MSS, in order to be suitably precautionary and recognise the uncertainty around assessment methodologies. The AA identified that the acceptable threshold for great black-backed gull was 11 birds of all ages. This is below the figure predicted by the ABC tool applied to both the MORL and BOWL PVA models and is well below the threshold advised by the JNCC and SNH of 6 adult breeding birds (MSS have estimated that 6 breeding birds equates to between 19 and 25 birds of all age classes depending on whether the MORL or BOWL population model is used). The AA was based on the MORL Proposal having 339 WTGs. Due to the confirmation from MORL on the reduction in the design envelope from a maximum of 339 WTGs to a maximum of 186 WTGs, it is not necessary to include conditions on this consent to ensure that the impacts on birds are within these acceptable levels.

2.) Puffin (displacement) - The JNCC and SNH advised that the calculation of displacement effects for the MORL Proposal and BOWL development is based on the footprint of the wind farms and the number of birds using the area. It takes no account of design (i.e. the density of WTGs) because there is no agreed method and limited available evidence to support any such approach. It predicts impacts solely in terms of displacement and its consequences for productivity. The JNCC and SNH noted that the assumption that each individual displaced equates to a pair failing to breed is at the most precautionary end of the range for this parameter, BOWL and MORL also consider this assumption to be highly precautionary. Assessments completed for offshore wind farms around England have focussed on SPAs for wintering / passage populations where the units have always been individuals not pairs, therefore this issue is somewhat novel.

The JNCC and SNH provided advice on appropriate impact thresholds based primarily on use of PBR. Original advice from 8th July and 29th October 2013 was based on a PBR calculation for the ECC SPA and NCC SPA individually. The October advice

provided a threshold of up to 7 breeding adults for ECC SPA using an f value of 0.3, and 341 breeding adults for NCC SPA using an f value of 0.5. This led the JNCC and SNH to conclude that an adverse effect on site integrity could not be ruled out for ECC with respect to puffin. The impact threshold identified by PBR is highly sensitive to the f value used in the equation and the JNCC and SNH advice on the choice of f was based on trend information at the colonies. The ECC SPA population was considered to be declining as the population at the time of designation was thought to be much higher than estimates from more recent counts, leading to the lower f value of 0.3 being used in the PBR model. Subsequent to this advice, uncertainties about the population sizes of the SPAs at time of designation, and the subsequent trends arose. To address this, the JNCC and SNH provided advice on the 17th January 2014 based on use of PBR applied to a combined population of both sites (ECC and NCC SPAs). This provided a combined threshold of 212-354 breeding adults based on using an f value range of 0.3-0.5, and a joint SPA population estimate of 7345 pairs. The JNCC and SNH advised that this joint assessment addresses the requirements under the Habitats Regulations.

MSS identified thresholds of acceptable change by applying the ABC tool to the BOWL and MORL PVA models.

The effects on puffin were estimated using the common currency approach. The estimate provided a metric of individuals displaced, which for the purposes of assessing against a PBR threshold resulted in an additional step of conversion to adult mortality.

The table below details the estimated puffin effects with identified thresholds:

| | Effects | PBR | PVA & ABC |
|------------------|---|--------------------------------------|---|
| ECC | 79 individuals displaced converted to 23 breeding adult mortalities | 7-13 breeding adult mortalities | Between ~ 50 pairs and 140 individuals failing to breed |
| NCC | 483 individuals displaced converted to 137 breeding adult mortalities | 205 - 341 breeding adult mortalities | Between ~ 850 pairs and > 2000 individuals failing to breed |
| ECC/NCC combined | 562 individuals displaced converted to 159 breeding adult mortalities | 212 - 354 breeding adult mortalities | Between ~ 900 pairs and > 2140 individuals failing to breed |

MSS advised that the manner in which displacement effects have been quantified is highly precautionary (full details of this are provided in the AA).

The population estimates underpinning the assessment methods used should be regarded as indicative. Although best available evidence has been used throughout, the inherent uncertainties are sufficiently great that the precise estimates of the effects and the acceptable thresholds should not be considered as absolute values. It is, however, reasonable to consider the calculated thresholds of acceptable change as being underestimates, and the estimated effects as being overestimates.

The JNCC and SNH advised that overall conclusions in relation to site integrity should be based upon the population estimate for both ECC SPA and NCC SPA combined. The JNCC and SNH concluded that there will be no adverse effect on site integrity from the BOWL and MORL worst case scenarios based on their application of PBR to set an impact threshold and conversion of the PBR value to an “equivalent” productivity value. MSS have used the PVA models to assess effects on productivity and taken account of the precautionary nature of the estimation of the magnitude of effects. MSS advised that the estimated effects are typically within the range of values used to estimate the acceptable thresholds. A reasonable interpretation of best available evidence led MSS to conclude no adverse effect on site integrity based on the number of birds displaced and the thresholds described above.

The AA completed for puffin concluded, having assessed all the evidence provided and taking into account the reduction in design envelopes, that whilst it is clear that puffin as a SPA qualifying interest appears the most sensitive to the displacement effect, the Proposal and the BOWL development will not adversely affect site integrity of ECC SPA or NCC SPA.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on birds that would require consent to be withheld.

Impacts on marine mammals

The Scottish Ministers note that techniques used in the construction of most offshore renewable energy installations have the potential to impact on marine mammals.

The JNCC, SNH and WDC advised that a key concern of theirs was the potential impacts from pile driving during construction. The JNCC and SNH noted that for bottlenose dolphins and harbour seals where population level effects could be of concern and population modelling was presented in the MORL ES, that the JNCC and SNH were satisfied that this used the best scientific approach currently available. The models are precautionary and predict some impact on the populations during construction, but no long term effects. The JNCC and SNH advised that it may be possible to further reduce disturbance impacts through consideration of construction programming and the adoption of mitigation, both of which, have been incorporated into the conditions of this consent (**Annex 2**).

The JNCC and SNH advice provided on the 8th July 2013 concluded that the Development or the Proposal and the BOWL development will not lead to any adverse effect on site integrity of the Moray Firth SAC and the Dornoch Firth and Morrich More SAC and did not object subject to conditions being attached to any section 36 consent (see **Annex 2**). An AA completed by MS-LOT, on behalf of the Scottish Ministers, concluded that the Development or the Proposal and the BOWL development will not adversely affect site integrity of these SACs.

For minke whale, MSS advised that the management area for minke whale is British and Irish waters. This area is estimated to contain 23,163 animals, with 95% confidence intervals ranging from 13,772 to 38,958. MSS advised that disturbance from piling will not affect the favourable conservation status of the minke whale population. However, disturbance of individual animals is likely to occur, both inside

and outside of Scottish Territorial Waters, from the Development, the Proposal and BOWL, necessitating the requirement for a European Protected Species (“EPS”) licence.

For harbour porpoise, MSS advised that significant disturbance is predicted to occur at ranges of around 10-15 km. Evidence from studies of harbour porpoise responses to seismic surveys in the Moray Firth suggests that animals that were displaced by noise effects within 10 km returned within a few hours and that animals reduced their response time over the duration of the survey. MSS advised that the Development alone, and in combination with the rest of the Proposal and BOWL, will not have a significant adverse effect on the North Sea, or Moray Firth harbour porpoise population.

WDC raised concerns over impacts on minke whale and harbour porpoise as well as corkscrew injuries to harbour seals. Impacts to prey species, particularly sandeels and salmonids was also raised. MSS have advised that there have been a small number of reports of corkscrew seals injuries in the inner Moray Firth, but the area is not considered at this time to be a hotspot for these injuries. Discussions are on-going between MSS and SNH over the cause and effect of corkscrew injuries to seals but there is not sufficient evidence at this time to attribute this type of injury to one particular source. A potential source may be a ducted propeller, such as a Kort nozzle or some types of Azimuth thrusters. Such systems are common to a wide range of ships including tugs, self-propelled barges and rigs, various types of offshore support vessels and research boats.

SNH and the JNCC advised that it has not been established whether there is a link between the use of ducted propellers and the corkscrew injuries which have been recorded in seal species over the last couple of years. Research in this regard has been commissioned by Marine Scotland and SNH and is currently being undertaken by the Sea Mammal Research Unit (“SMRU”). The JNCC and SNH will be consulted on the Vessel Management Plan (“VMP”) which is a condition of this consent, as will such other advisors and organisations as may be required at the discretion of the Scottish Ministers. This plan will detail the mitigation measures proposed by the Company to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with the Development. Scottish Ministers are satisfied that the mitigation and monitoring included in the conditions attached to this consent (**Annex 2**) will suffice.

WDC had concerns over the cumulative impacts on marine mammals from both the proposed Moray Firth developments and the proposed Forth and Tay wind farm developments. Advice received from MSS relating to the impact on the Coastal East Scotland bottlenose dolphin population from the construction of Nigg, Ardersier and Invergordon ports together with the construction impacts from the Moray Firth wind farms and Forth and Tay wind farms concluded that cumulative impacts were not significant to the population, given that they are statistically indistinguishable from the population estimate.

The Company will also be required to apply for a licence allowing for the disturbance of EPS at a later date.

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The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on marine mammals that would require consent to be withheld.

Impacts on benthic ecology and habitat interests

The design envelope applied for includes the option for gravity bases to be used. The Scottish Ministers have agreed with the Company that if gravity bases are to be used across all WTG locations, this would be subject to a further marine licence application and environmental impact assessment to consider the required dredging and disposal of spoils. The JNCC and SNH have welcomed this approach and have advised that with the absence of dredge spoil disposal there will be no adverse effect on site integrity on the Moray Firth SAC habitat interests.

The JNCC and SNH advised that no Annex 1 habitats had been identified in the survey work for the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on benthic ecology and habitat interests that would require consent to be withheld.

Impacts on commercial fishing activity

Regarding commercial fishing activity in the Moray Firth, the SFF raised concerns on restricted access or total loss of traditional fishing grounds, EMF and barriers caused by cabling to towing gear. The SFF stated that within the design envelope fewer WTGs would be favourable. The applications as submitted for the Proposal comprised up to 339 WTGs, however during the determination process, MORL has reduced this number down to no more than 186 WTGs. As suggested by MSS and the SFF, the MFOWDG-CFWG has been established to facilitate on-going dialogue throughout all phases of the Development. The MFOWDG-CFWG met for the first time on the 18th April 2013. Mitigation for the construction, operational and decommissioning impacts of this Development, in combination with the Proposal and adjacent proposed BOWL development, was identified as the key aims. Participation in this group and the creation of a commercial fisheries mitigation strategy, approved by the Scottish Ministers, are reflected in conditions of this consent (**Annex 2**). The reduction in the number of WTGs and the condition in this consent requiring over trawl surveys will potentially mitigate the impacts of the Proposal on commercial fisheries.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on commercial fishing activity that would require consent to be withheld.

Impacts on shipping and navigational safety

The Chamber of Shipping ("CoS") acknowledged that the proposed wind farm site is in an area with relatively low levels of commercial shipping activity and that the main concentrations of traffic are on the Pentland Firth route, some 4-5 nm from the site

boundary. The CoS agreed that the impacts on commercial shipping are likely to be relatively low, however raised some concerns over the cumulative impacts of the MORL and BOWL developments on navigation. The CoS advised that MORL should work closely with BOWL to ensure as much uniformity of the layout as possible between the wind farms. Any projected deviation of the shipping route to northern Norway and Russia may require minor adjustment taking into account the cumulative effect with BOWL. If MORL propose any future applications for operational safety zones the CoS would like to remain informed. Any safety zones will need to be applied for through the Department of Energy and Climate Change (“DECC”).

The Northern Lighthouse Board (“NLB”) was unable to specify final marking and lighting requirements owing to a lack of clarity in the application with regard to the number and layout of WTGs, sub-stations and meteorological masts. Lighting and marking requirements will be given by the NLB during the finalisation of the Development Specification and Layout Plan (“DSLPL”) once submitted by the Company. Submission of a DSLPL is a condition of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on shipping and navigational safety that would require consent to be withheld.

Impacts on aviation

NATS objected because of potential impacts on the Allanshill radar and associated air traffic operations. Following discussions between MORL and NATS, an agreement has been entered into between the two parties for the design and implementation of an identified and defined mitigation solution in relation to the Development and the Proposal. Consequently, NATS have withdrawn their objection.

The DIO initially objected to the Proposal citing concerns with the Air Traffic Control radar at RAF Lossiemouth and the Air Defence Radar at RAF Buchan. Following discussions with the DIO, and further consideration of the mitigation proposals submitted by MORL, the DIO confirmed that it was prepared to withdraw their objection subject to conditions being attached to any consent (**Annex 2**).

The CAA highlighted relevant Policy Statements and guidance relating to standards for offshore helicopter landing areas, lighting of offshore WTGs and the failure of aviation warning lighting on WTGs which the Company should adhere to. The CAA stated that there was a requirement to notify the UKHO of final positions and maximum heights of the WTGs for aviation and maritime charting. A condition capturing this requirement is reflected in this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on aviation that would require consent to be withheld.

Impacts on recreation and tourism

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Some concerns have been raised through the consultation regarding the Proposal's potential impact upon tourism, particularly relating to the dolphin watching in the Moray Firth, by WDC. Although there is likely to be some short term displacement of marine mammals during construction, this is not considered to be significant in the longer term and so will not significantly reduce the opportunities for marine mammal watching.

Concerns were also raised by Surfers Against Sewage ("SAS") that the Proposal could impact surfing locations around the Moray coast. The Scottish Ministers are satisfied that the wave climate will not be altered by the Development or the Proposal to such an extent as to impact on surfing.

No concerns were raised by either the Scottish Canoe Association ("SCA") or the Royal Yachting Association Scotland ("RYA Scotland"). However, the RYA Scotland did ask that a condition be attached to all marine licences to inform the 'Clyde Cruising Club Sailing directions and Anchorages' of the location of the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on recreation and tourism that would require consent to be withheld.

Visual impacts of the Development

SNH, the Scottish Ministers statutory advisors on visual impacts and designated landscape features, was consulted and did not object to the proposed Development or Proposal on the grounds of visual impacts. SNH and the JNCC advised that there would be a major change to Caithness' coastal character and scenery in the core area of Noss Head (Wick) to Dunbeath and that the Development or Proposal together with BOWL will form a prominent new feature (some 19 km in length) on the skyline of the open sea. These landscape and visual impacts are primarily caused by BOWL rather than the Development, due to its closer proximity to shore. The JNCC and SNH advised that the visual impact of the MORL Proposal and BOWL development on the Moray and Aberdeenshire coast would be negligible. The Highland Council has asked to be consulted on the final layout of the farm, but have accepted that seabed conditions and navigational safety will be the primary drivers in the design of the Development. As part of this consent, a condition has been placed on the Company to provide final visualisations to the Highland Council and all Consultees with an interest in visual amenity (**Annex 2**).

No Consultees, Statutory or otherwise, have objected to the development on landscape and visual impacts. This was primarily due to the distance the development is from the shore (over 12 nm).

The Scottish Ministers recognise that the MORL Proposal and BOWL development will be a prominent new feature on the seascape from the Caithness coastline.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's visual impacts that would require consent to be withheld.

Impact on telecommunications

The Highland Council raised a concern that the Development or the Proposal could cause an impact upon television reception in the area around Helmsdale which may look to Moray/Aberdeenshire for reception rather than to a point in Highland. The Scottish Ministers have therefore included a condition within the consent which sets out the mitigation measures that would be taken to investigate and rectify any complaint made (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the conditions proposed, there are no outstanding concerns in relation to the Development's impact on recreation and tourism that would require consent to be withheld.

The efficiency of wind energy

No form of electricity generation is 100% efficient and wind farms, in comparison with other generators, are relatively efficient. Less than half the energy of the fuel going into a conventional thermal power station is turned into useful electricity – a lot of it ends up as ash, nuclear waste or air pollution harmful to health as well as carbon dioxide. Also, the fuel for a wind farm does not need to be mined, refined or shipped and transported from foreign countries. The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the efficiency of wind energy that would require consent to be withheld.

The development of renewable energy

The Scottish Ministers must ensure that the development of the offshore wind sector is achieved in a sustainable manner in the seas around Scotland. This Development forms part of the Zone 1, of Round 3 offshore wind farm sites to be consented in Scotland and as such will raise confidence within the offshore wind industry that Scotland is delivering on its commitment to maximise offshore wind potential. This Development will also benefit the national and local supply chains. The Scottish Ministers aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland's manufacturing capacity, to develop new indigenous industries, and to provide significant export opportunities.

This 372 MW Development has the potential to annually generate renewable electricity equivalent to the demand from approximately 236,895 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020. Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of renewables generation, a balanced electricity mix is required to support the security of supply requirements. This does not

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mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the development of renewable energy that would require consent to be withheld.

Proposed location of the Development

The Scottish Ministers consider that MORL has carefully considered the location of the Development and selected the Outer Moray Firth due to its many advantages. The suitability of the site was further affirmed in May 2010 with the Scottish Government's publication of the SEA in the Draft Plan for Offshore Wind Energy in Scotland, which confirmed that all ten Scottish Territorial Waters 2009 lease round sites could be developed between 2010 and 2020 if "appropriate mitigation is implemented to avoid, minimise and offset significant environmental impacts".

The Marine Renewable Energy and the Natural Heritage: an Overview and Policy Statement (SNH, 2004) and Matching Renewable Electricity Generation and Demand (Scottish Government, 2006) indicated the Moray Firth Area was favoured for development of large scale offshore wind farms. The Company identified the wind farm site as a suitable site for offshore wind farm development; there are a number of reasons for the site being suitable:

- its distance from shore (over 12 nm) reduces visual impact;
- its excellent wind resource;
- its water depths and ground conditions suitable for jacket foundation technology;
- its good access, suitable ports and supply chain for construction and operations;
- it being situated outside any conservation-designated area;
- it being situated outwith any helicopter safety zones around oil platforms;
- it being situated outwith shipping access routes to oil platforms; and
- its access to the strong local skills base required to deliver energy from wind offshore.

MORL have chosen to develop the MORL Eastern Development Area ("EDA") of Zone 1 first because the MORL Western Development Area ("WDA") was assessed to have more significant spatial constraints to wind farm development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies and members of the public, there are no outstanding concerns with regards to the proposed location of the Development that would require consent to be withheld.

Cumulative impacts of the Development

The close proximity of the Development (as part of the Proposal) to the proposed adjacent BOWL wind farm has meant that cumulative impacts have raised significant concerns. The issue of potential cumulative impact on landscape and visual amenity was considered by the JNCC and SNH with no significant concerns raised regarding cumulative visual impact with other onshore and offshore developments.

Cumulative impacts on marine wildlife were raised by several organisations including the JNCC, SNH, RSPB Scotland, WDC, the ASFB and the MFSTP. Cumulative impacts on benthic ecology, birds, marine mammals and fish interests have been fully considered in this consent and conditions have been put in place to minimise the impacts and ensure that residual impacts are within acceptable limits (**Annex 2**).

The impact upon birds is a matter of particular significance in assessing the applications. The cumulative impacts on certain bird species has led to the original design envelope being reduced to ensure that any impacts are within calculated acceptable levels. The cumulative impacts on any protected species or habitats have also been considered in the AA, undertaken by MS-LOT, on behalf of the Scottish Ministers.

Cumulative impacts on commercial fisheries were also raised by the SFF, however a working group (MFOWDG-CFWG) has been established in order to discuss and address any issues. A condition to ensure the Company continues its membership of the working group and its commitment to any mitigation strategy forms part of this consent (**Annex 2**). Concerns were also raised on the cumulative impacts on navigation by the CoS. Conditions ensuring that consultation with the CoS is undertaken prior to commencement of the Development forms part of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the cumulative impact of this Development with other developments in the Moray Firth that would require consent to be withheld.

Economic Benefits

MORL estimate the total gross cost of constructing the Proposal and the OfTI to be £4.4 billion excluding Operational Expenditure ("OPEX"). In Scotland the expenditure made by the Proposal and OfTI could generate Gross Value Added ("GVA") of between £590 million and £1,510 million over its lifetime (including decommissioning phase). Between £310 million and £910 million of this total GVA could be in Moray, Highland, Aberdeen City and Aberdeenshire ("the Study Area").

MORL estimate that the Proposal could support between 8,300 and 17,800 job-years' worth of employment in Scotland across the whole lifetime of the project, of which between 4,300 and 11,200 could be in the Study Area. The construction of the OfTI could create an additional 1,000 - 1,500 job-years' worth of employment in Scotland, and 600 - 800 job-years' worth of employment in the Study Area.

MORL estimate that the Proposal and the OfTI could support between 990 and 2,410 jobs in Scotland and between 350 and 1,400 jobs in the Study Area during the peak of the construction phase. During the operations phase it is estimated this could fall to 210 - 330 jobs in Scotland and 140 - 220 jobs in the Study Area. During the decommissioning phase it is estimated there could be 100 - 460 jobs in Scotland and 40 - 260 jobs in the Study Area.

The above estimates are based on two scenarios:

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1. Base Case – the total value of contracts that have been delivered, or are expected to be delivered, from within each geography, assuming the current supply chain; and
2. High Case – the total value of contracts that could be secured by firms based in Scotland (and the Study Area) with a stronger supply chain. This assumes that where Scottish-based firms are not currently in a position to tender for work, (but there is good reason to expect them to be in the future), they are successful.

MORL anticipates that there could be a spend of 15% of the overall expenditure for the Proposal in Scotland under the Base Case. Under the High Case, there could be a total budget spend of 40% in Scotland.

It should be recognised however that at this stage, many development and procurement decisions are still to be made. Changes in the anticipated expenditure or procurement patterns from those anticipated during the assessment will change the associated estimates of employment and GVA. The effect on employment through the supply chain depends critically on the design, construction and operation decisions that are yet to be taken, and on the extent to which Scottish companies are able to secure contracts. These figures also assume that the full Proposal of 1,116 MW is developed.

The Scottish Ministers have taken account of the economic information provided by MORL and consider that there are no reasons in relation to this that would require consent to be withheld.

Summary

The Scottish Ministers consider the following as principal issues material to the merits of the section 36 consent application made under the Electricity Act:

- MORL has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- MORL's ES and the consultation process has identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES and Additional Ornithology Information, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004 such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Secretary of State before the Commencement of the Development (**Annex 2**);
- The Scottish Ministers have considered material details of how the Proposal can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;

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- The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the Additional Ornithology Information, all relevant responses from consultees and the fifteen (15) public representations received; and
- On the basis of the AA, the Scottish Ministers have ascertained to the appropriate level of scientific certainty that the Proposal (in combination with the BOWL development, and in light of mitigating measures and conditions proposed) will not adversely affect site integrity of any European protected sites, in view of such sites' conservation objectives.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act for the construction and operation of the Development with a permitted capacity of up to **372 MW** (as described in **Annex 1**).

Deemed planning for the onshore ancillary development was not applied for by the Company.

In accordance with the 2000 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development.

In reaching their decision, the Scottish Ministers have had regard to all, representations and relevant material considerations, and, subject to the conditions included in this consent (**Annex 2**), are satisfied that it is appropriate for the Company to construct and operate the generating station in the manner as set out in the Application and as described in **Annex 1**.

Copies of this letter and the consent have been sent to Aberdeenshire Council, Highland Council and Moray Council. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found at Chapter 58 of the Court of Session rules on the website of the Scottish Courts –

<http://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

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

Yours sincerely

JAMES MCKIE

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

19th March 2014

Annex 1

DESCRIPTION OF THE DEVELOPMENT

The Development, located as shown on Figure 1 below, shall have a permitted generating capacity not exceeding ~~372 MW~~500 MW and shall comprise a wind-powered electricity generating station in the Outer Moray Firth, including:

1. not more than 62 three-bladed horizontal axis wind turbine generators each with:
 - a. a maximum blade tip height of 204 metres;
 - b. a rotor diameter of between 150 and 172 metres;
 - c. a minimum crosswind spacing of 1,050 metres; and
 - d. a minimum downwind spacing of 1,200 metres;
2. all foundations, substructures, fixtures, fittings, fixings, and protections;
3. inter array cabling and cables up to and onto the offshore substation platforms; and
4. transition pieces including access ladders / fences and landing platforms,

all as specified in the Application and by the conditions imposed by the Scottish Ministers. References to “the Development” in this consent shall be construed accordingly.

MACCOLL OFFSHORE WIND FARM

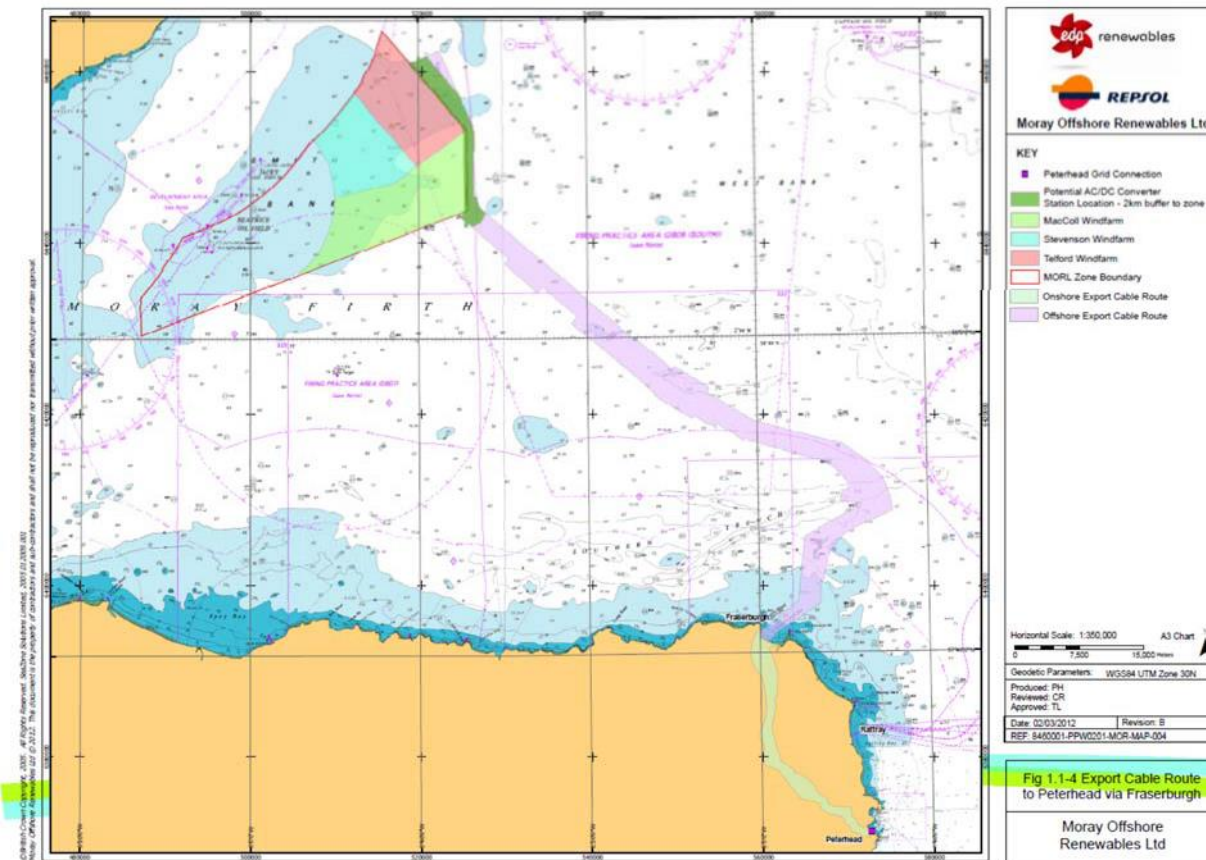


Figure 1. Development Location – see KEY

Annex 2

CONDITIONS OF THE SECTION 36 CONSENT

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

1. The consent is for a period from the date this consent is granted until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, the Planning Authority, JNCC and SNH no later than one calendar month after the Final Commissioning of the Development. Where the Scottish Ministers deem the Development to be complete on a date prior to the date when all wind turbine generators forming the Development have supplied electricity on a commercial basis to the National Grid then the Scottish Ministers will provide written confirmation of the date of the Final Commissioning of the Development to the Company, the Planning Authority, JNCC and SNH no later than one calendar month after the date on which the Scottish Ministers deem the Development to be complete.

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

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

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

3. Where the Secretary of State has, following consultation with the Scottish Ministers, given notice requiring the Company to submit to the Secretary of State a Decommissioning Programme, pursuant to section 105(2) and (5) of the Energy Act 2004, then construction may not begin on the site of the Development until after the Company has submitted to the Secretary of State a Decommissioning Programme in compliance with that notice.

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

4. The Company is not permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant (with or without conditions) or refuse such authorisation as they, at their own discretion, see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

5. In the event that for a continuous period of 12 months or more any WTG installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with any advisors as required at the discretion of the Scottish Ministers, any such WTG and all associated foundations and ancillary equipment may be deemed by the Scottish Ministers to cease to be required. If so deemed, the WTG and all its associated foundations and ancillary equipment must be dismantled and removed from the Site by the Company, following the procedures laid out within the Company's Decommissioning Programme, within the period of 24 months from the date of the deeming decision by the Scottish Ministers and the Site must be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers after consultation with any such advisors on decommissioning as may be required at the discretion of the Scottish Ministers.

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

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

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

7. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES, the Additional Ornithological Information, [the Section 36 Consents Variation Application Report for Telford, Stevenson and MacColl Offshore Wind Farms dated December 2017](#) and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.

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

8. 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 inspection.*

9. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CoP must be in accordance with the ES. The Development must, at all times, be constructed in accordance with the approved CoP (as updated and amended from time to time by the Company). Any updates or amendments made to the CoP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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.

Reason: To confirm the timing and programming of construction.

10. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CMS must set out the construction procedures and good working practices for installing the Development. The CMS must be in accordance with the construction methods assessed in the ES and must include details of how the construction related mitigation steps proposed in the ES are to be delivered. The Development must, at all times, be constructed in accordance with the approved CMS (as updated and amended from time to time by the Company). Any updates or amendments made to the CMS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

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. In the event that pile foundations are to be used, the Company must, no later than 6 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 the JNCC, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved PS (as updated and amended from time to time by the Company). Any updates or amendments made to the PS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The PS must include:

- a. Full details of the proposed method and anticipated duration of pile-driving at all locations;
- b. Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- c. Details of mitigation and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the ES and reflect any surveys 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 of the following species: bottlenose dolphin; harbour seal; Atlantic salmon; cod; and herring.

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

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

12. The Company must, no later than 6 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, CoS, the JNCC, SNH, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved DSLPL (as updated and amended from time to time by the Company). Any updates or amendments made to the DSLPL by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. A plan showing the proposed location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, location of the substation platforms,

- 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 for each WTG, this should also be provided as a GIS shape file using WGS84 format;
 - c. A table or diagram of each WTG dimensions including - height to blade tip (measured above HAT), height to hub (measured above HAT to the centreline of the generator shaft), rotor diameter and rotation speed;
 - d. The generating capacity of each WTG used on the Site and a confirmed generating capacity for the Site overall;
 - e. The finishes for each WTG (see condition 19 on WTG lighting and marking); and
 - f. The length and proposed arrangements on the seabed of all inter-array cables.

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

13. The Company must, prior to the Commencement of the Development, submit a Design Statement ("DS"), in writing, to the Scottish Ministers that includes representative wind farm visualisations from key viewpoints agreed with the Scottish Ministers, based upon the DSLP, as approved by the Scottish Ministers (as updated and amended from time to time by the Company). The DS must be provided, for information only, to the Planning Authorities and the JNCC, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The DS must be prepared and signed off by at least one qualified landscape architect, instructed by the Company prior to submission to the Scottish Ministers.

Reason: *To inform interested parties of the final wind farm scheme proposed to be built.*

14. The Company must, no later than 6 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 the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved EMP (as updated and amended from time to time by the Company). Any updates or amendments made to the EMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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 condition 3).

The EMP must be in accordance with the ES 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 ES and pre-consent and pre-construction surveys, and include the relevant parts of the CMS (refer to condition 10);
- b. Pollution prevention measures and contingency plans;
- c. Management measures to prevent the introduction of invasive non-native marine species;
- d. Measures to minimise, recycle, reuse and dispose of waste streams; and
- e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, the JNCC, SNH, SEPA, RSPB Scotland, MCA and NLB) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development, submit an updated EMP, in writing, to cover the operation and maintenance activities for the Development to the Scottish Ministers for their written approval. Such approval may be given only following consultation with the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must be regularly reviewed by the Company and the MFRAG (referred to in condition 27) over the lifespan of the Development, and be kept up to date (in relation to the likes of construction methods and operations of the Development in terms of up to date working practices) by the Company in consultation with the MFRAG.

The EMP must be informed, so far as is reasonably practicable, by the baseline surveys undertaken as part of the ES and the PEMP.

Reason: To mitigate the impacts on the environmental interests during construction and operation.

- 15. The Company must, no later than 6 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 the JNCC, SNH, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved VMP (as updated and amended from time to time by the Company). Any updates or amendments made to the VMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. The number, types and specification of vessels required;
- b. Working practices to minimise the unnecessary use of ducted propellers;
- c. How vessel management will be co-ordinated, particularly during construction but also during operation; and
- d. Location of working port(s), how often vessels will be required to transit between port(s) and the site and indicative vessel transit corridors proposed to be used.

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 thereafter, any changes to the details supplied must be notified, as soon as practicable, to the Scottish Ministers 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 disturbance or impact to marine mammals and birds.

16. The Company must, no later than 3 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 JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority 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 the operations and 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.

Operation and maintenance of the Development must, at all times, proceed in accordance with the approved OMP (as updated and amended from time to time by the Company). Any updates or amendments made to the OMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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.

Reason: *To safeguard environmental interests during operation of the offshore generating station.*

17. The Company must, no later than 6 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. Emergency response and co-ordination arrangements for the construction, operation and decommissioning phases of the Development; and
 - g. 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 Guidance Note 371, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance. The Development must, at all times, be constructed and operated in accordance with the approved NSP (as updated and amended from time to time by the Company). Any updates or amendments made to the NSP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

18. The Company must, no later than 6 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 the JNCC, SNH, MCA 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 ES. The Development must, at all times, be constructed and operated in accordance with the approved CaP (as updated and amended from time to time by the Company). Any updates or amendments made to the CaP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CaP must include the following:

- a. Details of the location and cable laying techniques for the inter array cables;
- b. The results of survey 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 if burial depths can be achieved. In locations where this is not possible then suitable protection measures must be provided;
- e. Methodologies for over trawl surveys 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. Measures to address exposure of inter array cables.

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

19. The Company must, no later than 6 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 MCA, NLB, CAA and DIO and any such other advisors 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 DIO 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 said guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in IALA Recommendation O-139 or any other documents that may supersede said guidance prior to approval of the LMP.

The Company must provide the LMP to the Highland Council, Moray Council, the JNCC, SNH and any other bodies as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved LMP (as updated and amended from time to time by the Company). Any updates or amendments made to the LMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

Reason: *To ensure safe marking and lighting of the offshore generating station.*

20. The Company must, prior to the erection of any WTGs on the Site, 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 by the Scottish Ministers with the DIO.

No WTGs shall become operational until:

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

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

Reason: To mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the operations of the DIO.

21. No part of any turbine shall be erected above sea level until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Ministers in order to avoid the impact of the Development on the Primary Radar of the Operator located at Allanshill and associated air traffic management operations.

Reason: To mitigate the adverse impact of the development on air traffic operations.

22. No blades shall be fitted to any turbine unless and until the approved Primary Radar Mitigation Scheme has been implemented and the Development shall thereafter be operated fully in accordance with such approved Scheme.

Reason: To mitigate the adverse impact of the development on air traffic operations.

23. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Television and Radio Reception Mitigation Plan ("TRRMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the Highland Council. The TRRMP must provide for a baseline television reception survey to be carried out at a location(s) to be agreed by the Scottish Ministers in consultation with the Highland Council, paid for by the Company, prior to the commencement of any WTG installation. The results of which must be submitted by the Company, in writing, to the Highland Council within the time limit set in the TRRMP.

From Commencement of the Development until the date occurring 12 months after the Final Commissioning of the Development, any reasonable claim by any individual person regarding television picture loss or interference at their house, business premises or other building, which they claim is attributable to the Development, and which is notified to the Company, must be investigated by a qualified engineer approved by the Scottish Ministers in consultation with the Highland Council. The Company is liable for any costs incurred by any

such investigation. The results of any investigation must be submitted by the Company to the Scottish Ministers and the Highland Council within 2 months of completion of the investigation. Any impairment to the television signal shall be remedied by the Company, at its own expense, as soon as practicable to provide that the standard of reception at any affected property is equivalent to the baseline television and radio reception as existing at that property before the operation of the Development.

Reason: For the protection of the local amenity.

24. 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 UKHO for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the “as-built” positions and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: For aviation and navigational safety.

25. The Company must, no later than 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan (“TTP”), 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, the Planning Authorities, and any such other advisors as may be required at the discretion of the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must, at all times, be constructed and operated in accordance with the approved TTP (as updated and amended from time to time, following written approval by the Scottish Ministers).

Reason: To minimise the impact on public roads.

26. The Company must, no later than 6 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 the JNCC, SNH, RSPB Scotland, WDC, ASFB and any other ecological advisors as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the ES 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.

Monitoring should be done in such a way as to ensure that the data which is collected allows useful and valid comparisons as between different phases of the Development. Monitoring may also serve the purpose of verifying key predictions in the ES. Additional monitoring may be required in the event that further potential adverse environmental effects are identified for which no predictions were made in the ES.

The Scottish Ministers may agree that monitoring may cease before the end of the lifespan of the Development.

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 surveys as relevant in terms of the ES and any subsequent surveys for:
 1. Birds;
 2. Cod;
 3. Herring;
 4. Sandeels;
 5. Diadromous fish;
 6. Benthic communities; and
 7. Seabed scour and local sediment deposition.
- b. The participation by the Company in surveys to be carried out in relation to marine mammals as set out in the MMMP; and
- c. The participation by the Company in surveys to be carried out in relation to regional and strategic bird monitoring;

All the initial methodologies for the above monitoring must be approved, in writing, by the Scottish Ministers and, where appropriate, in consultation with the MFRAG referred to in condition 27 of this consent. Any pre-consent surveys carried out by MORL to address any of the above species may be used in part to discharge this condition.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by the Scottish Ministers, in consultation with the MFRAG to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the MFRAG, 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 MFRAG and any other ecological, or such other advisors as may be required at the discretion of the Scottish Ministers. The PEMP, as amended from time to time, must be fully implemented by the Company at all times.

The Company must submit written reports of such monitoring surveys to the Scottish Ministers at timescales to be determined by the Scottish Ministers in consultation with the MFRAG. 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.

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

27. The Company must participate in any Moray Firth Regional Advisory Group ("MFRAG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish. Should a SSMEG be established (refer to condition 28), the responsibilities and obligations being delivered by the MFRAG will be subsumed by the SSMEG at a timescale to be determined by the Scottish Ministers.

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

28. The Company must participate in any Scottish Strategic Marine Environment Group ("SSMEG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish.

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

29. 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 the JNCC and SNH, appoint an Ecological Clerk of Works ("ECoW"). The term of appointment for the ECoW shall be from no later than 9 months post consent until the Final Commissioning of the Development.

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

- a. Quality assurance of final draft version of all plans and programmes required under this consent;
- b. Provide advice to the Company on compliance with consent conditions, including the conditions relating to the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- c. Monitor compliance with the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- d. Provide reports on point c) above to the Scottish Ministers at timescales to be determined by the Scottish Ministers; and
- e. Inducting site personnel on site / works environmental policy and procedures.

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

30. The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the 'Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy' so far as they apply at a local level (the Moray Firth). The extent and nature of the Company's participation is to be agreed by the Scottish Ministers in consultation with the MFRAG.

Reason: *To ensure effective monitoring of the effects on migratory fish at a local level (the Moray Firth).*

31. The Company must continue its membership in the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group ("MFOWDG-CFWG"), or any successor group formed to facilitate commercial fisheries dialogue to define and finalise the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C)). As part of the finalised Commercial Fisheries Mitigation Strategy ("CFMS"), the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development. Should it be deemed necessary by the MFOWDG-CFWG, investigations into alternative gear for the scallop fishing industry in the Moray Firth must form part of the CFMS. The CFMS to be implemented must be approved in writing by the Scottish Ministers. The Company must implement all mitigation measures committed to be carried out by the Company within the CFMS, so far as is applicable to the Development. Any contractors, or sub-contractors working for the Company, must co-operate with the fishing industry to ensure the effective implementation of said CFMS.

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

32. Prior to the Commencement of the Development, a Fisheries Liaison Officer ("FLO"), approved by Scottish Ministers, must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The Company must notify the Scottish Ministers of the identity and credentials of the FLO before Commencement of the Development by including such details 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 include, but not 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 project and any amendments to

- the CMS and site environmental procedures;
- b. 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 mitigate the impact on commercial fishermen.*

- 33.** The cod surveys undertaken on 17-26th February 2013 and 10-19th March 2013 in the Moray Firth by MORL will remain valid as a pre-construction baseline survey provided the Commencement of the Development occurs no later than 1st April 2018. If Commencement of the Development is later than 1st April 2018, the Company must undertake a further baseline cod survey during the months of February and March immediately prior to the Commencement of the Development in the area marked 'Cod Survey Area' shown on the MacColl Wind Farm Fish Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any further baseline cod survey for approval, in writing, by the Scottish Ministers.

The Company must undertake a post-construction cod survey in the first February and March, occurring no earlier than 12 months, following the Final Commissioning of the Development. This cod survey must be undertaken in the area marked 'Cod Survey Area' shown on the MacColl Wind Farm Fish Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any post-construction cod survey for approval, in writing, by the Scottish Ministers.

Reason: *To validate conclusions of impact assessments made in the ES on cod populations in the Moray Firth.*

- 34.** The sandeel survey undertaken between 30th January and 2nd March 2012 in the Moray Firth by MORL will remain valid as a pre-construction baseline survey provided that the Commencement of the Development occurs no later than 1st April 2017. If Commencement of the Development occurs later than 1st April 2017, the Company must undertake a further baseline sandeel survey prior to the Commencement of the Development of the area marked 'Sandeel Survey Area' shown on the MacColl Wind Farm Fish Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted by the Company, in writing, to the Scottish Ministers within 6 months following completion of any further baseline sandeel survey for approval, in writing, by the Scottish Ministers.

No earlier than 12 months following Final Commissioning of the Development, the Company must undertake a post-construction sandeel survey using a methodology agreed, in writing, with the Scottish Ministers. The post-construction sandeel survey will cover the area marked 'Sandeel Survey Area' shown on the MacColl Wind Farm Fish Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any post-construction sandeel survey for approval, in writing, by the Scottish Ministers.

Reason: *To validate conclusions of impact assessments made in the ES on sandeel populations in the Moray Firth.*

35. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Reporting Protocol 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 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.*

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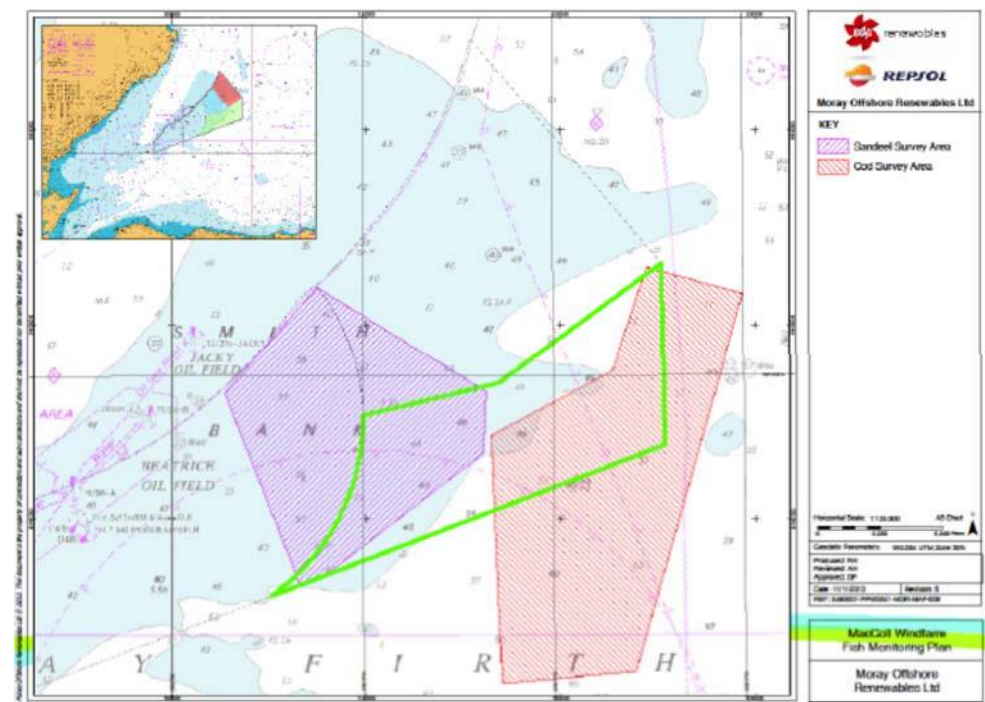


Figure 2. MacColl Post Construction Cod and Sandeel Survey Areas

Annex 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment.

“ABC” means the Acceptable Biological Change tool.

“Additional Ornithology Information” means the covering letter and report, submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013, concerning the reworking of bird data provided in the original Environmental Statement.

“the Application” means the Application letter and Environmental Statement submitted to the Scottish Ministers by Moray Offshore Renewables Limited, on behalf of MacColl Offshore Windfarm Limited, on 2nd August 2012, and the Additional Ornithology Information submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013.

“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme. A detailed scheme to mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the air surveillance and control operations of the Defence Infrastructure Organisation (Ministry of Defence). The scheme will set out the appropriate measures to be implemented to that end.

“CFMS” means Commercial Fisheries Mitigation Strategy - the final document produced from consultation between Moray Offshore Renewables Limited and the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group (“MFOWDG-CFWG”), based on the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C) produced by Moray Offshore Renewables Limited).

“Commencement of the Development” means the date on which Construction begins on the site of the Development in accordance with this consent.

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

“the Company” means MacColl Offshore Wind farm Limited, 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 07386891.

“Construction” means as defined at section 64(1) of the Electricity Act 1989, read with section 104 of the Energy Act 2004

“Decommissioning Programme” means the programme for decommissioning the relevant object, to be submitted by the Company to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended).

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“the Development” means the MacColl Offshore Wind Farm in the Outer Moray Firth.

“ECC” means East Caithness Cliffs Special Protection Area.

“ECOW” means Ecological Clerk of Works.

“EDA” means the Eastern Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“EIA” means Environmental Impact Assessment.

“EMF” means electromagnetic fields.

“EPS” means European Protected Species.

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Moray Offshore Renewables Limited on 2nd August 2012 as part of the Application as defined above.

“EU” means European Union.

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

“FLO” means a Fisheries Liaison Officer.

“GIS” means Geographic Information System.

“GVA” means a measure of the contribution to the economy of each individual producer, industry or sector in the United Kingdom.

“GW” means gigawatt.

“HAT” means Highest Astronomical Tide - the highest level of water which can be predicted to occur under any combination of astronomical conditions.

“HRA” means Habitats Regulations Appraisal.

“IALA Recommendation O-139” means the International Association of Marine Aids to Navigation and Lighthouse Authorities Recommendation O-139 On The Marking of Man Made Offshore Structures.

“Marine Guidance Note 371” means the Maritime and Coastguard Agency Marine Guidance Note 371 Offshore Renewable Energy installations (OREI’s) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

“MFOWDG-CFW” means Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group. A group formed, and set up, to develop the

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Commercial Fisheries Mitigation Strategy, and as forum to facilitate on-going dialogue with the commercial fishing industry.

“MFRAG” means Moray Firth Regional Advisory Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a regional scale, set up by the Scottish Ministers

“MW” means megawatt.

“NCC” means North Caithness Cliffs Special Protection Area.

“nm” means nautical miles.

“NRA” means Navigational Risk Assessment.

“OfTI” means the Offshore Transmission Infrastructure.

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“OPEX” means Operational Expenditure.

“PBR” means Potential Biological Removal.

“the Planning Authorities” means Aberdeenshire Council, the Highland Council and Moray Council.

“the Planning Authority” means Aberdeenshire Council.

"Primary Radar Mitigation Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Allanshill primary radar and air traffic management operations of the Operator.

“the Proposal” means the proposed MORL development, consisting of all three wind farms; Telford Offshore Wind Farm, Stevenson Offshore Wind Farm and MacColl Offshore Wind Farm.

“PVA” means Population Viability Analysis

“SAC” means Special Area of Conservation.

“Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy” means a strategy that will be formulated from the Marine Scotland Science Report 05/13 – “The Scope of Research Requirements for Atlantic Salmon, Sea Trout and European Eel in the Context of Offshore Renewables” to monitor migratory fish at a strategic level.

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“Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010.

“Scottish offshore region” has the meaning given in section 322 of the Marine and Coastal Access Act 2009 (as amended).

“SEA” means Strategic Environmental Assessment.

“the Site” means the area shaded in green in Figure 1, attached to this consent at Annex 1.

“Soft start piling” means the gradual increase of piling power, incrementally over a set time period, until full operational power is achieved.

“SPA” means Special Protection Area.

“SSMEG” means Scottish Strategic Marine Environment Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a National scale, set up by the Scottish Ministers.

“SSSI” means Site of Special Scientific Interest.

“the Study Area” means Moray, Highland, Aberdeen City and Aberdeenshire.

“WDA” means the Western Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“WGS84” means the World Geodetic System 1984.

“WTG” means wind turbine generator.

Organisations

“ASFB” means The Association of Salmon Fishery Boards.

“BOWL” means Beatrice Offshore Windfarm Limited (Company Number SC350248) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ.

“CAA” means The Civil Aviation Authority.

“CoS” means The Chamber of Shipping.

“DECC” means Department of Energy and Climate Change.

“DIO” means The Defence Infrastructure Organisation (Ministry of Defence).

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

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“JNCC” means The Joint Nature Conservation Committee.

“MCA” means The Maritime and Coastguard Agency.

“MFSTP” means Moray Firth Sea Trout Project.

“MMO” means Marine Management Organisation.

“MORL” means Moray Offshore Renewables Limited, and having its registered office at 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 7101438.

“MPFSPG” Moray and Pentland Firth Salmon Protection Group.

“MS-LOT” means Marine Scotland Licensing Operations Team.

“MSS” means Marine Scotland Science.

“NATS” means National Air Traffic Service.

“NLB” means The Northern Lighthouse Board.

“NREAP” means UK Government's National Renewable Energy Action Plan.

“RSPB Scotland” means The Royal Society for the Protection of Birds Scotland.

“RYA Scotland” means Royal Yachting Association Scotland.

“SAS” means Surfers Against Sewage.

“SCA” means – Scottish Canoe Association

“SEPA” means The Scottish Environment Protection Agency.

“SFF” means The Scottish Fisherman’s Federation.

“SMRU” means Sea Mammal Research Unit.

“SNH” means Scottish Natural Heritage.

“UNECE” means United Nations Economic Commission for Europe.

“UKHO” means United Kingdom Hydrographic Office.

“WDC” means Whale and Dolphin Conservation.

Plans, Programmes and Statements

“ACSSDP” means Aberdeen City and Shire Strategic Development Plan, proposed February 2013.

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“ALDP” means The Aberdeenshire Local Development Plan, June 2012.

“CaP” means Cable Plan.

“CFMS” means Commercial Fisheries Mitigation Strategy.

“CMS” means Construction Method Statement.

“CoP” means Construction Programme.

“DIO Scheme” means Air Traffic Control Radar Mitigation Scheme.

“DS” means Design Statement.

“DSLDP” means Development Specification and Layout Plan.

“EMP” means Environmental Management Plan.

“HRESPG” means Highland Renewable Energy Strategy and Planning Guidelines, May 2006.

“HwLDP” means The Highland – wide Local Development Plan, April 2012.

“LMP” means Lighting and Marking Plan.

“MES” means Moray Economic Strategy, October 2012.

“MLP” means The Moray Local Plan, November 2008.

“MMMP” means Marine Mammal Monitoring Programme.

“MSP 2007” means The Moray Structure Plan, April 2007.

“NPF2” means Scotland’s National Planning Framework 2.

“NPF3” means Scotland’s National Planning Framework 3.

“NSP” means Navigational Safety Plan.

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy.

“SEIS” means Supplementary Environmental Information Statement.

“the Statement” means The UK Marine Policy Statement 2011.

“the Structure Plan” means Aberdeen City and Shire Structure Plan, August 2009.

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“TRRMP” means Television and Radio Reception Mitigation Plan.

“TTP” means Traffic and Transportation Plan

“VMP” means Vessel Management Plan.

Legislation

“Wild Birds Directive” means Council Directive 79/409/EEC of 2nd 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 (as amended).

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

“the Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 1990 Regulations” means the Electricity (Applications for Consent) Regulations 1990 (as amended).

“the 1994 Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended).

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended).

“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 2009 Act” means Marine and Coastal Access Act 2009 (as amended).

“the 2010 Act” means Marine (Scotland) Act 2010

TELFORD OFFSHORE WIND FARM

COPY OF THE DECISION LETTER ISSUED ON 19TH October 2014, WITH TRACKED CHANGES SHOWING CONSOLIDATED VERSION OF THE LETTER – WITH VARIATIONS TO THE CONSENT HIGHLIGHTED

marinescotland

T: +44 (0)1224 295579 F: +44 (0)1224 295524
E: MS.MarineLicensing@Scotland.gsi.gov.uk

Mr Dan Finch
MORL Project Director
Telford Offshore Windfarm Limited
1st Floor, 14/18 City Road
Cardiff
CF24 3DL



19th March 2014

Dear Mr Finch,

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE TELFORD OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, IN THE OUTER MORAY FIRTH.

Defined Terms used in this letter and Annex 1 & 2 are contained in **Annex 3**.

The following applications have been made to the Scottish Ministers for:

- viii. A consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) by Telford Offshore Windfarm Limited (Company Number 07386810) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Telford Offshore Wind Farm in the Outer Moray Firth;
- ix. A consent under section 36 of the Electricity Act by Stevenson Offshore Windfarm Limited (Company Number 07386838) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Stevenson Offshore Wind Farm in the Outer Moray Firth;
- x. A consent under section 36 of the Electricity Act by MacColl Offshore Windfarm Limited (Company Number 07386891) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the

construction and operation of MacColl Offshore Wind Farm in the Outer Moray Firth;

- xi. A marine licence to be considered under the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”) by Telford Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Telford Offshore Wind Farm;
- xii. A marine licence to be considered under the 2009 Act by Stevenson Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Stevenson Offshore Wind Farm;
- xiii. A marine licence to be considered under the 2009 Act by MacColl Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the MacColl Offshore Wind Farm; and
- xiv. A marine licence to be considered under the Marine (Scotland) Act 2010 (“the 2010 Act”) and the 2009 Act by Moray Offshore Renewables Limited (“MORL”) to deposit any substance or object and to construct, alter or improve any works in relation to the Offshore Transmission Infrastructure (“OfTI”) within the Scottish marine area and Scottish offshore region.

THE APPLICATION

I refer to the application at i above made by Telford Offshore Windfarm Limited (“the Company”), received on 2nd August 2012 for consent under section 36 of the Electricity Act for the construction and operation of Telford Offshore Wind Farm in the Outer Moray Firth with a maximum generating capacity of **500 megawatts** (“MW”) (“the Application”).

The generating capacity has been reduced during the consultation process due to concerns raised by consultees with respect to potential impacts to birds. This consent is now granted for a maximum generating capacity of up to **372 MW**.

In this letter, ‘the Development’ means the proposed Telford Offshore Wind Farm electricity generating station as described in **Annex 1** of this letter.

In this letter, ‘the Proposal’ means the whole proposed MORL development, consisting of all three wind farms; Telford, Stevenson and MacColl, and the OfTI (applications i to vii above), for a maximum generating capacity of up to 1,116 MW.

STATUTORY AND REGULATORY FRAMEWORK

The Scotland Act 1998, The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 and The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved section 36 consent functions under the Electricity Act (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of section 36 consent functions as provided under the 1999 Order and then, one day later, re-transferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in the Scottish offshore region (12-200 nautical miles (“nm”) from the shore) with a generation capacity in excess of 50 MW requires consent under section 36 of the Electricity Act. Section 93 of the Energy Act 2004 extends the requirement for section 36 consent to the construction, extension or operation of a generating station situated in the Renewable Energy Zone (12 -200 nm). A consent under section 36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in or determined by or under the consent.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on licence holders or persons authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 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. Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

Paragraph 3 of Schedule 9 to the Electricity Act also provides that the Scottish Ministers must have regard to the desirability of preserving natural beauty etc. and the extent to which the person by whom the proposals were formulated has complied with their duty to mitigate the effects of the proposals. When exercising any relevant functions, a licence holder, a person authorised by an exemption to generate or supply electricity, and the Scottish Ministers, must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

Under section 36B of the Electricity Act, the Scottish Ministers may not grant a consent in relation to any particular offshore generating activities if they consider that

interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities, and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of or danger to navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this consent, the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already the subject of section 36 consent or activities for which it appears likely that such consents will be granted.

Under Schedule 8 to the Electricity Act and the Electricity (Applications for Consent) Regulations 1990 (“the 1990 Regulations”), notice of applications for section 36 consent must be published by the applicant in one or more local newspapers and in the Edinburgh Gazette to allow representations to be made to the application. Under Schedule 8 to the Electricity Act, the Scottish Ministers must serve notice of any application for consent upon any relevant planning authority.

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

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

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

The Scottish Ministers are satisfied that they have considered and applied all the necessary tests set out within the Electricity Act when assessing the Application. The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the Application for consent. The Minister and his officials have, from the date of the Application for

consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company.

The approach taken has been endorsed by the Outer House of the Court of Session where Lord Doherty in *Trump International Golf Club Scotland Limited and The Trump Organization against The Scottish Ministers and Aberdeen Offshore Wind Farm Limited* [2014] CSOH 22 opines that the Electricity Act and regulations made under it contemplate and authorise consent being granted to persons who need not be licence holders or persons with the benefit of an exemption. In addition, the Company is, in any event, required to consider the protection of the environment under statutory regulations which are substantially similar to Schedule 9 to the Electricity Act, namely the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations"), whether or not the Company is among the categories of persons described in Schedule 9, paragraph 3(1).

Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009

The 2010 Act regulates the territorial sea adjacent to Scotland in terms of marine environment issues. Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act, licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

As this application lies outwith the Scottish Territorial Sea, i.e. beyond the 12 nm limit, it falls to the 2009 Act to regulate marine environmental issues in this area. Other than for certain specified matters, the 2009 Act executively devolved marine planning, marine licensing and nature conservation powers in the Scottish offshore region to the Scottish Ministers.

The 2009 Act transferred certain functions in issuing consents under section 36 of the Electricity Act from the Secretary of State to the Marine Management Organisation ("MMO"). The MMO does not exercise such functions in Scottish waters or in the Scottish part of the renewable energy zone, as that is where the Scottish Ministers perform such functions.

Where applications for both a marine licence under the 2009 Act and consent under section 36 of the Electricity Act are made then, in those cases where they are the determining authority, the Scottish Ministers may issue a note to the applicant stating that both applications will be subject to the same administrative procedure. Where that is the case then that will ensure that the two related applications may be considered at the same time.

Climate Change (Scotland) Act 2009

Under Part 2 of the 2010 Act, the Scottish Ministers must, when exercising any function that affects the Scottish marine area under the Climate Change (Scotland) Act 2009 (as amended), act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned. Under the Climate Change (Scotland) Act 2009 (as amended), annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions

The Scottish Ministers are satisfied that in assessing the Application, they have acted in accordance with their general duties, and they have exercised their functions in compliance with the requirements of the Climate Change (Scotland) Act 2009 (as amended).

Environmental Impact Assessment Directive; The Electricity (Applications for Consent) Regulations 1990 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)

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

The proposal for the Development has been publicised, to include making the Environmental Statement ("ES") available to the public, in terms of the 2000 Regulations. The Scottish Ministers are satisfied that an ES has been produced and the applicable procedures regarding publicity and consultation all as laid down in the 1990 Regulations, the 2000 Regulations and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) have been followed.

The Scottish Ministers have, in compliance with the 2000 Regulations consulted with the Joint Nature Conservation Committee ("JNCC"), Scottish Natural Heritage ("SNH"), the Scottish Environment Protection Agency ("SEPA"), the Planning Authorities most local to the Development, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the Application in accordance with the regulatory requirements. The Scottish Ministers have taken into consideration the environmental information, including the ES and Additional Ornithology Information, and the representations received from the statutory consultative bodies and from all other persons.

The Scottish Ministers have, in compliance with the 2000 Regulations, obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 8th October 2012.

The Scottish Ministers have also consulted a wide range of relevant organisations, including colleagues within the Scottish Government on the Application, on the ES, and as a result of the issues raised, upon the required Additional Ornithology Information.

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

The Habitats Directive and the Wild Birds Directive

The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna in the Member States' European territory, including offshore areas such as the proposed site of the developments. It promotes the maintenance of biodiversity by requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological

network of protected sites by designating Special Areas of Conservation (“SACs”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

The Wild Birds Directive applies to the conservation of all species of naturally occurring wild birds in the member states’ European territory, including offshore areas such as the proposed site of the developments and it applies to birds, their eggs, nests and habitats. Under Article 2, Member States are obliged to “take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level”. Article 3 further provides that “[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1”. Such measures are to include the creation of protected areas: article 3.2.

Article 4 of the Wild Birds Directive provides *inter alia* as follows:

- “1. The species mentioned in Annex I [of that Directive] shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. [...]
2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I [of that Directive], bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.
- [...]
4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

Articles 6 & 7 of the Habitats Directive provide *inter alia* as follows:

- “6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
- 6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site

concerned and, if appropriate, after having obtained the opinion of the general public.

- 6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.
7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later."

The Habitats Directive and the Wild Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 ("the 1994 Regulations") and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 ("the 2007 Regulations"). As the Development is to be sited in the Scottish offshore region, it is the 2007 Regulations which are, in the main, applicable in respect of this application for section 36 consent. The 1994 Regulations do, however, apply to those parts of the associated transmission infrastructure which lie inside the Scottish Territorial Sea (i.e. within 12 nm from the shore).

The 1994 and the 2007 Regulations ("the Habitats Regulations") clearly implement the obligation in article 6(3) & (4) of the Habitats Directive, which by article 7 applies in place of the obligation found in the first sentence of article 4(4) of the Wild Birds Directive. In each case the "competent authority", which in this case is the Scottish Ministers, is obliged to "make an appropriate assessment of the implications for the site in view of the site's conservation objectives" (hereafter an "AA"). Such authority is also obliged to consult SNH and, for the purpose of regulation 48 of the 1994 Regulations, to have regard to any representations made by SNH. The nature of the decision may be taken for present purposes from the provision in regulation 25(4) & (5) of the 2007 Regulations:

- "(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).
- (5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given."

Developments in or adjacent to, European protected sites, or in locations which have the potential to affect such sites, must undergo what is commonly referred to as a

Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages which are set out as follows:

- Stage 1 - Where a project is not connected with or necessary to the site’s management and it is likely to have a significant effect thereon (either individually or in combination with other projects), then an AA is required.
- Stage 2 - In light of the AA of the project’s implications for the site in view of the site’s conservation objectives, the competent authority must ascertain to the requisite standard that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

The JNCC and SNH were of the opinion that the Proposal is likely to have a significant effect on the qualifying interests of certain Special Protected Areas (“SPAs”) and SAC sites, therefore an AA was required. The AA which has been undertaken has considered the combined effects of the Proposal and the Beatrice Offshore Wind Farm (by Beatrice Offshore Windfarm Limited (“BOWL”)). This is because the BOWL development, the application for which was submitted to the Scottish Ministers in April 2012, is proposed to be sited immediately adjacent to the Proposal.

The Scottish Ministers, as a competent authority, have complied with European Union (“EU”) obligations under the Habitats Directive and the Wild Birds Directive in relation to the Development. Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect site integrity of any of the identified European protected sites assessed to have connectivity with the Development, and have imposed conditions on the grant of this consent ensuring that this is the case. The test in the *Waddenzee* judgement formed the basis for the approach taken (CJEU Case C-127/02 [2004] ECR I-7405), and the Scottish Ministers are certain that the Development will not adversely affect site integrity of the sites “where no reasonable scientific doubt remains as to the absence of such effects”. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

APPLICABLE POLICIES AND GUIDANCE

Marine Area

The UK Marine Policy Statement 2011

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

The Statement which was jointly adopted by the UK Administrations, sets out the overall objectives for marine decision making. It specifies issues that decision-makers need to consider when examining and determining applications for energy

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

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

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

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

Draft National Marine Plan

A draft National Marine Plan developed under the 2010 Act and the 2009 Act was subject to consultation which closed in November 2013. Marine Scotland Planning & Policy are now considering the responses and undertaking a consultation analysis exercise. When formally adopted, the Scottish Ministers must take authorisation and enforcement decisions which affect the marine environment in accordance with the Plan.

The draft National Marine Plan sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. It also contains specific policies relating to the mitigation of impacts on habitats and species; and in relation to treatment of cables.

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

Offshore Renewable Policy

Published in September 2010, Scotland's Offshore Wind Route Map sets out the opportunities, challenges and priority recommendations for action for the sector to realise Scotland's full potential for offshore wind. The refreshed version of this document, published in January 2013, highlighted the progress that has been made but pointed to the continuing challenges that need to be overcome. The Scottish

Ministers remain fully committed to realising Scotland's offshore wind potential and to capture the biggest sustainable economic growth opportunity for a generation.

This Development, will contribute significantly to Scotland's renewable energy targets via its connection to the National Grid. It will also provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Route Map and the National Renewables Infrastructure Plan.

Terrestrial Area

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application.

In addition to high level policy documents regarding the Scottish Government's policy on renewables (2020 Renewable Route Map for Scotland - Update (published 30th Oct 2012)), the Scottish Ministers have had regard to the following documents:

Scottish Planning Policy

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

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

National Planning Framework 2

Scotland's National Planning Framework 2 ("NPF2") sets out strategic development priorities to support the Scottish Government's central purpose, namely sustainable economic growth. Relevant paragraphs to the Application are paragraphs 65, 144, 145, 146, 147 and 216. NPF2 provides strong support for the development of renewable energy projects to meet ambitious targets to generate the equivalent of 100% of our gross annual electricity consumption from renewable sources and to establish Scotland as a leading location for the development of the renewable offshore wind sector.

National Planning Framework 3

Scotland's National Planning Framework 3 ("NPF3") is the national spatial plan for delivering the Government Economic Strategy. The Main Issues Report sets out the ambition for Scotland to be a low carbon country, and emphasises the role of planning in enabling development of renewable energy onshore and offshore. NPF3 includes a proposal for national development to support onshore infrastructure for offshore renewable energy, as well as wider electricity grid enhancements. NPF3 also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

The Main Issues Report was published for consultation in April 2013 and the Proposed NPF3 was laid in the Scottish parliament on 14th January 2014. This will be subject to sixty (60) day Parliamentary scrutiny ending on 22nd March 2014. The Scottish Government expect to publish the finalised NPF3 in June 2014.

Aberdeen City and Shire Structure Plan, August 2009

The purpose of the Aberdeen City and Shire Structure Plan ("the Structure Plan") is to set a clear direction for the future development of the North East. All parts of the Structure Plan fall within strategic growth areas, local growth and diversification areas or regeneration priority areas. Relevant objectives of the Structure Plan to the proposed Development or Proposal are:-

- To provide opportunities which encourage economic development and create new employment in a range of areas;
- To be a city region which takes the lead in reducing the amount of carbon dioxide released into the air, adapts to the effects of climate change and limits the amount of non-renewable resources it uses;
- To encourage population growth;
- To make sure new development maintains and improves the region's important built, natural and cultural assets; and
- To make sure that new development meets the needs of the whole community, both now and in the future, and makes the area a more attractive place for residents and businesses to move to.

The Scottish Ministers consider that the Development can draw support from the objectives regarding economic development and new employment opportunities, the challenges of climate change, and to some extent improving the quality of the environment.

The Development can also draw support from the Structure Plan objective for the region to increase the supply of energy from renewable resources. MORL estimates the Development could potentially save between 0.9 and 1.18 million tons of CO₂ per year when compared to coal fired electricity generation and, between 0.4 and 0.52 million tons of CO₂ when compared to gas fired electricity generation, from being released into the atmosphere.

The Scottish Ministers consider that the Structure Plan is broadly supportive of the Development.

The Aberdeenshire Local Development Plan, June 2012

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

The Development is not located within the boundaries of Aberdeenshire Council. Only the export cable where it is situated onshore between Fraserburgh Beach and the National Grid connection at Peterhead power station is within the boundaries of Aberdeenshire Council. An application for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended) regarding the ancillary onshore infrastructure will be made to Aberdeenshire Council.

The Scottish Ministers consider that the ALDP is broadly supportive of the Development.

Aberdeen City and Shire Strategic Development Plan, proposed and published online in February 2013

The purpose of the Aberdeen City and Shire Strategic Development Plan (“ACSSDP”) is to set a clear direction for the future development of the North East – recognising the importance of improving links and connections, adding to the quality of life and providing the opportunities for high-quality sustainable growth, towards which the public and private sectors can work to deliver the vision for the region. The ACSSDP has been developed from the previous Aberdeen City and Shire Structure Plan (August 2009) and reflects the widespread support that plan received.

The northern end of the Energetica corridor, where the Proposal is due to connect to the National Grid, has the potential to be an important hub for the transmission of renewable energy, both within the UK and more widely as part of a European network.

The ACSSDP acknowledges that Peterhead Port has been identified in the National Renewables Infrastructure Plan as having the potential to transform into a port that could aid in the decommissioning of oil and gas as well as a port for offshore renewables.

The Scottish Ministers consider that the ACSSDP is broadly supportive of the Development.

Highland Renewable Energy Strategy and Planning Guidelines, May 2006

The Highland Renewable Energy Strategy and Planning Guidelines (“HRESPG”) supplement the existing policies of The Highland Council and aims to provide guidance and direction for Planning Authority decisions and developers plans.

The HRESPG notes that the optimal area for prospective offshore wind development is considered to be the Outer Moray Firth and that offshore wind is viewed as an important potential renewable energy technology for the Highland region. The key aspect of a renewables vision for the Highland region involves setting a balance between social, economic and environmental interests whilst utilising the high calibre energy resources available in the region. The vision also recognises the need for cleaner forms of energy within the existing energy network to help reduce CO₂ emissions.

Within the HRESPG, Strategic Topic E12 (within the Action Plan to implement objectives) states that The Highland Council will prioritise the few offshore wind areas for commercial development that have energy and grid potential with a medium term aim of 1 gigawatt (“GW”) capacity by 2020 and long term aim of 2 GW capacity by 2050 in the Moray Firth.

Although the Development is located outside 12 nm from the Highland coastline and thus out with the jurisdiction of The Highland Council, the Scottish Ministers consider that the HRESPG is broadly supportive of the Development which will contribute to the aims for offshore renewable wind development in the Highland region.

The Highland – wide Local Development Plan, April 2012

The purpose of the Highland – wide Local Development Plan (“HwLDP”) is to set out a balanced strategy to support the growth of all communities across the Highlands ensuring that development is directed to places with sufficient existing or planned infrastructure and facilities to support sustainable development. Relevant policies within this plan can be applied to the Development.

The Vision chapter of the HwLDP makes a commitment to ensuring that the development of renewable energy resources are managed effectively including guidance on where harnessing renewable sources is appropriate or not. There is also a commitment to provide new opportunities to encourage economic development and create new employment across the Highland area focusing on key sectors including renewable energy whilst at the same time improving the strategic infrastructure necessary to allow the economy to grow in the long term.

The Scottish Ministers consider that the HwLDP is broadly supportive of the Development.

The Moray Structure Plan, April 2007

The Moray Structure Plan (“MSP 2007”) sets out the strategic framework for the way in which Moray Council intend to develop the region over the next 15 – 20 years. The central pillar of the development strategy is to promote economic growth whilst safeguarding and enhancing the natural and built environment, and promoting overall sustainability. Promoting the sensitive development of renewable energy (Policy 2) has been identified as a key strategic issue which the MSP 2007 must address.

The Scottish Ministers consider the MSP 2007 is broadly supportive of the Development. The Development offers an opportunity for the region to contribute towards renewable energy targets, tackle the effects of climate change, increase energy security and contribute to the local and regional economies of Moray.

The Moray Local Plan, November 2008

The Moray Local Plan ("MLP") interprets the strategic direction provided by the MSP 2007 into detailed policies and proposals for use in the determining of planning policies. The MLP states that Moray has a wealth of natural resources including opportunities for renewable energy, particularly wind energy. The MLP provides a framework to optimise the benefits of these natural resources to the area.

The Scottish Ministers consider that the MLP is broadly supportive of the Development.

Moray Economic Strategy, October 2012

The recently published Moray Economic Strategy ("MES"), produced by the Moray Community Planning Partnership provides the long term economic diversification strategy for the area. The MES recognises that the engineering and fabrication base, which at the moment mainly services the oil, gas, and distillation industries, lends itself to development and diversification into the renewable energy supply chains. The MES recognises the potential offered by renewable energy as well as the opportunity for infrastructure in the Moray region to support the development of a world leading and diversified renewable energy sector. Buckie Harbour is specifically identified as having the potential to act as an operations and maintenance base to service the offshore wind farms proposed for the Moray Firth.

CONSULTATION

In accordance with the statutory requirements of the 1990 Regulations and the 2000 Regulations, notices of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Notice of the Application for section 36 consent is required to be served on any relevant Planning Authority under Schedule 8 to the Electricity Act.

Notifications were sent to Aberdeenshire Council, as the onshore Planning Authority where the OfTI export cable comes ashore at Fraserburgh Beach, as well as to Highland Council and Moray Council. Notifications were also sent to the JNCC, SNH and SEPA.

The formal consultation process that was undertaken by the Scottish Ministers consulted on the whole MORL development (the Proposal - which consists of applications i to vii and the ES). This was conducted in August, September and October 2012. The second consultation, which related to Additional Ornithology Information, was conducted in June and July 2013.

MORL was asked by the Scottish Ministers to re-work their Population Viability Analysis ("PVA") models for key bird species connected with the East Caithness Cliffs

(“ECC”) and North Caithness Cliffs (“NCC”) SPAs to present a common output. As this work was a re-working of information already contained within the ES, the Scottish Ministers did not request a Supplementary Environmental Information Statement (“SEIS”) from MORL. Additional Ornithology Information was submitted by MORL and as such, the Scottish Ministers notified all original consultees that this information was available if they wished to provide comment. The Scottish Ministers instructed MORL to place notices in the local press to notify the public that Additional Ornithology Information had been received, and further representation could be made. This procedure is in compliance with regulation 14A of the 2000 Regulations.

Representations and Objections

A total of fifteen (15) valid public representations were received by the Scottish Ministers during the course of the public consultation exercise. Of these, five (5) representations were in support; and ten (10) representations objected to the Development and the Proposal.

Of the five (5) representations in support of the Development and the Proposal, two (2) were received from Members of the Scottish Parliament (“MSPs”), one (1) was received from Highlands and Islands Enterprise, one (1) from Fraserburgh Harbour Commissioners, and one (1) from a member of the public.

These representations considered that the Development and the Proposal would help to reduce Scotland’s carbon footprint, allow Scotland to become a world leader in the (offshore) renewables sector and highlighted the potential for job creation and positive economic impact in the area, particularly through the opportunity for developing a local supply chain.

Of the ten (10) representations objecting to the Development and the Proposal, six (6) were received from members of the public, three (3) from Salmon Fishery Boards (Helmsdale District, Caithness District, Northern District) and one (1) was received from the Moray and Pentland Firth Salmon Protection Group (“MPFSPG”).

Objections to the Development and the Proposal cited concerns regarding: effects on marine life including birds and disturbance of marine mammals; effects on Atlantic salmon and sea trout; hazards to fishing; hazards to Defence Infrastructure Organisation (“DIO”) (Ministry of Defence) nautical and aeronautical activities in the area; visual and aural pollution; cumulative presence in the Moray Firth with the BOWL development; alternative technologies to wind power being available; and the failure to meet the requirements of the Aarhus convention.

Other concerns raised included issues such as the repowering of the wind farm (which involves the replacement of the turbines with new turbines), the future cost of electricity, the sustainability of offshore renewable energy developments, concerns over the safety of construction, the lack of jobs being created and no establishment of localised manufacturing.

During the consultation, objections were also received from the Association of Salmon Fishery Boards (“ASFB”), DIO, National Air Traffic Services (“NATS”), the Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) and the Moray Firth Sea Trout Project (“MFSTP”).

Following further discussions between the Company and the DIO and NATS, both consultees removed their objections subject to conditions being applied to any consent.

Objections from members of the public, the ASFB, RSPB Scotland and the MFSTP are being maintained. In light of these concerns, the Company has reduced their design envelope for the Development from 500 MW to 372 MW and the Scottish Ministers have applied conditions for monitoring and mitigation to this consent (**Annex 2**).

The Scottish Ministers have considered and had regard to all representations and objections received.

Material Considerations

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

The Scottish Ministers consider that no further information is required to determine the Application.

Public Local Inquiry

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

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

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

The Scottish Ministers have received objections to the Development and the Proposal as outlined above, raising a number of issues. In summary, and in no particular order, the objections were related to the following issues:

- Effects on marine life, including birds;
- Effects on Atlantic salmon and sea trout;
- Hazards to fishing;
- Hazards to DIO nautical and aeronautical activities in the area;
- Visual and aural pollution;
- Cumulative presence in the Moray Firth with other wind farms;
- Alternative technologies to wind power are available;
- Failure to meet the requirements of the Aarhus Convention;
- Construction safety;
- Future cost of electricity and repowering; and
- New jobs and manufacturing created in Scotland.

Effects on marine life, including birds

Eight (8) public representations were received concerning effects on marine life. Through the consultation process the Scottish Ministers consulted Marine Scotland Science ("MSS"), the JNCC, SNH, SEPA, Whale and Dolphin Conservation ("WDC"), the MFSTP and the ASFB (see comments below on Atlantic salmon and sea trout regarding the ASFB). The Scottish Ministers are confident that through the consultation process the main effects on the marine environment have been identified. The Scottish Ministers recognise that there is an outstanding objection from RSPB Scotland due to the potential impacts on several seabird species (most notably great black-backed gull, herring gull, gannet, kittiwake and puffin). MSS, JNCC and SNH, however, are in agreement that predicted impacts are within acceptable levels for all species in terms of both the 2000 Regulations and the Habitats Regulations. An AA completed by MS-LOT, concluded that the Development or the Proposal will not adversely affect site integrity of any SAC or SPA considered to have connectivity with the Development or the Proposal. Conditions to mitigate and monitor the effects on marine life, including birds, form part of this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential effects of the Development on marine life, including birds, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Effects on Atlantic salmon and sea trout

Objections relating to potential effects on Atlantic salmon and sea trout were received through the public consultation exercise from three (3) Salmon Fishery Boards and the MPFSPG. These are in addition to the objections that are being maintained from the ASFB and the MFSTP on the ES consultation.

Uncertainty around the assessments of these species has been recognised by MORL in their ES submitted in support of the Application. The ASFB and MFSTP also recognise these uncertainties and believe they can only be overcome through strategic research. A strategy is being developed by MSS to address monitoring requirements for Atlantic salmon and sea trout at a national level. MORL has engaged with MS-LOT, MSS, the ASFB and the MFSTP to address this issue. A condition for the Company to engage at a local level (the Moray Firth) to the strategic salmon and trout monitoring strategy is contained within this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that sufficient steps, including the development of national strategic monitoring, have been taken to address the uncertainties regarding the potential effects of the Development on Atlantic salmon and sea trout, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to fishing

Two (2) representations were received from members of the public concerning hazards to fishing. Through the consultation process MS-LOT consulted MSS and the Scottish Fisherman's Federation ("SFF"). It was recognised at an early stage that fishing would be of key concern, and as a result MORL, in conjunction with neighbouring wind farm developers, have formed the Moray Firth Offshore Wind Developers Group – Commercial Fisheries Working Group ("MFOWDG-CFWG"). This group has representation for all commercial fishing interests in the area and provides a forum to discuss any issues and potential mitigation in relation to the wind farm developments in the Moray Firth. Conditions for the Company to continue in the MFOWDG-CFWG and mitigate hazards to navigation for the commercial fishing industry are contained in this consent (**Annex 2**). Notices to Mariners and notices placed through the Kingfisher Fortnightly Bulletins, is to be considered as a condition as part of the marine licences, applications for which are to be determined in due course.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to fishing, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to DIO nautical and aeronautical activities in the area

Two (2) representations were received from members of the public concerning hazards to DIO nautical and aeronautical activities in the area. The DIO was consulted on the application and the ES, and whilst the DIO initially objected, a mitigation solution was reached and the objection was withdrawn subject to a condition forming part of any consent. This condition has been included in this consent (**Annex 2**).

The Civil Aviation Authority ("CAA") was also consulted on the application and the ES, and raised no objection to the Development. Conditions are placed on this consent to ensure the 'as built' wind farm is marked and lit as per DIO and CAA requirements, and communicated to the UK Hydrographic Office ("UKHO") for aviation and maritime charting (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to DIO nautical and aeronautical activities, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Visual and aural pollution

Two (2) representations were received from members of the public concerning visual and aural pollution. No statutory consultee objected to the Development or the Proposal on matters regarding visual or aural pollution. The JNCC and SNH stated that the Development, alone and in combination with the other developments in the Moray Firth, will form a prominent new feature on the skyline from the Caithness coast but not significant enough to merit an objection. The most affected area will be a core area

consisting of a 39 km stretch from Noss Head in the North, to Dunbeath in the South. The JNCC and SNH recommended that landscape consultants continue to be involved post-consent to work with the project and engineering teams to iterate and finalise the wind farm design. No consultees raised any concerns regarding aural pollution. Positioning the Development more than 12 nm away from land, has helped mitigate the visual and aural pollution elements of the wind farm.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential visual and aural pollution the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Cumulative presence in the Moray Firth with other wind farms

Two (2) representations were received from members of the public concerning cumulative developments in the Moray Firth. The cumulative effects of concern were not specified within their representations, but for offshore wind farms, MS-LOT has conducted and assessed cumulative impacts on all receptors (including but not limited to; visual, marine life, birds, commercial fisheries and shipping and navigation) of the Development alone, and in combination with the Proposal and the BOWL development which lies adjacent. These assessments show that the Development in combination with the Proposal and the BOWL development will not give rise to any unacceptable impacts.

There will be limited cumulative impact of onshore and offshore wind farm development on settlements in the core area (Noss Head, Wick to Dunbeath). Cumulative effects will arise at Sarclet and Lybster from the Burn of Whilk wind farm (consented) together with the offshore proposals, and at Dunbeath, the operational Buolfruch wind farm will also give rise to cumulative effects. These cumulative effects are however not considered by the Scottish Ministers to be significant.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the cumulative presence of wind farm developments in the Moray Firth, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Alternative technologies to wind power are available

A member of the public expressed an opinion that there is no need for the Development as alternative technologies to wind power are available. The Scottish Government's commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. The Scottish Government's Electricity Generation Policy Statement states we believe that Scotland has the capability and the opportunity to generate a level of electricity from renewables by 2020 that would be the equivalent of 100% of Scotland's gross annual electricity consumption. The target will require the market to deliver an estimated 14-16 GW of installed capacity. It does not mean or require an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's desire to remain a net exporter of electricity. Due to the intermittent nature of much renewables generation, we will need a balanced energy mix to ensure security of supply.

The technology to be used in this Development is one of a number of commercial developments being proposed in the renewables mix to help achieve 2020 targets for renewable electricity generation.

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

Failure to meet the requirements of the Aarhus Convention

A concern was raised from a member of the public that, in August 2013, the United Nations Economic Commission for Europe (“UNECE”) declared that the UK Government's National Renewable Energy Action Plan (“NREAP”) violated the laws that transpose the Aarhus Convention into the UK legal framework. In particular, it was stated that the public had not been given full access to information on the impacts on people and the environment, nor had they been given decision-making powers over their approval.

The Aarhus Convention is an international convention which protects the rights of individuals in relation to environmental matters in gaining access to information, public participation in decision-making, and access to justice. The UK is a signatory to the Convention, as is the EU.

On the single accusation relating to the UK Government – public participation in the Renewables Roadmap – the UK Government was found to be in breach of the Convention, as it had not conducted a Strategic Environmental Assessment (“SEA”) or other public consultation. However, on the four accusations for which the Scottish Government had lead responsibility, including public participation in the preparation of plans, programmes and policies in Scotland, and public participation in relation to the section 36 consent of a wind farm proposal, the Scottish Government’s position was upheld. The ruling confirmed that Scotland is in compliance with this international obligation.

The Scottish Ministers consider that proper assessments have been undertaken for the Development and the Proposal and proper opportunity was afforded for consultation with stakeholders and members of the public, in compliance with the Public Participation Directive, to reach a conclusion on the matter. The Scottish Ministers are committed to applying strict environmental assessment procedures. The Scottish Ministers, therefore, do not consider it appropriate to cause a public inquiry to be held to further investigate this.

Construction safety

One (1) representation was received from a member of the public concerning safe access and working conditions on offshore wind farm developments. MORL is committed to a formal safety assessment process where risks are identified at an early stage and are addressed as the Development or Proposal progresses. The Development or the Proposal also has to meet the requirements of the applicable safety legislation. Regarding Site access, a formal Navigational Risk Assessment (“NRA”) has been undertaken by MORL and extensive engagement between MORL and navigational stakeholders has been undertaken both prior to, and during the application process. The Scottish Ministers have included a condition requiring the

Company to submit plans on navigational safety (Navigational Safety Plan) for approval is included in this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding concerns over safety of construction, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Future cost of electricity and repowering

One (1) representation was received from a member of the public concerning the future cost of electricity and repowering of the wind farm. The Scottish Ministers are granting this section 36 consent for 25 years (see condition 1 at **Annex 2**) ensuring that repowering of the Development cannot occur without further assessment from the Company and consideration of that assessment by the Scottish Ministers. The cost of electricity, following the 25 year lifespan of the Development, would be difficult to predict at this time, therefore, the Company has indicated it will make a decision on whether to repower the Development based on a number of factors at an appropriate time in the future.

The Scottish Ministers, therefore, consider that they have sufficient information regarding future costs of electricity and repowering of the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

New jobs and manufacturing created in Scotland

One (1) representation was received from a member of the public concerning the creation of new jobs and turbine manufacturing in Scotland. The Socio-economic sections of the ES provided details on the benefits the Development will bring, and while no guarantees are made as to the exact number of jobs created, or what manufacturing facilities will be located in Scotland, the base case and high case has been estimated and assessed.

Further information on the economic assessment can be found under the Scottish Ministers' consideration of the Application.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the creation of new jobs and manufacturing in Scotland, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Summary

In addition to the issues raised by the objections, as discussed above, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers' consideration of the application. The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES, the Additional Ornithology Information and in the consultation responses received from the closest onshore Planning Authorities, SEPA, the JNCC,

SNH and other relevant bodies, together with all other objections and representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that-

5. they possess sufficient information upon which to determine the Application;
6. an inquiry into the issues raised by the objectors would not be likely to provide any further factual information to assist Ministers in determining the Application;
7. they have had regard to the various material considerations relevant to the Application, including issues raised by objections; and
8. the objectors have been afforded every opportunity to provide information and to make representations.

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

The Scottish Ministers are satisfied that an ES has been produced in accordance with the 2000 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES, Additional Ornithology Information, and the representations received from the consultative bodies, including JNCC, SNH, SEPA, Aberdeenshire Council, Highland Council, Moray Council and from all other persons.

The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the application for consent. The Scottish Ministers have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company. The Scottish Ministers have also, as per regulation 4(2) of the 2000 Regulations, taken into account all of the environmental information and are satisfied the Company has complied with their obligations under regulation 4(1) of those Regulations.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE

When considering an application for section 36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether a development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

With regards to the Development, the JNCC and SNH advised that the Development or the Proposal is likely to have a significant effect upon the qualifying interests of a number of sites, both SACs and SPAs. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA. On the basis of the AA, MS-LOT concluded that the Development or the Proposal would not adversely affect the integrity of any of the designated sites if the mitigation measures outlined were implemented by means of enforceable conditions attached to this consent (**Annex 2**). Under the Habitats Regulations the relevant statutory nature conservation bodies must be consulted. This has been carried out and the JNCC and SNH agreed with all the conclusions reached in the AA.

In the case of this Development the key decision for the Scottish Ministers has been the test laid down under article 6(3) of the Habitats Directive (and transposed by the Habitats Regulations) which applies to the effects of projects on both SACs and SPAs. The Scottish Ministers and their statutory nature conservation advisers are satisfied that the test in article 6(3) is met, and that the relevant provisions in the Habitats Directive, the Wild Birds Directive and the Habitats Regulations are being complied with. The precautionary principle, which is inherent in article 6 of the Habitats Directive and is evident from the approach taken in the AA, has been applied and complied with.

The Scottish Ministers are convinced that, by the attachment of conditions to the consent, the Development will not adversely affect site integrity of the European protected sites included within the AA. The Scottish Ministers are satisfied that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

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

For the reasons already set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also satisfied that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of any European protected site.

Impacts on fish and shellfish

The consultation responses from the ASFB and the MFSTP confirmed objections to the Development and the Proposal from each. Both organisations raised concerns regarding the uncertainty over the potential impacts on migratory fish. The key issues included the potential impacts associated with subsea noise during construction and operation, electromagnetic fields (“EMF”), degradation of the benthic environment, impact on prey species, unknown aggregation effects at the turbines and the fact that the transmission infrastructure cable landfall is close to the small river; Water of Philorth. Both organisations were concerned at the lack of biological information to make a wholly accurate assessment of possible impacts from the Development or the Proposal and both requested monitoring and mitigation measures be put in place. A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish which the Company will contribute to at a local level (the Moray Firth).

The JNCC and SNH identified SACs where the Development or the Proposal is likely to have a significant effect on the qualifying interests. This required MS-LOT, on behalf of the Scottish Ministers, to undertake an AA in view of the conservation objectives for each SAC. The AA concluded that subject to certain conditions, including appropriate mitigation and monitoring, the Development could be implemented without adversely affecting site integrity. Such conditions have been included by the Scottish Ministers within this consent (**Annex 2**).

The JNCC, SNH and MSS raised some concerns over the potential impacts on cod, herring and sandeels. The Company has already carried out pre-construction baseline surveys for cod and sandeels in the Moray Firth; using methodologies approved by MSS. Post consent surveys for cod and herring are conditioned in this consent (**Annex 2**). In the case of herring, this will be used to inform and determine appropriate mitigation to be used during sensitive spawning periods when piling activity is taking place. Herring surveys will be required during August to October prior to construction and will help to refine mitigation measures to reduce impacts on the Orkney/Shetland stock. Should the proposed mitigation not be suitable MSS advised that there should be a piling restriction of up to 16 days which should be determined following analysis of the survey data.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on fish species and shellfish that would require consent to be withheld.

Impacts on birds

The JNCC, SNH and the RSPB Scotland expressed concerns about the potential impact of the Proposal, on its own, and in combination with the adjacent proposed BOWL development, on several bird species using the Moray Firth. The species of most concern were great black-backed gull, herring gull, gannet, puffin, razorbill and guillemot. Concerns over great black-backed gull and herring gull were mainly in relation to collision risk with the wind turbine generators (“WTGs”) during operation. Concerns over the auk species (puffin, razorbill and guillemot) were in relation to displacement from the wind farm site. Potential displacement effects are; the loss of

feeding grounds and increased energy costs that could lead to breeding failure. Concerns over gannet related to both collision and displacement.

Of the species above, all except gannet are considered in the AA as gannet is not a qualifying feature of the nearby Troup, Pennan and Lion's Head SPA. However as part of the Gamrie and Pennan Coast Site of Special Scientific Interest ("SSSI"), the gannet colony at Troup Head is a notified feature and therefore required consideration. The JNCC and SNH advised that the colony at Troup Head has been increasing in numbers and concluded that the Development and the Proposal, in combination with the BOWL development would not have a significant adverse impact on the SSSI gannet population.

The AA requires to assess the implications of the Proposal (in combination with BOWL and including mitigation measures) for each European protected site in view of the site's conservation objectives. The JNCC and SNH have advised that in the case of bird species the relevant conservation objective in the present case is to ensure the long-term maintenance of the population of the relevant qualifying bird species as a viable component of the relevant SPA. This is because that objective not only encompasses direct impacts to the species, such as significant disturbance when birds are outwith the SPA, but it can also address indirect impacts, such as the degradation or loss of supporting habitats which are outwith the SPA but which help maintain the population of the species of the SPA in the long-term. Such an assessment requires the use of data and scientific methods to estimate two key values: first, to predict the impact of the Proposal (in combination with BOWL and including mitigation measures) on the population of the qualifying species; and second, to quantify the level of impact that such populations could sustain without there being an adverse effect on the population of the species as a viable component of the site (i.e. an acceptable level of population change or "impact threshold", whether caused by increased mortality or decreased productivity). In the case of offshore wind farms, such impacts on bird species principally occur by virtue of two key effects, namely (i) increased mortality by direct collision of birds with a WTG and/or (ii) decreased productivity by displacement of birds from their foraging area (full details are provided in the AA).

Concerns from the JNCC and SNH regarding impacts on great black-backed gull, herring gull, puffin, razorbill and guillemot led to the development of a common currency approach for fixing the first key value, the predicted impact of the MORL Proposal and BOWL. This approach involved MORL and BOWL, the JNCC, SNH, and MSS agreeing the parameters which were most appropriate when predicting the levels of impact that the MORL Proposal and BOWL development were likely to have on the bird populations. This common currency approach allowed numbers to be generated and agreed for collision and displacement effects for each species of concern giving a cumulative impact from the MORL Proposal and BOWL development.

The JNCC, SNH and MSS also advised on what the acceptable levels of population change were for each affected qualifying species. The methods used for determining this figure varied between the JNCC, SNH, and MSS. The JNCC and SNH used a calculation called Potential Biological Removal ("PBR") and MSS used both MORL and BOWL's PVA modelling work augmented by the Acceptable Biological Change ("ABC") tool, which was developed by MSS as a means of estimating acceptable levels of biological change.

Following the common currency exercise the JNCC, SNH and MSS agreed in October 2013 that there would be no adverse effect on site integrity at ECC SPA in respect of Herring Gull, Guillemot and Razorbill, and at NCC SPA in respect of Puffin. There was however some disagreement over the acceptable levels of impact on 1.) great black-backed gull from ECC SPA, and 2.) puffin from ECC SPA.

1.) Great black-backed gull (collision risk) – The JNCC and SNH advised on the 29th October 2013 that for great black-backed gull from ECC SPA, using PBR, the acceptable level of impact was a cumulative mortality of no more than 6 birds a year. The impact thresholds which were predicted by MSS using the ABC tool were 20 if the MORL's model was used and 15 if the BOWL's model was used. Taking into account the fact that the JNCC and SNH had advised a figure of 6, MSS concluded that there would be no adverse effect on site integrity at ECC SPA for great black-backed gull, if cumulative collision risk mortality from MORL and BOWL is no greater than approximately 10 birds per annum. This precautionary figure was recommended in order to more closely align with the figure advised by the JNCC and SNH. It was later realised that the figure of 6 birds advised by the JNCC and SNH refers to adult breeding birds as this is the metric which their PBR method calculates. On the 22nd November 2013 agreement was reached between the JNCC, SNH and MSS that there would be no adverse effect on site integrity for great black-backed gull from ECC SPA based on the common currency which predicted an in-combination total impact of 3.95 collision mortalities for breeding adults or 14.82 collision mortalities including birds of all ages.

The AA, which concluded that there would be no adverse impact on the integrity of great black-backed gull from the ECC SPA, was completed using all advice received from the JNCC, SNH and MSS, in order to be suitably precautionary and recognise the uncertainty around assessment methodologies. The AA identified that the acceptable threshold for great black-backed gull was 11 birds of all ages. This is below the figure predicted by the ABC tool applied to both the MORL and BOWL PVA models and is well below the threshold advised by the JNCC and SNH of 6 adult breeding birds (MSS have estimated that 6 breeding birds equates to between 19 and 25 birds of all age classes depending on whether the MORL or BOWL population model is used). The AA was based on the MORL Proposal having 339 WTGs. Due to the confirmation from MORL on the reduction in the design envelope from a maximum of 339 WTGs to a maximum of 186 WTGs, it is not necessary to include conditions on this consent to ensure that the impacts on birds are within these acceptable levels.

2.) Puffin (displacement) - The JNCC and SNH advised that the calculation of displacement effects for the MORL Proposal and BOWL development is based on the footprint of the wind farms and the number of birds using the area. It takes no account of design (i.e. the density of WTGs) because there is no agreed method and limited available evidence to support any such approach. It predicts impacts solely in terms of displacement and its consequences for productivity. The JNCC and SNH noted that the assumption that each individual displaced equates to a pair failing to breed is at the most precautionary end of the range for this parameter, BOWL and MORL also consider this assumption to be highly precautionary. Assessments completed for offshore wind farms around England have focussed on SPAs for wintering / passage populations where the units have always been individuals not pairs, therefore this issue is somewhat novel.

The JNCC and SNH provided advice on appropriate impact thresholds based primarily on use of PBR. Original advice from 8th July and 29th October 2013 was based on a PBR calculation for the ECC SPA and NCC SPA individually. The October advice provided a threshold of up to 7 breeding adults for ECC SPA using an *f* value of 0.3, and 341 breeding adults for NCC SPA using an *f* value of 0.5. This led the JNCC and SNH to conclude that an adverse effect on site integrity could not be ruled out for ECC with respect to puffin. The impact threshold identified by PBR is highly sensitive to the *f* value used in the equation and the JNCC and SNH advice on the choice of *f* was based on trend information at the colonies. The ECC SPA population was considered to be declining as the population at the time of designation was thought to be much higher than estimates from more recent counts, leading to the lower *f* value of 0.3 being used in the PBR model. Subsequent to this advice, uncertainties about the population sizes of the SPAs at time of designation, and the subsequent trends arose. To address this, the JNCC and SNH provided advice on the 17th January 2014 based on use of PBR applied to a combined population of both sites (ECC and NCC SPAs). This provided a combined threshold of 212-354 breeding adults based on using an *f* value range of 0.3-0.5, and a joint SPA population estimate of 7345 pairs. The JNCC and SNH advised that this joint assessment addresses the requirements under the Habitats Regulations.

MSS identified thresholds of acceptable change by applying the ABC tool to the BOWL and MORL PVA models.

The effects on puffin were estimated using the common currency approach. The estimate provided a metric of individuals displaced, which for the purposes of assessing against a PBR threshold resulted in an additional step of conversion to adult mortality.

The table below details the estimated puffin effects with identified thresholds:

| | Effects | PBR | PVA & ABC |
|------------------|---|--------------------------------------|---|
| ECC | 79 individuals displaced converted to 23 breeding adult mortalities | 7-13 breeding adult mortalities | Between ~ 50 pairs and 140 individuals failing to breed |
| NCC | 483 individuals displaced converted to 137 breeding adult mortalities | 205 - 341 breeding adult mortalities | Between ~ 850 pairs and > 2000 individuals failing to breed |
| ECC/NCC combined | 562 individuals displaced converted to 159 breeding adult mortalities | 212 - 354 breeding adult mortalities | Between ~ 900 pairs and > 2140 individuals failing to breed |

MSS advised that the manner in which displacement effects have been quantified is highly precautionary (full details of this are provided in the AA).

The population estimates underpinning the assessment methods used should be regarded as indicative. Although best available evidence has been used throughout, the inherent uncertainties are sufficiently great that the precise estimates of the effects and the acceptable thresholds should not be considered as absolute values. It is,

however, reasonable to consider the calculated thresholds of acceptable change as being underestimates, and the estimated effects as being overestimates.

The JNCC and SNH advised that overall conclusions in relation to site integrity should be based upon the population estimate for both ECC SPA and NCC SPA combined. The JNCC and SNH concluded that there will be no adverse effect on site integrity from the BOWL and MORL worst case scenarios based on their application of PBR to set an impact threshold and conversion of the PBR value to an “equivalent” productivity value. MSS have used the PVA models to assess effects on productivity and taken account of the precautionary nature of the estimation of the magnitude of effects. MSS advised that the estimated effects are typically within the range of values used to estimate the acceptable thresholds. A reasonable interpretation of best available evidence led MSS to conclude no adverse effect on site integrity based on the number of birds displaced and the thresholds described above.

The AA completed for puffin concluded, having assessed all the evidence provided and taking into account the reduction in design envelopes, that whilst it is clear that puffin as a SPA qualifying interest appears the most sensitive to the displacement effect, the Proposal and the BOWL development will not adversely affect site integrity of ECC SPA or NCC SPA.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on birds that would require consent to be withheld.

Impacts on marine mammals

The Scottish Ministers note that techniques used in the construction of most offshore renewable energy installations have the potential to impact on marine mammals.

The JNCC, SNH and WDC advised that a key concern of theirs was the potential impacts from pile driving during construction. The JNCC and SNH noted that for bottlenose dolphins and harbour seals where population level effects could be of concern and population modelling was presented in the MORL ES, that the JNCC and SNH were satisfied that this used the best scientific approach currently available. The models are precautionary and predict some impact on the populations during construction, but no long term effects. The JNCC and SNH advised that it may be possible to further reduce disturbance impacts through consideration of construction programming and the adoption of mitigation, both of which, have been incorporated into the conditions of this consent (**Annex 2**).

The JNCC and SNH advice provided on the 8th July 2013 concluded that the Development or the Proposal and the BOWL development will not lead to any adverse effect on site integrity of the Moray Firth SAC and the Dornoch Firth and Morrich More SAC and did not object subject to conditions being attached to any section 36 consent (see **Annex 2**). An AA completed by MS-LOT, on behalf of the Scottish Ministers, concluded that the Development or the Proposal and the BOWL development will not adversely affect site integrity of these SACs.

For minke whale, MSS advised that the management area for minke whale is British and Irish waters. This area is estimated to contain 23,163 animals, with 95% confidence intervals ranging from 13,772 to 38,958. MSS advised that disturbance from piling will not affect the favourable conservation status of the minke whale population. However, disturbance of individual animals is likely to occur, both inside and outside of Scottish Territorial Waters, from the Development, the Proposal and BOWL, necessitating the requirement for a European Protected Species ("EPS") licence.

For harbour porpoise, MSS advised that significant disturbance is predicted to occur at ranges of around 10-15 km. Evidence from studies of harbour porpoise responses to seismic surveys in the Moray Firth suggests that animals that were displaced by noise effects within 10 km returned within a few hours and that animals reduced their response time over the duration of the survey. MSS advised that the Development alone, and in combination with the rest of the Proposal and BOWL, will not have a significant adverse effect on the North Sea, or Moray Firth harbour porpoise population.

WDC raised concerns over impacts on minke whale and harbour porpoise as well as corkscrew injuries to harbour seals. Impacts to prey species, particularly sandeels and salmonids was also raised. MSS have advised that there have been a small number of reports of corkscrew seals injuries in the inner Moray Firth, but the area is not considered at this time to be a hotspot for these injuries. Discussions are on-going between MSS and SNH over the cause and effect of corkscrew injuries to seals but there is not sufficient evidence at this time to attribute this type of injury to one particular source. A potential source may be a ducted propeller, such as a Kort nozzle or some types of Azimuth thrusters. Such systems are common to a wide range of ships including tugs, self-propelled barges and rigs, various types of offshore support vessels and research boats.

SNH and the JNCC advised that it has not been established whether there is a link between the use of ducted propellers and the corkscrew injuries which have been recorded in seal species over the last couple of years. Research in this regard has been commissioned by Marine Scotland and SNH and is currently being undertaken by the Sea Mammal Research Unit ("SMRU"). The JNCC and SNH will be consulted on the Vessel Management Plan ("VMP") which is a condition of this consent, as will such other advisors and organisations as may be required at the discretion of the Scottish Ministers. This plan will detail the mitigation measures proposed by the Company to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with the Development. Scottish Ministers are satisfied that the mitigation and monitoring included in the conditions attached to this consent (**Annex 2**) will suffice.

WDC had concerns over the cumulative impacts on marine mammals from both the proposed Moray Firth developments and the proposed Forth and Tay wind farm developments. Advice received from MSS relating to the impact on the Coastal East Scotland bottlenose dolphin population from the construction of Nigg, Ardersier and Invergordon ports together with the construction impacts from the Moray Firth wind farms and Forth and Tay wind farms concluded that cumulative impacts were not significant to the population, given that they are statistically indistinguishable from the population estimate.

The Company will also be required to apply for a licence allowing for the disturbance of EPS at a later date.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on marine mammals that would require consent to be withheld.

Impacts on benthic ecology and habitat interests

The design envelope applied for includes the option for gravity bases to be used. The Scottish Ministers have agreed with the Company that if gravity bases are to be used across all WTG locations, this would be subject to a further marine licence application and environmental impact assessment to consider the required dredging and disposal of spoils. The JNCC and SNH have welcomed this approach and have advised that with the absence of dredge spoil disposal there will be no adverse effect on site integrity on the Moray Firth SAC habitat interests.

The JNCC and SNH advised that no Annex 1 habitats had been identified in the survey work for the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on benthic ecology and habitat interests that would require consent to be withheld.

Impacts on commercial fishing activity

Regarding commercial fishing activity in the Moray Firth, the SFF raised concerns on restricted access or total loss of traditional fishing grounds, EMF and barriers caused by cabling to towing gear. The SFF stated that within the design envelope fewer WTGs would be favourable. The applications as submitted for the Proposal comprised up to 339 WTGs, however during the determination process, MORL has reduced this number down to no more than 186 WTGs. As suggested by MSS and the SFF, the MFOWDG-CFWG has been established to facilitate on-going dialogue throughout all phases of the Development. The MFOWDG-CFWG met for the first time on the 18th April 2013. Mitigation for the construction, operational and decommissioning impacts of this Development, in combination with the Proposal and adjacent proposed BOWL development, was identified as the key aims. Participation in this group and the creation of a commercial fisheries mitigation strategy, approved by the Scottish Ministers, are reflected in a condition of this consent (**Annex 2**). The reduction in the number of WTGs and the condition in this consent requiring over trawl surveys will potentially mitigate the impacts of the Proposal on commercial fisheries.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on commercial fishing activity that would require consent to be withheld.

Impacts on shipping and navigational safety

The Chamber of Shipping (“CoS”) acknowledged that the proposed wind farm site is in an area with relatively low levels of commercial shipping activity and that the main concentrations of traffic are on the Pentland Firth route, some 4-5 nm from the site boundary. The CoS agreed that the impacts on commercial shipping are likely to be relatively low, however raised some concerns over the cumulative impacts of the MORL and BOWL developments on navigation. The CoS advised that MORL should work closely with BOWL to ensure as much uniformity of the layout as possible between the wind farms. Any projected deviation of the shipping route to northern Norway and Russia may require minor adjustment taking into account the cumulative effect with BOWL. If MORL propose any future applications for operational safety zones the CoS would like to remain informed. Any safety zones will need to be applied for through the Department of Energy and Climate Change (“DECC”).

The Northern Lighthouse Board (“NLB”) was unable to specify final marking and lighting requirements owing to a lack of clarity in the application with regard to the number and layout of WTGs, sub-stations and meteorological masts. Lighting and marking requirements will be given by the NLB during the finalisation of the Development Specification and Layout Plan (“DSLPL”) once submitted by the Company. Submission of a DSLPL is a condition of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on shipping and navigational safety that would require consent to be withheld.

Impacts on aviation

NATS objected because of potential impacts on the Allanshill radar and associated air traffic operations. Following discussions between MORL and NATS, an agreement has been entered into between the two parties for the design and implementation of an identified and defined mitigation solution in relation to the Development and the Proposal. Consequently, NATS have withdrawn their objection.

The DIO initially objected to the Proposal citing concerns with the Air Traffic Control radar at RAF Lossiemouth and the Air Defence Radar at RAF Buchan. Following discussions with the DIO, and further consideration of the mitigation proposals submitted by MORL, the DIO confirmed that it was prepared to withdraw their objection subject to conditions being attached to any consent (**Annex 2**).

The CAA highlighted relevant Policy Statements and guidance relating to standards for offshore helicopter landing areas, lighting of offshore WTGs and the failure of aviation warning lighting on WTGs which the Company should adhere to. The CAA stated that there was a requirement to notify the UKHO of final positions and maximum heights of the WTGs for aviation and maritime charting. A condition capturing this requirement is reflected in this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in

relation to the Development's impact on aviation that would require consent to be withheld.

Impacts on recreation and tourism

Some concerns have been raised through the consultation regarding the Proposal's potential impact upon tourism, particularly relating to the dolphin watching in the Moray Firth, by WDC. Although there is likely to be some short term displacement of marine mammals during construction, this is not considered to be significant in the longer term and so will not significantly reduce the opportunities for marine mammal watching.

Concerns were also raised by Surfers Against Sewage ("SAS") that the Proposal could impact surfing locations around the Moray coast. The Scottish Ministers are satisfied that the wave climate will not be altered by the Development or the Proposal to such an extent as to impact on surfing.

No concerns were raised by either the Scottish Canoe Association ("SCA") or the Royal Yachting Association Scotland ("RYA Scotland"). However, the RYA Scotland did ask that a condition be attached to all marine licences to inform the 'Clyde Cruising Club Sailing directions and Anchorages' of the location of the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on recreation and tourism that would require consent to be withheld.

Visual impacts of the Development

SNH, the Scottish Ministers statutory advisors on visual impacts and designated landscape features, was consulted and did not object to the proposed Development or Proposal on the grounds of visual impacts. SNH and the JNCC advised that there would be a major change to Caithness' coastal character and scenery in the core area of Noss Head (Wick) to Dunbeath and that the Development or Proposal together with BOWL will form a prominent new feature (some 19 km in length) on the skyline of the open sea. These landscape and visual impacts are primarily caused by BOWL rather than the Development, due to its closer proximity to shore. The JNCC and SNH advised that the visual impact of the MORL Proposal and BOWL development on the Moray and Aberdeenshire coast would be negligible. The Highland Council has asked to be consulted on the final layout of the farm, but have accepted that seabed conditions and navigational safety will be the primary drivers in the design of the Development. As part of this consent, a condition has been placed on the Company to provide final visualisations to the Highland Council and all Consultees with an interest in visual amenity (**Annex 2**).

No Consultees, Statutory or otherwise, have objected to the development on landscape and visual impacts. This was primarily due to the distance the development is from the shore (over 12 nm).

The Scottish Ministers recognise that the MORL Proposal and BOWL development will be a prominent new feature on the seascape from the Caithness coastline.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's visual impacts that would require consent to be withheld.

Impact on telecommunications

The Highland Council raised a concern that the Development or the Proposal could cause an impact upon television reception in the area around Helmsdale which may look to Moray/Aberdeenshire for reception rather than to a point in Highland. The Scottish Ministers have therefore included a condition within the consent which sets out the mitigation measures that would be taken to investigate and rectify any complaint made (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the conditions proposed, there are no outstanding concerns in relation to the Development's impact on recreation and tourism that would require consent to be withheld.

The efficiency of wind energy

No form of electricity generation is 100% efficient and wind farms, in comparison with other generators, are relatively efficient. Less than half the energy of the fuel going into a conventional thermal power station is turned into useful electricity – a lot of it ends up as ash, nuclear waste or air pollution harmful to health as well as carbon dioxide. Also, the fuel for a wind farm does not need to be mined, refined or shipped and transported from foreign countries. The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the efficiency of wind energy that would require consent to be withheld.

The development of renewable energy

The Scottish Ministers must ensure that the development of the offshore wind sector is achieved in a sustainable manner in the seas around Scotland. This Development forms part of the Zone 1, of Round 3 offshore wind farm sites to be consented in Scotland and as such will raise confidence within the offshore wind industry that Scotland is delivering on its commitment to maximise offshore wind potential. This Development will also benefit the national and local supply chains. The Scottish Ministers aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland's manufacturing capacity, to develop new indigenous industries, and to provide significant export opportunities.

This 372 MW Development has the potential to annually generate renewable electricity equivalent to the demand from approximately 236,895 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the

Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020. Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of renewables generation, a balanced electricity mix is required to support the security of supply requirements. This does not mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the development of renewable energy that would require consent to be withheld.

Proposed location of the Development

The Scottish Ministers consider that MORL has carefully considered the location of the Development and selected the Outer Moray Firth due to its many advantages. The suitability of the site was further affirmed in May 2010 with the Scottish Government's publication of the SEA in the Draft Plan for Offshore Wind Energy in Scotland, which confirmed that all ten Scottish Territorial Waters 2009 lease round sites could be developed between 2010 and 2020 if "appropriate mitigation is implemented to avoid, minimise and offset significant environmental impacts".

The Marine Renewable Energy and the Natural Heritage: an Overview and Policy Statement (SNH, 2004) and Matching Renewable Electricity Generation and Demand (Scottish Government, 2006) indicated the Moray Firth Area was favoured for development of large scale offshore wind farms. The Company identified the wind farm site as a suitable site for offshore wind farm development; there are a number of reasons for the site being suitable:

- its distance from shore (over 12 nm) reduces visual impact;
- its excellent wind resource;
- its water depths and ground conditions suitable for jacket foundation technology;
- its good access, suitable ports and supply chain for construction and operations;
- it being situated outside any conservation-designated area;
- it being situated outwith any helicopter safety zones around oil platforms;
- it being situated outwith shipping access routes to oil platforms; and
- its access to the strong local skills base required to deliver energy from wind offshore.

MORL have chosen to develop the MORL Eastern Development Area ("EDA") of Zone 1 first because the MORL Western Development Area ("WDA") was assessed to have more significant spatial constraints to wind farm development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies and members of the public, there are no outstanding concerns with regards to the proposed location of the Development that would require consent to be withheld.

Cumulative impacts of the Development

The close proximity of the Development (as part of the Proposal) to the proposed adjacent BOWL wind farm has meant that cumulative impacts have raised significant concerns. The issue of potential cumulative impact on landscape and visual amenity was considered by the JNCC and SNH with no significant concerns raised regarding cumulative visual impact with other onshore and offshore developments.

Cumulative impacts on marine wildlife were raised by several organisations including the JNCC, SNH, RSPB Scotland, WDC, the ASFB and the MFSTP. Cumulative impacts on benthic ecology, birds, marine mammals and fish interests have been fully considered in this consent and conditions have been put in place to minimise the impacts and ensure that residual impacts are within acceptable limits (**Annex 2**).

The impact upon birds is a matter of particular significance in assessing the applications. The cumulative impacts on certain bird species has led to the original design envelope being reduced to ensure that any impacts are within calculated acceptable levels. The cumulative impacts on any protected species or habitats have also been considered in the AA, undertaken by MS-LOT, on behalf of the Scottish Ministers.

Cumulative impacts on commercial fisheries were also raised by the SFF, however a working group (MFOWDG-CFWG) has been established in order to discuss and address any issues. A condition to ensure the Company continues its membership of the working group and its commitment to any mitigation strategy forms part of this consent (**Annex 2**). Concerns were also raised on the cumulative impacts on navigation by the CoS. Conditions ensuring that consultation with the CoS is undertaken prior to commencement of the Development forms part of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the cumulative impact of this Development with other developments in the Moray Firth that would require consent to be withheld.

Economic Benefits

MORL estimate the total gross cost of constructing the Proposal and the OfTI to be £4.4 billion excluding Operational Expenditure (“OPEX”). In Scotland the expenditure made by the Proposal and OfTI could generate Gross Value Added (“GVA”) of between £590 million and £1,510 million over its lifetime (including decommissioning phase). Between £310 million and £910 million of this total GVA could be in Moray, Highland, Aberdeen City and Aberdeenshire (“the Study Area”).

MORL estimate that the Proposal could support between 8,300 and 17,800 job-years’ worth of employment in Scotland across the whole lifetime of the project, of which between 4,300 and 11,200 could be in the Study Area. The construction of the OfTI could create an additional 1,000 - 1,500 job-years’ worth of employment in Scotland, and 600 - 800 job-years’ worth of employment in the Study Area.

MORL estimate that the Proposal and the OfTI could support between 990 and 2,410 jobs in Scotland and between 350 and 1,400 jobs in the Study Area during the peak of the construction phase. During the operations phase it is estimated this could fall to

210 - 330 jobs in Scotland and 140 – 220 jobs in the Study Area. During the decommissioning phase it is estimated there could be 100 - 460 jobs in Scotland and 40 - 260 jobs in the Study Area.

The above estimates are based on two scenarios:

3. Base Case – the total value of contracts that have been delivered, or are expected to be delivered, from within each geography, assuming the current supply chain; and
4. High Case – the total value of contracts that could be secured by firms based in Scotland (and the Study Area) with a stronger supply chain. This assumes that where Scottish-based firms are not currently in a position to tender for work, (but there is good reason to expect them to be in the future), they are successful.

MORL anticipates that there could be a spend of 15% of the overall expenditure for the Proposal in Scotland under the Base Case. Under the High Case, there could be a total budget spend of 40% in Scotland.

It should be recognised however that at this stage, many development and procurement decisions are still to be made. Changes in the anticipated expenditure or procurement patterns from those anticipated during the assessment will change the associated estimates of employment and GVA. The effect on employment through the supply chain depends critically on the design, construction and operation decisions that are yet to be taken, and on the extent to which Scottish companies are able to secure contracts. These figures also assume that the full Proposal of 1,116 MW is developed.

The Scottish Ministers have taken account of the economic information provided by MORL and consider that there are no reasons in relation to this that would require consent to be withheld.

Summary

The Scottish Ministers consider the following as principal issues material to the merits of the section 36 consent application made under the Electricity Act:

- MORL has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- MORL's ES and the consultation process has identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES and Additional Ornithology Information, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004 such programme is prepared

in a timely fashion by imposing a condition requiring its submission to the Secretary of State before the Commencement of the Development (**Annex 2**);

- The Scottish Ministers have considered material details of how the Proposal can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;
- The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the Additional Ornithology Information, all relevant responses from consultees and the fifteen (15) public representations received; and
- On the basis of the AA, the Scottish Ministers have ascertained to the appropriate level of scientific certainty that the Proposal (in combination with the BOWL development, and in light of mitigating measures and conditions proposed) will not adversely affect site integrity of any European protected sites, in view of such sites' conservation objectives.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act for the construction and operation of the Development with a permitted capacity of up to **372 MW** (as described in **Annex 1**).

Deemed planning for the onshore ancillary development was not applied for by the Company.

In accordance with the 2000 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development.

In reaching their decision, the Scottish Ministers have had regard to all, representations and relevant material considerations, and, subject to the conditions included in this consent (**Annex 2**), are satisfied that it is appropriate for the Company to construct and operate the generating station in the manner as set out in the Application and as described in **Annex 1**.

Copies of this letter and the consent have been sent to Aberdeenshire Council, Highland Council and Moray Council. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found at Chapter 58 of the Court of Session rules on the website of the Scottish Courts –

<http://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

TELFORD OFFSHORE WIND FARM

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

Yours sincerely

JAMES MCKIE

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

19th March 2014

Annex 1

DESCRIPTION OF THE DEVELOPMENT

The Development, located as shown on Figure 1 below, shall have a permitted generating capacity not exceeding 372 MW and shall comprise a wind-powered electricity generating station in the Outer Moray Firth, including:

1. not more than 62 three-bladed horizontal axis wind turbine generators each with:
 - a. a maximum blade tip height of 204 metres;
 - b. a rotor diameter of between 150 and 172 metres;
 - c. a minimum crosswind spacing of 1,050 metres; and
 - d. a minimum downwind spacing of 1,200 metres;
2. all foundations, substructures, fixtures, fittings, fixings, and protections;
3. inter array cabling and cables up to and onto the offshore substation platforms; and
4. transition pieces including access ladders / fences and landing platforms,

all as specified in the Application and by the conditions imposed by the Scottish Ministers. References to “the Development” in this consent shall be construed accordingly.

TELFORD OFFSHORE WIND FARM

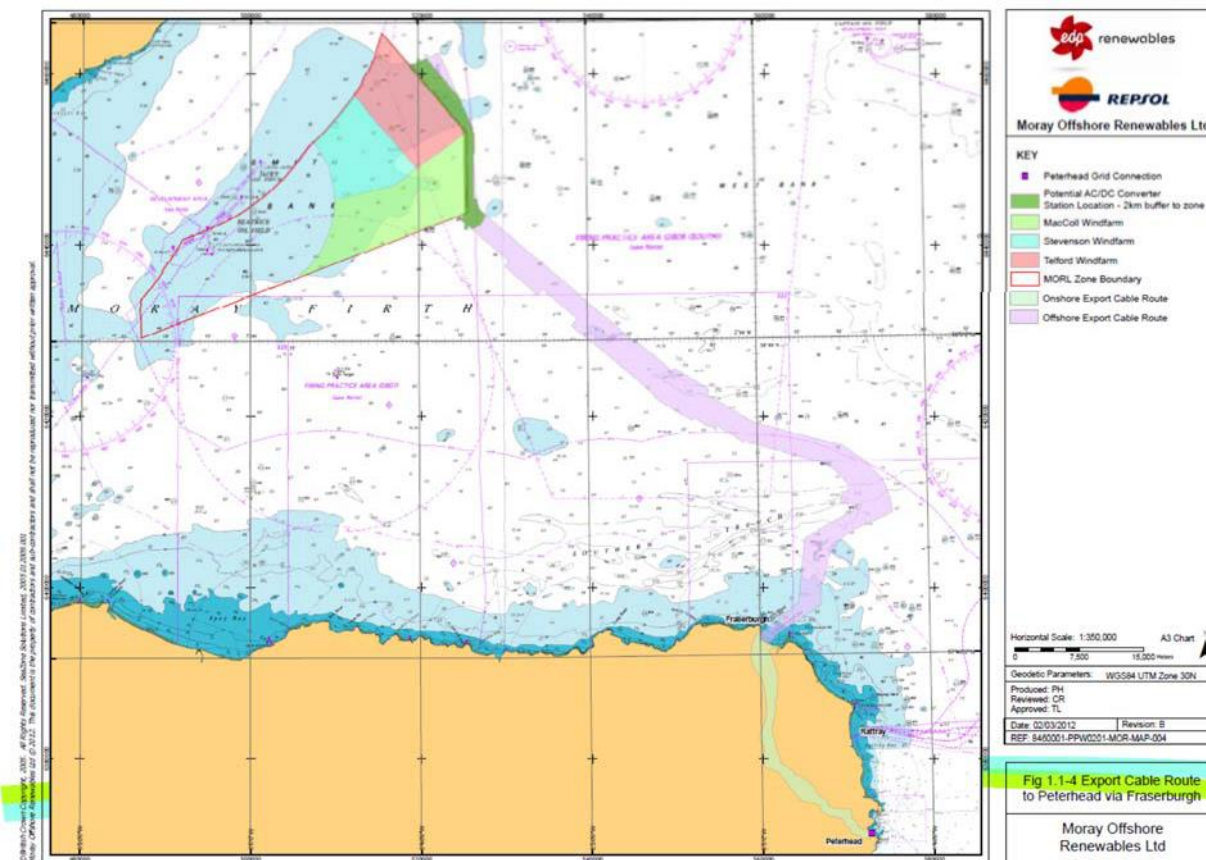


Figure 1. Development Location – see KEY

Annex 2

CONDITIONS OF THE SECTION 36 CONSENT

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

1. The consent is for a period from the date this consent is granted until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, the Planning Authority, JNCC and SNH no later than one calendar month after the Final Commissioning of the Development. Where the Scottish Ministers deem the Development to be complete on a date prior to the date when all wind turbine generators forming the Development have supplied electricity on a commercial basis to the National Grid then the Scottish Ministers will provide written confirmation of the date of the Final Commissioning of the Development to the Company, the Planning Authority, JNCC and SNH no later than one calendar month after the date on which the Scottish Ministers deem the Development to be complete.

Reason: To define the duration of the consent.

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

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

3. Where the Secretary of State has, following consultation with the Scottish Ministers, given notice requiring the Company to submit to the Secretary of State a Decommissioning Programme, pursuant to section 105(2) and (5) of the Energy Act 2004, then construction may not begin on the site of the Development until after the Company has submitted to the Secretary of State a Decommissioning Programme in compliance with that notice.

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

4. The Company is not permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant (with or without conditions) or refuse such authorisation as they, at their own discretion, see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

5. In the event that for a continuous period of 12 months or more any WTG installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with any advisors as required at the discretion of the Scottish Ministers, any such WTG and all associated foundations and ancillary equipment may be deemed by the Scottish Ministers to cease to be required. If so deemed, the WTG and all its associated foundations and ancillary equipment must be dismantled and removed from the Site by the Company, following the procedures laid out within the Company's Decommissioning Programme, within the period of 24 months from the date of the deeming decision by the Scottish Ministers and the Site must be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers after consultation with any such advisors on decommissioning as may be required at the discretion of the Scottish Ministers.

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

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

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

7. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES, the Additional Ornithological Information, [the Section 36 Consents Variation Application Report for Telford, Stevenson and MacColl Offshore Wind Farms dated December 2017](#) and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.

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

8. 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 inspection.*

9. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CoP must be in accordance with the ES. The Development must, at all times, be constructed in accordance with the approved CoP (as updated and amended from time to time by the Company). Any updates or amendments made to the CoP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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.

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

10. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CMS must set out the construction procedures and good working practices for installing the Development. The CMS must be in accordance with the construction methods assessed in the ES and must include details of how the construction related mitigation steps proposed in the ES are to be delivered. The Development must, at all times, be constructed in accordance with the approved CMS (as updated and amended from time to time by the Company). Any updates or amendments made to the CMS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

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. In the event that pile foundations are to be used, the Company must, no later than 6 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 the JNCC, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved PS (as updated and amended from time to time by the Company). Any updates or amendments made to the PS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The PS must include:

- a. Full details of the proposed method and anticipated duration of pile-driving at all locations;
- b. Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- c. Details of mitigation and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the ES and reflect any surveys 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 of the following species: bottlenose dolphin; harbour seal; Atlantic salmon; cod; and herring.

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

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

12. The Company must, no later than 6 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, CoS, the JNCC, SNH, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved DSLPL (as updated and amended from time to time by the Company). Any updates or amendments made to the DSLPL by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. A plan showing the proposed location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, location of the substation platforms,

- 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 for each WTG, this should also be provided as a GIS shape file using WGS84 format;
 - c. A table or diagram of each WTG dimensions including - height to blade tip (measured above HAT), height to hub (measured above HAT to the centreline of the generator shaft), rotor diameter and rotation speed;
 - d. The generating capacity of each WTG used on the Site and a confirmed generating capacity for the Site overall;
 - e. The finishes for each WTG (see condition 19 on WTG lighting and marking); and
 - f. The length and proposed arrangements on the seabed of all inter-array cables.

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

13. The Company must, prior to the Commencement of the Development, submit a Design Statement ("DS"), in writing, to the Scottish Ministers that includes representative wind farm visualisations from key viewpoints agreed with the Scottish Ministers, based upon the DSLP, as approved by the Scottish Ministers (as updated and amended from time to time by the Company). The DS must be provided, for information only, to the Planning Authorities and the JNCC, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The DS must be prepared and signed off by at least one qualified landscape architect, instructed by the Company prior to submission to the Scottish Ministers.

Reason: *To inform interested parties of the final wind farm scheme proposed to be built.*

14. The Company must, no later than 6 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 the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved EMP (as updated and amended from time to time by the Company). Any updates or amendments made to the EMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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 condition 3).

The EMP must be in accordance with the ES 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 ES and pre-consent and pre-construction surveys, and include the relevant parts of the CMS (refer to condition 10);
- b. Pollution prevention measures and contingency plans;
- c. Management measures to prevent the introduction of invasive non-native marine species;
- d. Measures to minimise, recycle, reuse and dispose of waste streams; and
- e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, the JNCC, SNH, SEPA, RSPB Scotland, MCA and NLB) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development, submit an updated EMP, in writing, to cover the operation and maintenance activities for the Development to the Scottish Ministers for their written approval. Such approval may be given only following consultation with the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must be regularly reviewed by the Company and the MFRAG (referred to in condition 27) over the lifespan of the Development, and be kept up to date (in relation to the likes of construction methods and operations of the Development in terms of up to date working practices) by the Company in consultation with the MFRAG.

The EMP must be informed, so far as is reasonably practicable, by the baseline surveys undertaken as part of the ES and the PEMP.

Reason: To mitigate the impacts on the environmental interests during construction and operation.

15. The Company must, no later than 6 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 the JNCC, SNH, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved VMP (as updated and amended from time to time by the Company). Any updates or amendments made to the VMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. The number, types and specification of vessels required;
- b. Working practices to minimise the unnecessary use of ducted propellers;
- c. How vessel management will be co-ordinated, particularly during construction but also during operation; and
- d. Location of working port(s), how often vessels will be required to transit between port(s) and the site and indicative vessel transit corridors proposed to be used.

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 thereafter, any changes to the details supplied must be notified, as soon as practicable, to the Scottish Ministers 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 disturbance or impact to marine mammals and birds.

16. The Company must, no later than 3 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 JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority 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 the operations and 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.

Operation and maintenance of the Development must, at all times, proceed in accordance with the approved OMP (as updated and amended from time to time by the Company). Any updates or amendments made to the OMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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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.

Reason: To safeguard environmental interests during operation of the offshore generating station.

17. The Company must, no later than 6 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. Emergency response and co-ordination arrangements for the construction, operation and decommissioning phases of the Development; and
- g. 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 Guidance Note 371, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance. The Development must, at all times, be constructed and operated in accordance with the approved NSP (as updated and amended from time to time by the Company). Any updates or amendments made to the NSP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

18. The Company must, no later than 6 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 the JNCC, SNH, MCA 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 ES. The Development must, at all times, be constructed and operated in accordance with the approved CaP (as updated and amended from time to time by the Company). Any updates or amendments made to the CaP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CaP must include the following:

- a. Details of the location and cable laying techniques for the inter array cables;
- b. The results of survey 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 if burial depths can be achieved. In locations where this is not possible then suitable protection measures must be provided;
- e. Methodologies for over trawl surveys 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. Measures to address exposure of inter array cables.

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

- 19.** The Company must, no later than 6 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 MCA, NLB, CAA and DIO and any such other advisors 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 DIO 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 said guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in IALA Recommendation O-139 or any other documents that may supersede said guidance prior to approval of the LMP.

The Company must provide the LMP to the Highland Council, Moray Council, the JNCC, SNH and any other bodies as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved LMP (as updated and amended from time to time by the Company). Any updates or amendments made to the LMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

Reason: *To ensure safe marking and lighting of the offshore generating station.*

- 20.** The Company must, prior to the erection of any WTGs on the Site, 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 by the Scottish Ministers with the DIO.

No WTGs shall become operational until:

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

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

Reason: To mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the operations of the DIO.

21. No part of any turbine shall be erected above sea level until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Ministers in order to avoid the impact of the Development on the Primary Radar of the Operator located at Allanshill and associated air traffic management operations.

Reason: To mitigate the adverse impact of the development on air traffic operations.

22. No blades shall be fitted to any turbine unless and until the approved Primary Radar Mitigation Scheme has been implemented and the Development shall thereafter be operated fully in accordance with such approved Scheme.

Reason: To mitigate the adverse impact of the development on air traffic operations.

23. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Television and Radio Reception Mitigation Plan ("TRRMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the Highland Council. The TRRMP must provide for a baseline television reception survey to be carried out at a location(s) to be agreed by the Scottish Ministers in consultation with the Highland Council, paid for by the Company, prior to the commencement of any WTG installation. The results of which must be submitted by the Company, in writing, to the Highland Council within the time limit set in the TRRMP.

From Commencement of the Development until the date occurring 12 months after the Final Commissioning of the Development, any reasonable claim by any individual person regarding television picture loss or interference at their house, business premises or other building, which they claim is attributable to the Development, and which is notified to the Company, must be investigated by a qualified engineer approved by the Scottish Ministers in consultation with the Highland Council. The Company is liable for any costs incurred by any

such investigation. The results of any investigation must be submitted by the Company to the Scottish Ministers and the Highland Council within 2 months of completion of the investigation. Any impairment to the television signal shall be remedied by the Company, at its own expense, as soon as practicable to provide that the standard of reception at any affected property is equivalent to the baseline television and radio reception as existing at that property before the operation of the Development.

Reason: For the protection of the local amenity.

24. 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 UKHO for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the “as-built” positions and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: For aviation and navigational safety.

25. The Company must, no later than 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan (“TTP”), 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, the Planning Authorities, and any such other advisors as may be required at the discretion of the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must, at all times, be constructed and operated in accordance with the approved TTP (as updated and amended from time to time, following written approval by the Scottish Ministers).

Reason: To minimise the impact on public roads.

26. The Company must, no later than 6 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 the JNCC, SNH, RSPB Scotland, WDC, ASFB and any other ecological advisors as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the ES 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.

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Monitoring should be done in such a way as to ensure that the data which is collected allows useful and valid comparisons as between different phases of the Development. Monitoring may also serve the purpose of verifying key predictions in the ES. Additional monitoring may be required in the event that further potential adverse environmental effects are identified for which no predictions were made in the ES.

The Scottish Ministers may agree that monitoring may cease before the end of the lifespan of the Development.

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 surveys as relevant in terms of the ES and any subsequent surveys for:
 1. Birds;
 2. Cod;
 3. Herring;
 4. Sandeels;
 5. Diadromous fish;
 6. Benthic communities; and
 7. Seabed scour and local sediment deposition.
- b. The participation by the Company in surveys to be carried out in relation to marine mammals as set out in the MMMP; and
- c. The participation by the Company in surveys to be carried out in relation to regional and strategic bird monitoring;

All the initial methodologies for the above monitoring must be approved, in writing, by the Scottish Ministers and, where appropriate, in consultation with the MFRAG referred to in condition 27 of this consent. Any pre-consent surveys carried out by MORL to address any of the above species may be used in part to discharge this condition.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by the Scottish Ministers, in consultation with the MFRAG to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the MFRAG, 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 MFRAG and any other ecological, or such other advisors as may be required at the discretion of the Scottish Ministers. The PEMP, as amended from time to time, must be fully implemented by the Company at all times.

The Company must submit written reports of such monitoring surveys to the Scottish Ministers at timescales to be determined by the Scottish Ministers in consultation with the MFRAG. 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.

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

27. The Company must participate in any Moray Firth Regional Advisory Group ("MFRAG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish. Should a SSMEG be established (refer to condition 28), the responsibilities and obligations being delivered by the MFRAG will be subsumed by the SSMEG at a timescale to be determined by the Scottish Ministers.

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

28. The Company must participate in any Scottish Strategic Marine Environment Group ("SSMEG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish.

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

29. 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 the JNCC and SNH, appoint an Ecological Clerk of Works ("ECoW"). The term of appointment for the ECoW shall be from no later than 9 months post consent until the Final Commissioning of the Development.

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

- a. Quality assurance of final draft version of all plans and programmes required under this consent;
- b. Provide advice to the Company on compliance with consent conditions, including the conditions relating to the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- c. Monitor compliance with the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- d. Provide reports on point c) above to the Scottish Ministers at timescales to be determined by the Scottish Ministers; and
- e. Inducting site personnel on site / works environmental policy and procedures.

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

30. The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the 'Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy' so far as they apply at a local level (the Moray Firth). The extent and nature of the Company's participation is to be agreed by the Scottish Ministers in consultation with the MFRAG.

Reason: *To ensure effective monitoring of the effects on migratory fish at a local level (the Moray Firth).*

31. The Company must continue its membership in the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group ("MFOWDG-CFWG"), or any successor group formed to facilitate commercial fisheries dialogue to define and finalise the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C)). As part of the finalised Commercial Fisheries Mitigation Strategy ("CFMS"), the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development. Should it be deemed necessary by the MFOWDG-CFWG, investigations into alternative gear for the scallop fishing industry in the Moray Firth must form part of the CFMS. The CFMS to be implemented must be approved in writing by the Scottish Ministers. The Company must implement all mitigation measures committed to be carried out by the Company within the CFMS, so far as is applicable to the Development. Any contractors, or sub-contractors working for the Company, must co-operate with the fishing industry to ensure the effective implementation of said CFMS.

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

32. Prior to the Commencement of the Development, a Fisheries Liaison Officer ("FLO"), approved by Scottish Ministers, must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The Company must notify the Scottish Ministers of the identity and credentials of the FLO before Commencement of the Development by including such details 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 include, but not 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 project and any amendments to

- the CMS and site environmental procedures;
- b. 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 mitigate the impact on commercial fishermen.

- 33.** In the event that pile foundations are to be used, the Company must undertake herring surveys every year during the months of August and September commencing the first August and September following the date of this consent, up until, and including, the last August and September prior to Commencement of the Development, unless otherwise agreed in writing by the Scottish Ministers. The methodology of the herring surveys must be agreed, in writing, by the Scottish Ministers, following consultation with Marine Scotland Science, prior to the surveys commencing. The results of the herring surveys will be used to better inform the knowledge of spawning behaviour / characteristics of the Orkney / Shetland herring stock, thus allowing the Company to devise mitigation options to minimise noise impacts from piling activity on all life stages of herring and to inform the Company's PS (if a PS is required).

Following the results of the herring surveys undertaken in the last August and September prior to the Commencement of the Development, the Company must submit, in writing, its mitigation strategy to minimise the noise impacts on herring from piling activity, to the Scottish Ministers for their written approval. Once the Scottish Ministers have provided their written approval, the mitigation must be deployed during the annual herring spawning period (August and September) in any year of construction involving piling. Failing any agreement on mitigation, a piling restriction not exceeding sixteen (16) days within the months of August and September will take place in the area marked 'mitigation zone', as shown on the Telford Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, in any year of construction involving piling. The sixteen (16) days are not necessarily to be consecutive. The relevant sixteen (16) days of piling restrictions will be notified to the Company by the Scottish Ministers, in writing, at least 90 days prior to the first day of piling restriction.

Reason: To mitigate the risk to herring numbers in the Orkney/Shetland stock.

- 34.** The cod surveys undertaken on 17-26th February 2013 and 10-19th March 2013 in the Moray Firth by MORL will remain valid as a pre-construction baseline survey provided the Commencement of the Development occurs no later than 1st April 2018. If Commencement of the Development is later than 1st April 2018, the Company must undertake a further baseline cod survey during the months of February and March immediately prior to the Commencement of the Development in the area marked 'Cod Survey Area'

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shown on the Telford Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any further baseline cod survey for approval, in writing, by the Scottish Ministers.

The Company must undertake a post-construction cod survey in the first February and March, occurring no earlier than 12 months, following the Final Commissioning of the Development. This cod survey must be undertaken in the area marked 'Cod Survey Area' shown on Telford Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any post-construction cod survey for approval, in writing, by the Scottish Ministers.

Reason: To validate conclusions of impact assessments made in the ES on cod populations in the Moray Firth.

35. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Reporting Protocol 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 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.

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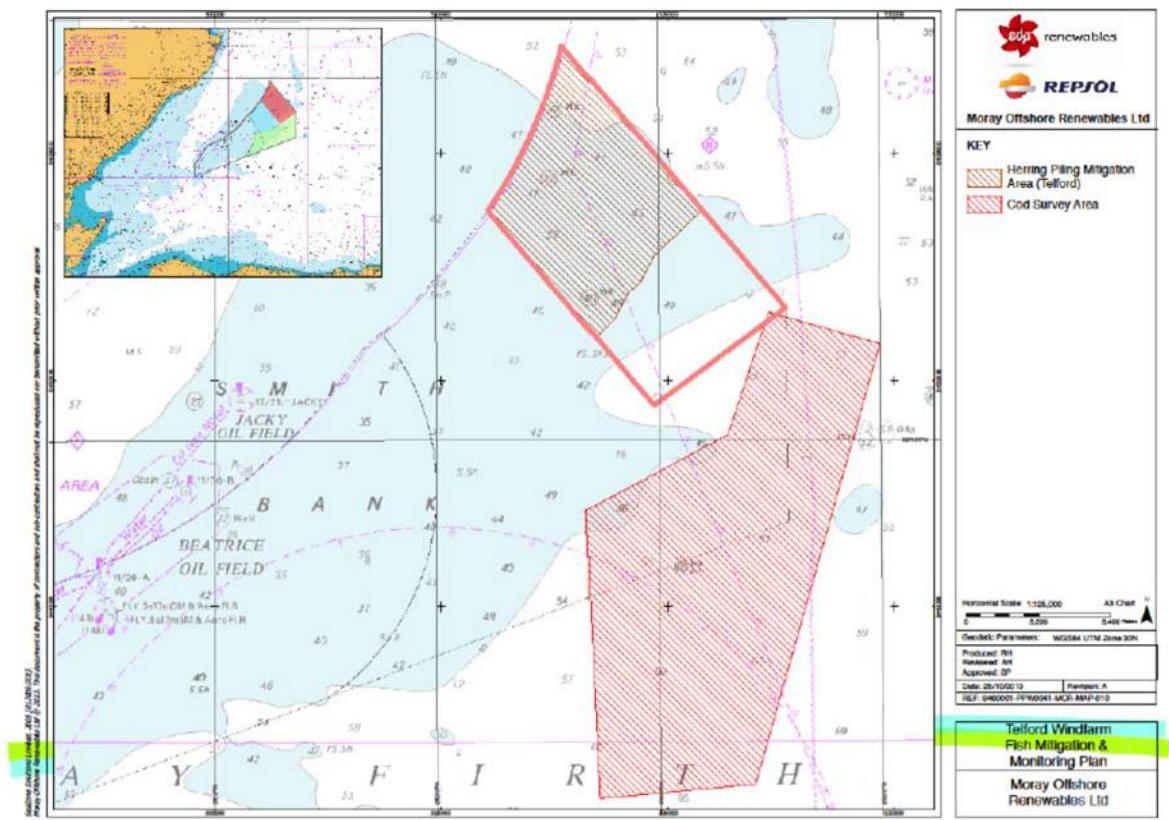


Figure 2. Telford Herring Piling Mitigation Area and Post Construction Cod Survey Area

Annex 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment.

“ABC” means the Acceptable Biological Change tool.

“Additional Ornithology Information” means the covering letter and report, submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013, concerning the reworking of bird data provided in the original Environmental Statement.

“the Application” means the Application letter and Environmental Statement submitted to the Scottish Ministers by Moray Offshore Renewables Limited, on behalf of Telford Offshore Windfarm Limited, on 2nd August 2012, and the Additional Ornithology Information submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013.

“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme. A detailed scheme to mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the air surveillance and control operations of the Defence Infrastructure Organisation (Ministry of Defence). The scheme will set out the appropriate measures to be implemented to that end.

“CFMS” means Commercial Fisheries Mitigation Strategy - the final document produced from consultation between Moray Offshore Renewables Limited and the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group (“MFOWDG-CFWG”), based on the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C) produced by Moray Offshore Renewables Limited).

“Commencement of the Development” means the date on which Construction begins on the site of the Development in accordance with this consent.

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

“the Company” means Telford Offshore Wind farm Limited, 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 07386810.

“Construction” means as defined at section 64(1) of the Electricity Act 1989, read with section 104 of the Energy Act 2004

“Decommissioning Programme” means the programme for decommissioning the relevant object, to be submitted by the Company to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended).

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“the Development” means the Telford Offshore Wind Farm in the Outer Moray Firth.

“ECC” means East Caithness Cliffs Special Protection Area.

“ECoW” means Ecological Clerk of Works.

“EDA” means the Eastern Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“EIA” means Environmental Impact Assessment.

“EMF” means electromagnetic fields.

“EPS” means European Protected Species.

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Moray Offshore Renewables Limited on 2nd August 2012 as part of the Application as defined above.

“EU” means European Union.

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

“FLO” means a Fisheries Liaison Officer.

“GIS” means Geographic Information System.

“GVA” means a measure of the contribution to the economy of each individual producer, industry or sector in the United Kingdom.

“GW” means gigawatt.

“HAT” means Highest Astronomical Tide - the highest level of water which can be predicted to occur under any combination of astronomical conditions.

“HRA” means Habitats Regulations Appraisal.

“IALA Recommendation O-139” means the International Association of Marine Aids to Navigation and Lighthouse Authorities Recommendation O-139 On The Marking of Man Made Offshore Structures.

“Marine Guidance Note 371” means the Maritime and Coastguard Agency Marine Guidance Note 371 Offshore Renewable Energy installations (OREI’s) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

“MFOWDG-CFW” means Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group. A group formed, and set up, to develop the

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Commercial Fisheries Mitigation Strategy, and as forum to facilitate on-going dialogue with the commercial fishing industry.

“MFRAG” means Moray Firth Regional Advisory Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a regional scale, set up by the Scottish Ministers

“MW” means megawatt.

“NCC” means North Caithness Cliffs Special Protection Area.

“nm” means nautical miles.

“NRA” means Navigational Risk Assessment.

“OfTI” means the Offshore Transmission Infrastructure.

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“OPEX” means Operational Expenditure.

“PBR” means Potential Biological Removal.

“the Planning Authorities” means Aberdeenshire Council, the Highland Council and Moray Council.

“the Planning Authority” means Aberdeenshire Council.

"Primary Radar Mitigation Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Allanshill primary radar and air traffic management operations of the Operator.

“the Proposal” means the proposed MORL development, consisting of all three wind farms; Telford Offshore Wind Farm, Stevenson Offshore Wind Farm and MacColl Offshore Wind Farm.

“PVA” means Population Viability Analysis

“SAC” means Special Area of Conservation.

“Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy” means a strategy that will be formulated from the Marine Scotland Science Report 05/13 – “The Scope of Research Requirements for Atlantic Salmon, Sea Trout and European Eel in the Context of Offshore Renewables” to monitor migratory fish at a strategic level.

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“Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010.

“Scottish offshore region” has the meaning given in section 322 of the Marine and Coastal Access Act 2009 (as amended).

“SEA” means Strategic Environmental Assessment.

“the Site” means the area shaded in red in Figure 1, attached to this consent at Annex 1.

“Soft start piling” means the gradual increase of piling power, incrementally over a set time period, until full operational power is achieved.

“SPA” means Special Protection Area.

“SSMEG” means Scottish Strategic Marine Environment Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a National scale, set up by the Scottish Ministers.

“SSSI” means Site of Special Scientific Interest.

“the Study Area” means Moray, Highland, Aberdeen City and Aberdeenshire.

“WDA” means the Western Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“WGS84” means the World Geodetic System 1984.

“WTG” means wind turbine generator.

Organisations

“ASFB” means The Association of Salmon Fishery Boards.

“BOWL” means Beatrice Offshore Windfarm Limited (Company Number SC350248) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ.

“CAA” means The Civil Aviation Authority.

“CoS” means The Chamber of Shipping.

“DECC” means Department of Energy and Climate Change.

“DIO” means The Defence Infrastructure Organisation (Ministry of Defence).

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

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“JNCC” means The Joint Nature Conservation Committee.

“MCA” means The Maritime and Coastguard Agency.

“MFSTP” means Moray Firth Sea Trout Project.

“MMO” means Marine Management Organisation.

“MORL” means Moray Offshore Renewables Limited, and having its registered office at 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 7101438.

“MPFSPG” Moray and Pentland Firth Salmon Protection Group.

“MS-LOT” means Marine Scotland Licensing Operations Team.

“MSS” means Marine Scotland Science.

“NATS” means National Air Traffic Service.

“NLB” means The Northern Lighthouse Board.

“NREAP” means UK Government's National Renewable Energy Action Plan.

“RSPB Scotland” means The Royal Society for the Protection of Birds Scotland.

“RYA Scotland” means Royal Yachting Association Scotland.

“SAS” means Surfers Against Sewage.

“SCA” means – Scottish Canoe Association

“SEPA” means The Scottish Environment Protection Agency.

“SFF” means The Scottish Fisherman’s Federation.

“SMRU” means Sea Mammal Research Unit.

“SNH” means Scottish Natural Heritage.

“UNECE” means United Nations Economic Commission for Europe.

“UKHO” means United Kingdom Hydrographic Office.

“WDC” means Whale and Dolphin Conservation.

Plans, Programmes and Statements

“ACSSDP” means Aberdeen City and Shire Strategic Development Plan, proposed February 2013.

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“ALDP” means The Aberdeenshire Local Development Plan, June 2012.

“CaP” means Cable Plan.

“CFMS” means Commercial Fisheries Mitigation Strategy.

“CMS” means Construction Method Statement.

“CoP” means Construction Programme.

“DIO Scheme” means Air Traffic Control Radar Mitigation Scheme.

“DS” means Design Statement.

“DSLDP” means Development Specification and Layout Plan.

“EMP” means Environmental Management Plan.

“HRESPG” means Highland Renewable Energy Strategy and Planning Guidelines, May 2006.

“HwLDP” means The Highland – wide Local Development Plan, April 2012.

“LMP” means Lighting and Marking Plan.

“MES” means Moray Economic Strategy, October 2012.

“MLP” means The Moray Local Plan, November 2008.

“MMMP” means Marine Mammal Monitoring Programme.

“MSP 2007” means The Moray Structure Plan, April 2007.

“NPF2” means Scotland’s National Planning Framework 2.

“NPF3” means Scotland’s National Planning Framework 3.

“NSP” means Navigational Safety Plan.

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy.

“SEIS” means Supplementary Environmental Information Statement.

“the Statement” means The UK Marine Policy Statement 2011.

“the Structure Plan” means Aberdeen City and Shire Structure Plan, August 2009.

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“TRRMP” means Television and Radio Reception Mitigation Plan.

“TTP” means Traffic and Transportation Plan

“VMP” means Vessel Management Plan.

Legislation

“Wild Birds Directive” means Council Directive 79/409/EEC of 2nd 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 (as amended).

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

“the Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 1990 Regulations” means the Electricity (Applications for Consent) Regulations 1990 (as amended).

“the 1994 Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended).

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended).

“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 2009 Act” means Marine and Coastal Access Act 2009 (as amended).

“the 2010 Act” means Marine (Scotland) Act 2010

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COPY OF THE DECISION LETTER ISSUED ON 19th October 2014, WITH TRACKED CHANGES SHOWING CONSOLIDATED VERSION OF THE LETTER – WITH VARIATIONS TO THE CONSENT HIGHLIGHTED

marinescotland

T: +44 (0)1224 295579 F: +44 (0)1224 295524
E: MS.MarineLicensing@Scotland.gsi.gov.uk

Mr Dan Finch
MORL Project Director
Stevenson Offshore Windfarm Limited
1st Floor, 14/18 City Road
Cardiff
CF24 3DL



19th March 2014

Dear Mr Finch,

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE STEVENSON OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, IN THE OUTER MORAY FIRTH.

Defined Terms used in this letter and Annex 1 & 2 are contained in **Annex 3**.

The following applications have been made to the Scottish Ministers for:

- xv. A consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) by Telford Offshore Windfarm Limited (Company Number 07386810) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Telford Offshore Wind Farm in the Outer Moray Firth;
- xvi. A consent under section 36 of the Electricity Act by Stevenson Offshore Windfarm Limited (Company Number 07386838) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of Stevenson Offshore Wind Farm in the Outer Moray Firth;

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- xvii. A consent under section 36 of the Electricity Act by MacColl Offshore Windfarm Limited (Company Number 07386891) and having its registered office at First Floor, 14/18 City Road, Cardiff, South Glamorgan, CF24 3DL for the construction and operation of MacColl Offshore Wind Farm in the Outer Moray Firth;
- xviii. A marine licence to be considered under the Marine and Coastal Access Act 2009 (as amended) ("the 2009 Act") by Telford Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Telford Offshore Wind Farm;
- xix. A marine licence to be considered under the 2009 Act by Stevenson Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Stevenson Offshore Wind Farm;
- xx. A marine licence to be considered under the 2009 Act by MacColl Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the MacColl Offshore Wind Farm; and
- xxi. A marine licence to be considered under the Marine (Scotland) Act 2010 ("the 2010 Act") and the 2009 Act by Moray Offshore Renewables Limited ("MORL") to deposit any substance or object and to construct, alter or improve any works in relation to the Offshore Transmission Infrastructure ("OfTI") within the Scottish marine area and Scottish offshore region.

THE APPLICATION

I refer to the application at ii above made by Stevenson Offshore Windfarm Limited ("the Company"), received on 2nd August 2012 for consent under section 36 of the Electricity Act for the construction and operation of Stevenson Offshore Wind Farm in the Outer Moray Firth with a maximum generating capacity of **500 megawatts** ("MW") ("the Application").

The generating capacity has been reduced during the consultation process due to concerns raised by consultees with respect to potential impacts to birds. This consent is now granted for a maximum generating capacity of up to **372 MW**.

In this letter, 'the Development' means the proposed Stevenson Offshore Wind Farm electricity generating station as described in **Annex 1** of this letter.

In this letter, 'the Proposal' means the whole proposed MORL development, consisting of all three wind farms; Telford, Stevenson and MacColl, and the OfTI (applications i to vii above), for a maximum generating capacity of up to 1,116 MW.

STATUTORY AND REGULATORY FRAMEWORK

The Scotland Act 1998, The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 and The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved section 36 consent functions under the Electricity Act (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of section 36 consent functions as provided under the 1999 Order and then, one day later, re-transferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in the Scottish offshore region (12-200 nautical miles (“nm”) from the shore) with a generation capacity in excess of 50 MW requires consent under section 36 of the Electricity Act. Section 93 of the Energy Act 2004 extends the requirement for section 36 consent to the construction, extension or operation of a generating station situated in the Renewable Energy Zone (12 -200 nm). A consent under section 36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in or determined by or under the consent.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on licence holders or persons authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 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. Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

Paragraph 3 of Schedule 9 to the Electricity Act also provides that the Scottish Ministers must have regard to the desirability of preserving natural beauty etc. and the extent to which the person by whom the proposals were formulated has complied with their duty to mitigate the effects of the proposals. When exercising any relevant functions, a licence holder, a person authorised by an exemption to generate or supply electricity, and the Scottish Ministers, must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

Under section 36B of the Electricity Act, the Scottish Ministers may not grant a consent in relation to any particular offshore generating activities if they consider that

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interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities, and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of or danger to navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this consent, the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already the subject of section 36 consent or activities for which it appears likely that such consents will be granted.

Under Schedule 8 to the Electricity Act and the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations"), notice of applications for section 36 consent must be published by the applicant in one or more local newspapers and in the Edinburgh Gazette to allow representations to be made to the application. Under Schedule 8 to the Electricity Act, the Scottish Ministers must serve notice of any application for consent upon any relevant planning authority.

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

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

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

The Scottish Ministers are satisfied that they have considered and applied all the necessary tests set out within the Electricity Act when assessing the Application. The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the Application for consent. The Minister and his officials have, from the date of the Application for

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consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company.

The approach taken has been endorsed by the Outer House of the Court of Session where Lord Doherty in *Trump International Golf Club Scotland Limited and The Trump Organization against The Scottish Ministers and Aberdeen Offshore Wind Farm Limited* [2014] CSOH 22 opines that the Electricity Act and regulations made under it contemplate and authorise consent being granted to persons who need not be licence holders or persons with the benefit of an exemption. In addition, the Company is, in any event, required to consider the protection of the environment under statutory regulations which are substantially similar to Schedule 9 to the Electricity Act, namely the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations"), whether or not the Company is among the categories of persons described in Schedule 9, paragraph 3(1).

Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009

The 2010 Act regulates the territorial sea adjacent to Scotland in terms of marine environment issues. Subject to exemptions specified in subordinate legislation, under Part 4 of the 2010 Act, licensable marine activities may only be carried out in accordance with a marine licence granted by the Scottish Ministers.

As this application lies outwith the Scottish Territorial Sea, i.e. beyond the 12 nm limit, it falls to the 2009 Act to regulate marine environmental issues in this area. Other than for certain specified matters, the 2009 Act executively devolved marine planning, marine licensing and nature conservation powers in the Scottish offshore region to the Scottish Ministers.

The 2009 Act transferred certain functions in issuing consents under section 36 of the Electricity Act from the Secretary of State to the Marine Management Organisation ("MMO"). The MMO does not exercise such functions in Scottish waters or in the Scottish part of the renewable energy zone, as that is where the Scottish Ministers perform such functions.

Where applications for both a marine licence under the 2009 Act and consent under section 36 of the Electricity Act are made then, in those cases where they are the determining authority, the Scottish Ministers may issue a note to the applicant stating that both applications will be subject to the same administrative procedure. Where that is the case then that will ensure that the two related applications may be considered at the same time.

Climate Change (Scotland) Act 2009

Under Part 2 of the 2010 Act, the Scottish Ministers must, when exercising any function that affects the Scottish marine area under the Climate Change (Scotland) Act 2009 (as amended), act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned. Under the Climate

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Change (Scotland) Act 2009 (as amended), annual targets have been agreed with relevant advisory bodies for the reduction in carbon emissions

The Scottish Ministers are satisfied that in assessing the Application, they have acted in accordance with their general duties, and they have exercised their functions in compliance with the requirements of the Climate Change (Scotland) Act 2009 (as amended).

Environmental Impact Assessment Directive; The Electricity (Applications for Consent) Regulations 1990 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)

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

The proposal for the Development has been publicised, to include making the Environmental Statement (“ES”) available to the public, in terms of the 2000 Regulations. The Scottish Ministers are satisfied that an ES has been produced and the applicable procedures regarding publicity and consultation all as laid down in the 1990 Regulations, the 2000 Regulations and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) have been followed.

The Scottish Ministers have, in compliance with the 2000 Regulations consulted with the Joint Nature Conservation Committee (“JNCC”), Scottish Natural Heritage (“SNH”), the Scottish Environment Protection Agency (“SEPA”), the Planning Authorities most local to the Development, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the Application in accordance with the regulatory requirements. The Scottish Ministers have taken into consideration the environmental information, including the ES and Additional Ornithology Information, and the representations received from the statutory consultative bodies and from all other persons.

The Scottish Ministers have, in compliance with the 2000 Regulations, obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 8th October 2012.

The Scottish Ministers have also consulted a wide range of relevant organisations, including colleagues within the Scottish Government on the Application, on the ES, and as a result of the issues raised, upon the required Additional Ornithology Information.

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

The Habitats Directive and the Wild Birds Directive

The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna in the Member States’ European territory, including offshore areas such as the proposed site of the developments. It promotes the maintenance of biodiversity by

requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation (“SACs”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

The Wild Birds Directive applies to the conservation of all species of naturally occurring wild birds in the member states’ European territory, including offshore areas such as the proposed site of the developments and it applies to birds, their eggs, nests and habitats. Under Article 2, Member States are obliged to “take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level”. Article 3 further provides that “[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1”. Such measures are to include the creation of protected areas: article 3.2.

Article 4 of the Wild Birds Directive provides *inter alia* as follows:

- “1. The species mentioned in Annex I [of that Directive] shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. [...]
 2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I [of that Directive], bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.
- [...]
4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

Articles 6 & 7 of the Habitats Directive provide *inter alia* as follows:

- “6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
- 6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of

- the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.
- 6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.
7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

The Habitats Directive and the Wild Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (“the 1994 Regulations”) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (“the 2007 Regulations”). As the Development is to be sited in the Scottish offshore region, it is the 2007 Regulations which are, in the main, applicable in respect of this application for section 36 consent. The 1994 Regulations do, however, apply to those parts of the associated transmission infrastructure which lie inside the Scottish Territorial Sea (i.e. within 12 nm from the shore).

The 1994 and the 2007 Regulations (“the Habitats Regulations”) clearly implement the obligation in article 6(3) & (4) of the Habitats Directive, which by article 7 applies in place of the obligation found in the first sentence of article 4(4) of the Wild Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an appropriate assessment of the implications for the site in view of the site’s conservation objectives” (hereafter an “AA”). Such authority is also obliged to consult SNH and, for the purpose of regulation 48 of the 1994 Regulations, to have regard to any representations made by SNH. The nature of the decision may be taken for present purposes from the provision in regulation 25(4) & (5) of the 2007 Regulations:

- “(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).
- (5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given.”

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Developments in or adjacent to, European protected sites, or in locations which have the potential to affect such sites, must undergo what is commonly referred to as a Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages which are set out as follows:

- Stage 1 - Where a project is not connected with or necessary to the site’s management and it is likely to have a significant effect thereon (either individually or in combination with other projects), then an AA is required.
- Stage 2 - In light of the AA of the project’s implications for the site in view of the site’s conservation objectives, the competent authority must ascertain to the requisite standard that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

The JNCC and SNH were of the opinion that the Proposal is likely to have a significant effect on the qualifying interests of certain Special Protected Areas (“SPAs”) and SAC sites, therefore an AA was required. The AA which has been undertaken has considered the combined effects of the Proposal and the Beatrice Offshore Wind Farm (by Beatrice Offshore Windfarm Limited (“BOWL”)). This is because the BOWL development, the application for which was submitted to the Scottish Ministers in April 2012, is proposed to be sited immediately adjacent to the Proposal.

The Scottish Ministers, as a competent authority, have complied with European Union (“EU”) obligations under the Habitats Directive and the Wild Birds Directive in relation to the Development. Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect site integrity of any of the identified European protected sites assessed to have connectivity with the Development, and have imposed conditions on the grant of this consent ensuring that this is the case. The test in the *Waddenzee* judgement formed the basis for the approach taken (CJEU Case C-127/02 [2004] ECR I-7405), and the Scottish Ministers are certain that the Development will not adversely affect site integrity of the sites “where no reasonable scientific doubt remains as to the absence of such effects”. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

APPLICABLE POLICIES AND GUIDANCE

Marine Area

The UK Marine Policy Statement 2011

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

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

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

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

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

Draft National Marine Plan

A draft National Marine Plan developed under the 2010 Act and the 2009 Act was subject to consultation which closed in November 2013. Marine Scotland Planning & Policy are now considering the responses and undertaking a consultation analysis exercise. When formally adopted, the Scottish Ministers must take authorisation and enforcement decisions which affect the marine environment in accordance with the Plan.

The draft National Marine Plan sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. It also contains specific policies relating to the mitigation of impacts on habitats and species; and in relation to treatment of cables.

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

Offshore Renewable Policy

Published in September 2010, Scotland's Offshore Wind Route Map sets out the opportunities, challenges and priority recommendations for action for the sector to realise Scotland's full potential for offshore wind. The refreshed version of this

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document, published in January 2013, highlighted the progress that has been made but pointed to the continuing challenges that need to be overcome. The Scottish Ministers remain fully committed to realising Scotland's offshore wind potential and to capture the biggest sustainable economic growth opportunity for a generation.

This Development, will contribute significantly to Scotland's renewable energy targets via its connection to the National Grid. It will also provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Route Map and the National Renewables Infrastructure Plan.

Terrestrial Area

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring tides. The Statement clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. The Scottish Ministers have, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Application.

In addition to high level policy documents regarding the Scottish Government's policy on renewables (2020 Renewable Route Map for Scotland - Update (published 30th Oct 2012)), the Scottish Ministers have had regard to the following documents:

Scottish Planning Policy

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

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

National Planning Framework 2

Scotland's National Planning Framework 2 ("NPF2") sets out strategic development priorities to support the Scottish Government's central purpose, namely sustainable economic growth. Relevant paragraphs to the Application are paragraphs 65, 144, 145, 146, 147 and 216. NPF2 provides strong support for the development of renewable energy projects to meet ambitious targets to generate the equivalent of 100% of our

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gross annual electricity consumption from renewable sources and to establish Scotland as a leading location for the development of the renewable offshore wind sector.

National Planning Framework 3

Scotland's National Planning Framework 3 ("NPF3") is the national spatial plan for delivering the Government Economic Strategy. The Main Issues Report sets out the ambition for Scotland to be a low carbon country, and emphasises the role of planning in enabling development of renewable energy onshore and offshore. NPF3 includes a proposal for national development to support onshore infrastructure for offshore renewable energy, as well as wider electricity grid enhancements. NPF3 also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

The Main Issues Report was published for consultation in April 2013 and the Proposed NPF3 was laid in the Scottish parliament on 14th January 2014. This will be subject to sixty (60) day Parliamentary scrutiny ending on 22nd March 2014. The Scottish Government expect to publish the finalised NPF3 in June 2014.

Aberdeen City and Shire Structure Plan, August 2009

The purpose of the Aberdeen City and Shire Structure Plan ("the Structure Plan") is to set a clear direction for the future development of the North East. All parts of the Structure Plan fall within strategic growth areas, local growth and diversification areas or regeneration priority areas. Relevant objectives of the Structure Plan to the proposed Development or Proposal are:-

- To provide opportunities which encourage economic development and create new employment in a range of areas;
- To be a city region which takes the lead in reducing the amount of carbon dioxide released into the air, adapts to the effects of climate change and limits the amount of non-renewable resources it uses;
- To encourage population growth;
- To make sure new development maintains and improves the region's important built, natural and cultural assets; and
- To make sure that new development meets the needs of the whole community, both now and in the future, and makes the area a more attractive place for residents and businesses to move to.

The Scottish Ministers consider that the Development can draw support from the objectives regarding economic development and new employment opportunities, the challenges of climate change, and to some extent improving the quality of the environment.

The Development can also draw support from the Structure Plan objective for the region to increase the supply of energy from renewable resources. MORL estimates the Development could potentially save between 0.9 and 1.18 million tons of CO₂ per year when compared to coal fired electricity generation and, between 0.4 and 0.52 million tons of CO₂ when compared to gas fired electricity generation, from being released into the atmosphere.

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The Scottish Ministers consider that the Structure Plan is broadly supportive of the Development.

The Aberdeenshire Local Development Plan, June 2012

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

The Development is not located within the boundaries of Aberdeenshire Council. Only the export cable where it is situated onshore between Fraserburgh Beach and the National Grid connection at Peterhead power station is within the boundaries of Aberdeenshire Council. An application for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended) regarding the ancillary onshore infrastructure will be made to Aberdeenshire Council.

The Scottish Ministers consider that the ALDP is broadly supportive of the Development.

Aberdeen City and Shire Strategic Development Plan, proposed and published online in February 2013

The purpose of the Aberdeen City and Shire Strategic Development Plan (“ACSSDP”) is to set a clear direction for the future development of the North East – recognising the importance of improving links and connections, adding to the quality of life and providing the opportunities for high-quality sustainable growth, towards which the public and private sectors can work to deliver the vision for the region. The ACSSDP has been developed from the previous Aberdeen City and Shire Structure Plan (August 2009) and reflects the widespread support that plan received.

The northern end of the Energetica corridor, where the Proposal is due to connect to the National Grid, has the potential to be an important hub for the transmission of renewable energy, both within the UK and more widely as part of a European network.

The ACSSDP acknowledges that Peterhead Port has been identified in the National Renewables Infrastructure Plan as having the potential to transform into a port that could aid in the decommissioning of oil and gas as well as a port for offshore renewables.

The Scottish Ministers consider that the ACSSDP is broadly supportive of the Development.

Highland Renewable Energy Strategy and Planning Guidelines, May 2006

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The Highland Renewable Energy Strategy and Planning Guidelines (“HRESPG”) supplement the existing policies of The Highland Council and aims to provide guidance and direction for Planning Authority decisions and developers plans.

The HRESPG notes that the optimal area for prospective offshore wind development is considered to be the Outer Moray Firth and that offshore wind is viewed as an important potential renewable energy technology for the Highland region. The key aspect of a renewables vision for the Highland region involves setting a balance between social, economic and environmental interests whilst utilising the high calibre energy resources available in the region. The vision also recognises the need for cleaner forms of energy within the existing energy network to help reduce CO₂ emissions.

Within the HRESPG, Strategic Topic E12 (within the Action Plan to implement objectives) states that The Highland Council will prioritise the few offshore wind areas for commercial development that have energy and grid potential with a medium term aim of 1 gigawatt (“GW”) capacity by 2020 and long term aim of 2 GW capacity by 2050 in the Moray Firth.

Although the Development is located outside 12 nm from the Highland coastline and thus out with the jurisdiction of The Highland Council, the Scottish Ministers consider that the HRESPG is broadly supportive of the Development which will contribute to the aims for offshore renewable wind development in the Highland region.

The Highland – wide Local Development Plan, April 2012

The purpose of the Highland – wide Local Development Plan (“HwLDP”) is to set out a balanced strategy to support the growth of all communities across the Highlands ensuring that development is directed to places with sufficient existing or planned infrastructure and facilities to support sustainable development. Relevant policies within this plan can be applied to the Development.

The Vision chapter of the HwLDP makes a commitment to ensuring that the development of renewable energy resources are managed effectively including guidance on where harnessing renewable sources is appropriate or not. There is also a commitment to provide new opportunities to encourage economic development and create new employment across the Highland area focusing on key sectors including renewable energy whilst at the same time improving the strategic infrastructure necessary to allow the economy to grow in the long term.

The Scottish Ministers consider that the HwLDP is broadly supportive of the Development.

The Moray Structure Plan, April 2007

The Moray Structure Plan (“MSP 2007”) sets out the strategic framework for the way in which Moray Council intend to develop the region over the next 15 – 20 years. The central pillar of the development strategy is to promote economic growth whilst safeguarding and enhancing the natural and built environment, and promoting overall sustainability. Promoting the sensitive development of renewable energy (Policy 2) has been identified as a key strategic issue which the MSP 2007 must address.

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The Scottish Ministers consider the MSP 2007 is broadly supportive of the Development. The Development offers an opportunity for the region to contribute towards renewable energy targets, tackle the effects of climate change, increase energy security and contribute to the local and regional economies of Moray.

The Moray Local Plan, November 2008

The Moray Local Plan ("MLP") interprets the strategic direction provided by the MSP 2007 into detailed policies and proposals for use in the determining of planning policies. The MLP states that Moray has a wealth of natural resources including opportunities for renewable energy, particularly wind energy. The MLP provides a framework to optimise the benefits of these natural resources to the area.

The Scottish Ministers consider that the MLP is broadly supportive of the Development.

Moray Economic Strategy, October 2012

The recently published Moray Economic Strategy ("MES"), produced by the Moray Community Planning Partnership provides the long term economic diversification strategy for the area. The MES recognises that the engineering and fabrication base, which at the moment mainly services the oil, gas, and distillation industries, lends itself to development and diversification into the renewable energy supply chains. The MES recognises the potential offered by renewable energy as well as the opportunity for infrastructure in the Moray region to support the development of a world leading and diversified renewable energy sector. Buckie Harbour is specifically identified as having the potential to act as an operations and maintenance base to service the offshore wind farms proposed for the Moray Firth.

CONSULTATION

In accordance with the statutory requirements of the 1990 Regulations and the 2000 Regulations, notices of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Notice of the Application for section 36 consent is required to be served on any relevant Planning Authority under Schedule 8 to the Electricity Act.

Notifications were sent to Aberdeenshire Council, as the onshore Planning Authority where the OfTI export cable comes ashore at Fraserburgh Beach, as well as to Highland Council and Moray Council. Notifications were also sent to the JNCC, SNH and SEPA.

The formal consultation process that was undertaken by the Scottish Ministers consulted on the whole MORL development (the Proposal - which consists of applications i to vii and the ES). This was conducted in August, September and October 2012. The second consultation, which related to Additional Ornithology Information, was conducted in June and July 2013.

MORL was asked by the Scottish Ministers to re-work their Population Viability Analysis ("PVA") models for key bird species connected with the East Caithness Cliffs

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(“ECC”) and North Caithness Cliffs (“NCC”) SPAs to present a common output. As this work was a re-working of information already contained within the ES, the Scottish Ministers did not request a Supplementary Environmental Information Statement (“SEIS”) from MORL. Additional Ornithology Information was submitted by MORL and as such, the Scottish Ministers notified all original consultees that this information was available if they wished to provide comment. The Scottish Ministers instructed MORL to place notices in the local press to notify the public that Additional Ornithology Information had been received, and further representation could be made. This procedure is in compliance with regulation 14A of the 2000 Regulations.

Representations and Objections

A total of fifteen (15) valid public representations were received by the Scottish Ministers during the course of the public consultation exercise. Of these, five (5) representations were in support; and ten (10) representations objected to the Development and the Proposal.

Of the five (5) representations in support of the Development and the Proposal, two (2) were received from Members of the Scottish Parliament (“MSPs”), one (1) was received from Highlands and Islands Enterprise, one (1) from Fraserburgh Harbour Commissioners, and one (1) from a member of the public.

These representations considered that the Development and the Proposal would help to reduce Scotland’s carbon footprint, allow Scotland to become a world leader in the (offshore) renewables sector and highlighted the potential for job creation and positive economic impact in the area, particularly through the opportunity for developing a local supply chain.

Of the ten (10) representations objecting to the Development and the Proposal, six (6) were received from members of the public, three (3) from Salmon Fishery Boards (Helmsdale District, Caithness District, Northern District) and one (1) was received from the Moray and Pentland Firth Salmon Protection Group (“MPFSPG”).

Objections to the Development and the Proposal cited concerns regarding: effects on marine life including birds and disturbance of marine mammals; effects on Atlantic salmon and sea trout; hazards to fishing; hazards to Defence Infrastructure Organisation (“DIO”) (Ministry of Defence) nautical and aeronautical activities in the area; visual and aural pollution; cumulative presence in the Moray Firth with the BOWL development; alternative technologies to wind power being available; and the failure to meet the requirements of the Aarhus convention.

Other concerns raised included issues such as the repowering of the wind farm (which involves the replacement of the turbines with new turbines), the future cost of electricity, the sustainability of offshore renewable energy developments, concerns over the safety of construction, the lack of jobs being created and no establishment of localised manufacturing.

During the consultation, objections were also received from the Association of Salmon Fishery Boards (“ASFB”), DIO, National Air Traffic Services (“NATS”), the Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) and the Moray Firth Sea Trout Project (“MFSTP”).

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Following further discussions between the Company and the DIO and NATS, both consultees removed their objections subject to conditions being applied to any consent.

Objections from members of the public, the ASFB, RSPB Scotland and the MFSTP are being maintained. In light of these concerns, the Company has reduced their design envelope for the Development from 500 MW to 372 MW and the Scottish Ministers have applied conditions for monitoring and mitigation to this consent (**Annex 2**).

The Scottish Ministers have considered and had regard to all representations and objections received.

Material Considerations

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

The Scottish Ministers consider that no further information is required to determine the Application.

Public Local Inquiry

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

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

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

The Scottish Ministers have received objections to the Development and the Proposal as outlined above, raising a number of issues. In summary, and in no particular order, the objections were related to the following issues:

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- Effects on marine life, including birds;
- Effects on Atlantic salmon and sea trout;
- Hazards to fishing;
- Hazards to DIO nautical and aeronautical activities in the area;
- Visual and aural pollution;
- Cumulative presence in the Moray Firth with other wind farms;
- Alternative technologies to wind power are available;
- Failure to meet the requirements of the Aarhus Convention;
- Construction safety;
- Future cost of electricity and repowering; and
- New jobs and manufacturing created in Scotland.

Effects on marine life, including birds

Eight (8) public representations were received concerning effects on marine life. Through the consultation process the Scottish Ministers consulted Marine Scotland Science ("MSS"), the JNCC, SNH, SEPA, Whale and Dolphin Conservation ("WDC"), the MFSTP and the ASFB (see comments below on Atlantic salmon and sea trout regarding the ASFB). The Scottish Ministers are confident that through the consultation process the main effects on the marine environment have been identified. The Scottish Ministers recognise that there is an outstanding objection from RSPB Scotland due to the potential impacts on several seabird species (most notably great black-backed gull, herring gull, gannet, kittiwake and puffin). MSS, JNCC and SNH, however, are in agreement that predicted impacts are within acceptable levels for all species in terms of both the 2000 Regulations and the Habitats Regulations. An AA completed by MS-LOT, concluded that the Development or the Proposal will not adversely affect site integrity of any SAC or SPA considered to have connectivity with the Development or the Proposal. Conditions to mitigate and monitor the effects on marine life, including birds, form part of this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential effects of the Development on marine life, including birds, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Effects on Atlantic salmon and sea trout

Objections relating to potential effects on Atlantic salmon and sea trout were received through the public consultation exercise from three (3) Salmon Fishery Boards and the MPFSPG. These are in addition to the objections that are being maintained from the ASFB and the MFSTP on the ES consultation.

Uncertainty around the assessments of these species has been recognised by MORL in their ES submitted in support of the Application. The ASFB and MFSTP also recognise these uncertainties and believe they can only be overcome through strategic research. A strategy is being developed by MSS to address monitoring requirements for Atlantic salmon and sea trout at a national level. MORL has engaged with MS-LOT, MSS, the ASFB and the MFSTP to address this issue. A condition for the Company to engage at a local level (the Moray Firth) to the strategic salmon and trout monitoring strategy is contained within this consent (**Annex 2**).

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The Scottish Ministers, therefore, consider that sufficient steps, including the development of national strategic monitoring, have been taken to address the uncertainties regarding the potential effects of the Development on Atlantic salmon and sea trout, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to fishing

Two (2) representations were received from members of the public concerning hazards to fishing. Through the consultation process MS-LOT consulted MSS and the Scottish Fisherman's Federation ("SFF"). It was recognised at an early stage that fishing would be of key concern, and as a result MORL, in conjunction with neighbouring wind farm developers, have formed the Moray Firth Offshore Wind Developers Group – Commercial Fisheries Working Group ("MFOWDG-CFWG"). This group has representation for all commercial fishing interests in the area and provides a forum to discuss any issues and potential mitigation in relation to the wind farm developments in the Moray Firth. Conditions for the Company to continue in the MFOWDG-CFWG and mitigate hazards to navigation for the commercial fishing industry are contained in this consent (**Annex 2**). Notices to Mariners and notices placed through the Kingfisher Fortnightly Bulletins, is to be considered as a condition as part of the marine licences, applications for which are to be determined in due course.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to fishing, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Hazards to DIO nautical and aeronautical activities in the area

Two (2) representations were received from members of the public concerning hazards to DIO nautical and aeronautical activities in the area. The DIO was consulted on the application and the ES, and whilst the DIO initially objected, a mitigation solution was reached and the objection was withdrawn subject to a condition forming part of any consent. This condition has been included in this consent (**Annex 2**).

The Civil Aviation Authority ("CAA") was also consulted on the application and the ES, and raised no objection to the Development. Conditions are placed on this consent to ensure the 'as built' wind farm is marked and lit as per DIO and CAA requirements, and communicated to the UK Hydrographic Office ("UKHO") for aviation and maritime charting (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential hazards of the Development to DIO nautical and aeronautical activities, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Visual and aural pollution

Two (2) representations were received from members of the public concerning visual and aural pollution. No statutory consultee objected to the Development or the Proposal on matters regarding visual or aural pollution. The JNCC and SNH stated that the Development, alone and in combination with the other developments in the Moray Firth, will form a prominent new feature on the skyline from the Caithness coast but not significant enough to merit an objection. The most affected area will be a core area

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consisting of a 39 km stretch from Noss Head in the North, to Dunbeath in the South. The JNCC and SNH recommended that landscape consultants continue to be involved post-consent to work with the project and engineering teams to iterate and finalise the wind farm design. No consultees raised any concerns regarding aural pollution. Positioning the Development more than 12 nm away from land, has helped mitigate the visual and aural pollution elements of the wind farm.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential visual and aural pollution the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Cumulative presence in the Moray Firth with other wind farms

Two (2) representations were received from members of the public concerning cumulative developments in the Moray Firth. The cumulative effects of concern were not specified within their representations, but for offshore wind farms, MS-LOT has conducted and assessed cumulative impacts on all receptors (including but not limited to; visual, marine life, birds, commercial fisheries and shipping and navigation) of the Development alone, and in combination with the Proposal and the BOWL development which lies adjacent. These assessments show that the Development in combination with the Proposal and the BOWL development will not give rise to any unacceptable impacts.

There will be limited cumulative impact of onshore and offshore wind farm development on settlements in the core area (Noss Head, Wick to Dunbeath). Cumulative effects will arise at Sarclet and Lybster from the Burn of Whilk wind farm (consented) together with the offshore proposals, and at Dunbeath, the operational Buolfruch wind farm will also give rise to cumulative effects. These cumulative effects are however not considered by the Scottish Ministers to be significant.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the cumulative presence of wind farm developments in the Moray Firth, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Alternative technologies to wind power are available

A member of the public expressed an opinion that there is no need for the Development as alternative technologies to wind power are available. The Scottish Government's commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. The Scottish Government's Electricity Generation Policy Statement states we believe that Scotland has the capability and the opportunity to generate a level of electricity from renewables by 2020 that would be the equivalent of 100% of Scotland's gross annual electricity consumption. The target will require the market to deliver an estimated 14-16 GW of installed capacity. It does not mean or require an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's desire to remain a net exporter of electricity. Due to the intermittent nature of much renewables generation, we will need a balanced energy mix to ensure security of supply.

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The technology to be used in this Development is one of a number of commercial developments being proposed in the renewables mix to help achieve 2020 targets for renewable electricity generation.

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

Failure to meet the requirements of the Aarhus Convention

A concern was raised from a member of the public that, in August 2013, the United Nations Economic Commission for Europe (“UNECE”) declared that the UK Government's National Renewable Energy Action Plan (“NREAP”) violated the laws that transpose the Aarhus Convention into the UK legal framework. In particular, it was stated that the public had not been given full access to information on the impacts on people and the environment, nor had they been given decision-making powers over their approval.

The Aarhus Convention is an international convention which protects the rights of individuals in relation to environmental matters in gaining access to information, public participation in decision-making, and access to justice. The UK is a signatory to the Convention, as is the EU.

On the single accusation relating to the UK Government – public participation in the Renewables Roadmap – the UK Government was found to be in breach of the Convention, as it had not conducted a Strategic Environmental Assessment (“SEA”) or other public consultation. However, on the four accusations for which the Scottish Government had lead responsibility, including public participation in the preparation of plans, programmes and policies in Scotland, and public participation in relation to the section 36 consent of a wind farm proposal, the Scottish Government’s position was upheld. The ruling confirmed that Scotland is in compliance with this international obligation.

The Scottish Ministers consider that proper assessments have been undertaken for the Development and the Proposal and proper opportunity was afforded for consultation with stakeholders and members of the public, in compliance with the Public Participation Directive, to reach a conclusion on the matter. The Scottish Ministers are committed to applying strict environmental assessment procedures. The Scottish Ministers, therefore, do not consider it appropriate to cause a public inquiry to be held to further investigate this.

Construction safety

One (1) representation was received from a member of the public concerning safe access and working conditions on offshore wind farm developments. MORL is committed to a formal safety assessment process where risks are identified at an early stage and are addressed as the Development or Proposal progresses. The Development or the Proposal also has to meet the requirements of the applicable safety legislation. Regarding Site access, a formal Navigational Risk Assessment (“NRA”) has been undertaken by MORL and extensive engagement between MORL and navigational stakeholders has been undertaken both prior to, and during the application process. The Scottish Ministers have included a condition requiring the

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Company to submit plans on navigational safety (Navigational Safety Plan) for approval is included in this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding concerns over safety of construction, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Future cost of electricity and repowering

One (1) representation was received from a member of the public concerning the future cost of electricity and repowering of the wind farm. The Scottish Ministers are granting this section 36 consent for 25 years (see condition 1 at **Annex 2**) ensuring that repowering of the Development cannot occur without further assessment from the Company and consideration of that assessment by the Scottish Ministers. The cost of electricity, following the 25 year lifespan of the Development, would be difficult to predict at this time, therefore, the Company has indicated it will make a decision on whether to repower the Development based on a number of factors at an appropriate time in the future.

The Scottish Ministers, therefore, consider that they have sufficient information regarding future costs of electricity and repowering of the Development, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

New jobs and manufacturing created in Scotland

One (1) representation was received from a member of the public concerning the creation of new jobs and turbine manufacturing in Scotland. The Socio-economic sections of the ES provided details on the benefits the Development will bring, and while no guarantees are made as to the exact number of jobs created, or what manufacturing facilities will be located in Scotland, the base case and high case has been estimated and assessed.

Further information on the economic assessment can be found under the Scottish Ministers' consideration of the Application.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the creation of new jobs and manufacturing in Scotland, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Summary

In addition to the issues raised by the objections, as discussed above, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers' consideration of the application. The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES, the Additional Ornithology Information and in the consultation responses received from the closest onshore Planning Authorities, SEPA, the JNCC,

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SNH and other relevant bodies, together with all other objections and representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that-

9. they possess sufficient information upon which to determine the Application;
10. an inquiry into the issues raised by the objectors would not be likely to provide any further factual information to assist Ministers in determining the Application;
11. they have had regard to the various material considerations relevant to the Application, including issues raised by objections; and
12. the objectors have been afforded every opportunity to provide information and to make representations.

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

The Scottish Ministers are satisfied that an ES has been produced in accordance with the 2000 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES, Additional Ornithology Information, and the representations received from the consultative bodies, including JNCC, SNH, SEPA, Aberdeenshire Council, Highland Council, Moray Council and from all other persons.

The Company, at the time of submitting the Application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the application for consent. The Scottish Ministers have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company. The Scottish Ministers have also, as per regulation 4(2) of the 2000 Regulations, taken into account all of the environmental information and are satisfied the Company has complied with their obligations under regulation 4(1) of those Regulations.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE

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When considering an application for section 36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether a development is directly connected with or necessary for the beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

With regards to the Development, the JNCC and SNH advised that the Development or the Proposal is likely to have a significant effect upon the qualifying interests of a number of sites, both SACs and SPAs. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA. On the basis of the AA, MS-LOT concluded that the Development or the Proposal would not adversely affect the integrity of any of the designated sites if the mitigation measures outlined were implemented by means of enforceable conditions attached to this consent (**Annex 2**). Under the Habitats Regulations the relevant statutory nature conservation bodies must be consulted. This has been carried out and the JNCC and SNH agreed with all the conclusions reached in the AA.

In the case of this Development the key decision for the Scottish Ministers has been the test laid down under article 6(3) of the Habitats Directive (and transposed by the Habitats Regulations) which applies to the effects of projects on both SACs and SPAs. The Scottish Ministers and their statutory nature conservation advisers are satisfied that the test in article 6(3) is met, and that the relevant provisions in the Habitats Directive, the Wild Birds Directive and the Habitats Regulations are being complied with. The precautionary principle, which is inherent in article 6 of the Habitats Directive and is evident from the approach taken in the AA, has been applied and complied with.

The Scottish Ministers are convinced that, by the attachment of conditions to the consent, the Development will not adversely affect site integrity of the European protected sites included within the AA. The Scottish Ministers are satisfied that no reasonable scientific doubt remains as to the absence of such effects and that the most up-to-date scientific data available has been used.

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

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

For the reasons already set out above, the Scottish Ministers are satisfied that the Development finds support from the applicable policies and guidance. The Scottish Ministers are also satisfied that all applicable Acts and Regulations have been complied with, and that the Development will not adversely affect site integrity of any European protected site.

Impacts on fish and shellfish

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The consultation responses from the ASFB and the MFSTP confirmed objections to the Development and the Proposal from each. Both organisations raised concerns regarding the uncertainty over the potential impacts on migratory fish. The key issues included the potential impacts associated with subsea noise during construction and operation, electromagnetic fields (“EMF”), degradation of the benthic environment, impact on prey species, unknown aggregation effects at the turbines and the fact that the transmission infrastructure cable landfall is close to the small river; Water of Philorth. Both organisations were concerned at the lack of biological information to make a wholly accurate assessment of possible impacts from the Development or the Proposal and both requested monitoring and mitigation measures be put in place. A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish which the Company will contribute to at a local level (the Moray Firth).

The JNCC and SNH identified SACs where the Development or the Proposal is likely to have a significant effect on the qualifying interests. This required MS-LOT, on behalf of the Scottish Ministers, to undertake an AA in view of the conservation objectives for each SAC. The AA concluded that subject to certain conditions, including appropriate mitigation and monitoring, the Development could be implemented without adversely affecting site integrity. Such conditions have been included by the Scottish Ministers within this consent (**Annex 2**).

The JNCC, SNH and MSS raised some concerns over the potential impacts on cod, herring and sandeels. The Company has already carried out pre-construction baseline surveys for cod and sandeels in the Moray Firth; using methodologies approved by MSS. Post consent surveys for cod, herring and sandeel are conditioned in this consent (**Annex 2**). In the case of herring, this will be used to inform and determine appropriate mitigation to be used during sensitive spawning periods when piling activity is taking place. Herring surveys will be required during August to October prior to construction and will help to refine mitigation measures to reduce impacts on the Orkney/Shetland stock. Should the proposed mitigation not be suitable MSS advised that there should be a piling restriction of up to 16 days which should be determined following analysis of the survey data.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on fish species and shellfish that would require consent to be withheld.

Impacts on birds

The JNCC, SNH and the RSPB Scotland expressed concerns about the potential impact of the Proposal, on its own, and in combination with the adjacent proposed BOWL development, on several bird species using the Moray Firth. The species of most concern were great black-backed gull, herring gull, gannet, puffin, razorbill and guillemot. Concerns over great black-backed gull and herring gull were mainly in relation to collision risk with the wind turbine generators (“WTGs”) during operation. Concerns over the auk species (puffin, razorbill and guillemot) were in relation to displacement from the wind farm site. Potential displacement effects are; the loss of feeding grounds and increased energy costs that could lead to breeding failure. Concerns over gannet related to both collision and displacement.

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Of the species above, all except gannet are considered in the AA as gannet is not a qualifying feature of the nearby Troup, Pennan and Lion's Head SPA. However as part of the Gamrie and Pennan Coast Site of Special Scientific Interest ("SSSI"), the gannet colony at Troup Head is a notified feature and therefore required consideration. The JNCC and SNH advised that the colony at Troup Head has been increasing in numbers and concluded that the Development and the Proposal, in combination with the BOWL development would not have a significant adverse impact on the SSSI gannet population.

The AA requires to assess the implications of the Proposal (in combination with BOWL and including mitigation measures) for each European protected site in view of the site's conservation objectives. The JNCC and SNH have advised that in the case of bird species the relevant conservation objective in the present case is to ensure the long-term maintenance of the population of the relevant qualifying bird species as a viable component of the relevant SPA. This is because that objective not only encompasses direct impacts to the species, such as significant disturbance when birds are outwith the SPA, but it can also address indirect impacts, such as the degradation or loss of supporting habitats which are outwith the SPA but which help maintain the population of the species of the SPA in the long-term. Such an assessment requires the use of data and scientific methods to estimate two key values: first, to predict the impact of the Proposal (in combination with BOWL and including mitigation measures) on the population of the qualifying species; and second, to quantify the level of impact that such populations could sustain without there being an adverse effect on the population of the species as a viable component of the site (i.e. an acceptable level of population change or "impact threshold", whether caused by increased mortality or decreased productivity). In the case of offshore wind farms, such impacts on bird species principally occur by virtue of two key effects, namely (i) increased mortality by direct collision of birds with a WTG and/or (ii) decreased productivity by displacement of birds from their foraging area (full details are provided in the AA).

Concerns from the JNCC and SNH regarding impacts on great black-backed gull, herring gull, puffin, razorbill and guillemot led to the development of a common currency approach for fixing the first key value, the predicted impact of the MORL Proposal and BOWL. This approach involved MORL and BOWL, the JNCC, SNH, and MSS agreeing the parameters which were most appropriate when predicting the levels of impact that the MORL Proposal and BOWL development were likely to have on the bird populations. This common currency approach allowed numbers to be generated and agreed for collision and displacement effects for each species of concern giving a cumulative impact from the MORL Proposal and BOWL development.

The JNCC, SNH and MSS also advised on what the acceptable levels of population change were for each affected qualifying species. The methods used for determining this figure varied between the JNCC, SNH, and MSS. The JNCC and SNH used a calculation called Potential Biological Removal ("PBR") and MSS used both MORL and BOWL's PVA modelling work augmented by the Acceptable Biological Change ("ABC") tool, which was developed by MSS as a means of estimating acceptable levels of biological change.

Following the common currency exercise the JNCC, SNH and MSS agreed in October 2013 that there would be no adverse effect on site integrity at ECC SPA in respect of Herring Gull, Guillemot and Razorbill, and at NCC SPA in respect of Puffin. There was

however some disagreement over the acceptable levels of impact on 1.) great black-backed gull from ECC SPA, and 2.) puffin from ECC SPA.

1.) Great black-backed gull (collision risk) – The JNCC and SNH advised on the 29th October 2013 that for great black-backed gull from ECC SPA, using PBR, the acceptable level of impact was a cumulative mortality of no more than 6 birds a year. The impact thresholds which were predicted by MSS using the ABC tool were 20 if the MORL's model was used and 15 if the BOWL's model was used. Taking into account the fact that the JNCC and SNH had advised a figure of 6, MSS concluded that there would be no adverse effect on site integrity at ECC SPA for great black-backed gull, if cumulative collision risk mortality from MORL and BOWL is no greater than approximately 10 birds per annum. This precautionary figure was recommended in order to more closely align with the figure advised by the JNCC and SNH. It was later realised that the figure of 6 birds advised by the JNCC and SNH refers to adult breeding birds as this is the metric which their PBR method calculates. On the 22nd November 2013 agreement was reached between the JNCC, SNH and MSS that there would be no adverse effect on site integrity for great black-backed gull from ECC SPA based on the common currency which predicted an in-combination total impact of 3.95 collision mortalities for breeding adults or 14.82 collision mortalities including birds of all ages.

The AA, which concluded that there would be no adverse impact on the integrity of great black-backed gull from the ECC SPA, was completed using all advice received from the JNCC, SNH and MSS, in order to be suitably precautionary and recognise the uncertainty around assessment methodologies. The AA identified that the acceptable threshold for great black-backed gull was 11 birds of all ages. This is below the figure predicted by the ABC tool applied to both the MORL and BOWL PVA models and is well below the threshold advised by the JNCC and SNH of 6 adult breeding birds (MSS have estimated that 6 breeding birds equates to between 19 and 25 birds of all age classes depending on whether the MORL or BOWL population model is used). The AA was based on the MORL Proposal having 339 WTGs. Due to the confirmation from MORL on the reduction in the design envelope from a maximum of 339 WTGs to a maximum of 186 WTGs, it is not necessary to include conditions on this consent to ensure that the impacts on birds are within these acceptable levels.

2.) Puffin (displacement) - The JNCC and SNH advised that the calculation of displacement effects for the MORL Proposal and BOWL development is based on the footprint of the wind farms and the number of birds using the area. It takes no account of design (i.e. the density of WTGs) because there is no agreed method and limited available evidence to support any such approach. It predicts impacts solely in terms of displacement and its consequences for productivity. The JNCC and SNH noted that the assumption that each individual displaced equates to a pair failing to breed is at the most precautionary end of the range for this parameter, BOWL and MORL also consider this assumption to be highly precautionary. Assessments completed for offshore wind farms around England have focussed on SPAs for wintering / passage populations where the units have always been individuals not pairs, therefore this issue is somewhat novel.

The JNCC and SNH provided advice on appropriate impact thresholds based primarily on use of PBR. Original advice from 8th July and 29th October 2013 was based on a PBR calculation for the ECC SPA and NCC SPA individually. The October advice

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provided a threshold of up to 7 breeding adults for ECC SPA using an f value of 0.3, and 341 breeding adults for NCC SPA using an f value of 0.5. This led the JNCC and SNH to conclude that an adverse effect on site integrity could not be ruled out for ECC with respect to puffin. The impact threshold identified by PBR is highly sensitive to the f value used in the equation and the JNCC and SNH advice on the choice of f was based on trend information at the colonies. The ECC SPA population was considered to be declining as the population at the time of designation was thought to be much higher than estimates from more recent counts, leading to the lower f value of 0.3 being used in the PBR model. Subsequent to this advice, uncertainties about the population sizes of the SPAs at time of designation, and the subsequent trends arose. To address this, the JNCC and SNH provided advice on the 17th January 2014 based on use of PBR applied to a combined population of both sites (ECC and NCC SPAs). This provided a combined threshold of 212-354 breeding adults based on using an f value range of 0.3-0.5, and a joint SPA population estimate of 7345 pairs. The JNCC and SNH advised that this joint assessment addresses the requirements under the Habitats Regulations.

MSS identified thresholds of acceptable change by applying the ABC tool to the BOWL and MORL PVA models.

The effects on puffin were estimated using the common currency approach. The estimate provided a metric of individuals displaced, which for the purposes of assessing against a PBR threshold resulted in an additional step of conversion to adult mortality.

The table below details the estimated puffin effects with identified thresholds:

| | Effects | PBR | PVA & ABC |
|------------------|---|--------------------------------------|---|
| ECC | 79 individuals displaced converted to 23 breeding adult mortalities | 7-13 breeding adult mortalities | Between ~ 50 pairs and 140 individuals failing to breed |
| NCC | 483 individuals displaced converted to 137 breeding adult mortalities | 205 - 341 breeding adult mortalities | Between ~ 850 pairs and > 2000 individuals failing to breed |
| ECC/NCC combined | 562 individuals displaced converted to 159 breeding adult mortalities | 212 - 354 breeding adult mortalities | Between ~ 900 pairs and > 2140 individuals failing to breed |

MSS advised that the manner in which displacement effects have been quantified is highly precautionary (full details of this are provided in the AA).

The population estimates underpinning the assessment methods used should be regarded as indicative. Although best available evidence has been used throughout, the inherent uncertainties are sufficiently great that the precise estimates of the effects and the acceptable thresholds should not be considered as absolute values. It is, however, reasonable to consider the calculated thresholds of acceptable change as being underestimates, and the estimated effects as being overestimates.

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The JNCC and SNH advised that overall conclusions in relation to site integrity should be based upon the population estimate for both ECC SPA and NCC SPA combined. The JNCC and SNH concluded that there will be no adverse effect on site integrity from the BOWL and MORL worst case scenarios based on their application of PBR to set an impact threshold and conversion of the PBR value to an “equivalent” productivity value. MSS have used the PVA models to assess effects on productivity and taken account of the precautionary nature of the estimation of the magnitude of effects. MSS advised that the estimated effects are typically within the range of values used to estimate the acceptable thresholds. A reasonable interpretation of best available evidence led MSS to conclude no adverse effect on site integrity based on the number of birds displaced and the thresholds described above.

The AA completed for puffin concluded, having assessed all the evidence provided and taking into account the reduction in design envelopes, that whilst it is clear that puffin as a SPA qualifying interest appears the most sensitive to the displacement effect, the Proposal and the BOWL development will not adversely affect site integrity of ECC SPA or NCC SPA.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on birds that would require consent to be withheld.

Impacts on marine mammals

The Scottish Ministers note that techniques used in the construction of most offshore renewable energy installations have the potential to impact on marine mammals.

The JNCC, SNH and WDC advised that a key concern of theirs was the potential impacts from pile driving during construction. The JNCC and SNH noted that for bottlenose dolphins and harbour seals where population level effects could be of concern and population modelling was presented in the MORL ES, that the JNCC and SNH were satisfied that this used the best scientific approach currently available. The models are precautionary and predict some impact on the populations during construction, but no long term effects. The JNCC and SNH advised that it may be possible to further reduce disturbance impacts through consideration of construction programming and the adoption of mitigation, both of which, have been incorporated into the conditions of this consent (**Annex 2**).

The JNCC and SNH advice provided on the 8th July 2013 concluded that the Development or the Proposal and the BOWL development will not lead to any adverse effect on site integrity of the Moray Firth SAC and the Dornoch Firth and Morrich More SAC and did not object subject to conditions being attached to any section 36 consent (see **Annex 2**). An AA completed by MS-LOT, on behalf of the Scottish Ministers, concluded that the Development or the Proposal and the BOWL development will not adversely affect site integrity of these SACs.

For minke whale, MSS advised that the management area for minke whale is British and Irish waters. This area is estimated to contain 23,163 animals, with 95% confidence intervals ranging from 13,772 to 38,958. MSS advised that disturbance from piling will not affect the favourable conservation status of the minke whale population.

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However, disturbance of individual animals is likely to occur, both inside and outside of Scottish Territorial Waters, from the Development, the Proposal and BOWL, necessitating the requirement for a European Protected Species (“EPS”) licence.

For harbour porpoise, MSS advised that significant disturbance is predicted to occur at ranges of around 10-15 km. Evidence from studies of harbour porpoise responses to seismic surveys in the Moray Firth suggests that animals that were displaced by noise effects within 10 km returned within a few hours and that animals reduced their response time over the duration of the survey. MSS advised that the Development alone, and in combination with the rest of the Proposal and BOWL, will not have a significant adverse effect on the North Sea, or Moray Firth harbour porpoise population.

WDC raised concerns over impacts on minke whale and harbour porpoise as well as corkscrew injuries to harbour seals. Impacts to prey species, particularly sandeels and salmonids was also raised. MSS have advised that there have been a small number of reports of corkscrew seals injuries in the inner Moray Firth, but the area is not considered at this time to be a hotspot for these injuries. Discussions are on-going between MSS and SNH over the cause and effect of corkscrew injuries to seals but there is not sufficient evidence at this time to attribute this type of injury to one particular source. A potential source may be a ducted propeller, such as a Kort nozzle or some types of Azimuth thrusters. Such systems are common to a wide range of ships including tugs, self-propelled barges and rigs, various types of offshore support vessels and research boats.

SNH and the JNCC advised that it has not been established whether there is a link between the use of ducted propellers and the corkscrew injuries which have been recorded in seal species over the last couple of years. Research in this regard has been commissioned by Marine Scotland and SNH and is currently being undertaken by the Sea Mammal Research Unit (“SMRU”). The JNCC and SNH will be consulted on the Vessel Management Plan (“VMP”) which is a condition of this consent, as will such other advisors and organisations as may be required at the discretion of the Scottish Ministers. This plan will detail the mitigation measures proposed by the Company to reduce the probability of injuries of this type occurring to seals as a direct result of vessels associated with the Development. Scottish Ministers are satisfied that the mitigation and monitoring included in the conditions attached to this consent (**Annex 2**) will suffice.

WDC had concerns over the cumulative impacts on marine mammals from both the proposed Moray Firth developments and the proposed Forth and Tay wind farm developments. Advice received from MSS relating to the impact on the Coastal East Scotland bottlenose dolphin population from the construction of Nigg, Ardersier and Invergordon ports together with the construction impacts from the Moray Firth wind farms and Forth and Tay wind farms concluded that cumulative impacts were not significant to the population, given that they are statistically indistinguishable from the population estimate.

The Company will also be required to apply for a licence allowing for the disturbance of EPS at a later date.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the

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mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on marine mammals that would require consent to be withheld.

Impacts on benthic ecology and habitat interests

The design envelope applied for includes the option for gravity bases to be used. The Scottish Ministers have agreed with the Company that if gravity bases are to be used across all WTG locations, this would be subject to a further marine licence application and environmental impact assessment to consider the required dredging and disposal of spoils. The JNCC and SNH have welcomed this approach and have advised that with the absence of dredge spoil disposal there will be no adverse effect on site integrity on the Moray Firth SAC habitat interests.

The JNCC and SNH advised that no Annex 1 habitats had been identified in the survey work for the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on benthic ecology and habitat interests that would require consent to be withheld.

Impacts on commercial fishing activity

Regarding commercial fishing activity in the Moray Firth, the SFF raised concerns on restricted access or total loss of traditional fishing grounds, EMF and barriers caused by cabling to towing gear. The SFF stated that within the design envelope fewer WTGs would be favourable. The applications as submitted for the Proposal comprised up to 339 WTGs, however during the determination process, MORL has reduced this number down to no more than 186 WTGs. As suggested by MSS and the SFF, the MFOWDG-CFWG has been established to facilitate on-going dialogue throughout all phases of the Development. The MFOWDG-CFWG met for the first time on the 18th April 2013. Mitigation for the construction, operational and decommissioning impacts of this Development, in combination with the Proposal and adjacent proposed BOWL development, was identified as the key aims. Participation in this group and the creation of a commercial fisheries mitigation strategy, approved by the Scottish Ministers, are reflected in conditions of this consent (**Annex 2**). The reduction in the number of WTGs and the condition in this consent requiring over trawl surveys will potentially mitigate the impacts of the Proposal on commercial fisheries.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development's impact on commercial fishing activity that would require consent to be withheld.

Impacts on shipping and navigational safety

The Chamber of Shipping ("CoS") acknowledged that the proposed wind farm site is in an area with relatively low levels of commercial shipping activity and that the main concentrations of traffic are on the Pentland Firth route, some 4-5 nm from the site boundary. The CoS agreed that the impacts on commercial shipping are likely to be relatively low, however raised some concerns over the cumulative impacts of the

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MORL and BOWL developments on navigation. The CoS advised that MORL should work closely with BOWL to ensure as much uniformity of the layout as possible between the wind farms. Any projected deviation of the shipping route to northern Norway and Russia may require minor adjustment taking into account the cumulative effect with BOWL. If MORL propose any future applications for operational safety zones the CoS would like to remain informed. Any safety zones will need to be applied for through the Department of Energy and Climate Change (“DECC”).

The Northern Lighthouse Board (“NLB”) was unable to specify final marking and lighting requirements owing to a lack of clarity in the application with regard to the number and layout of WTGs, sub-stations and meteorological masts. Lighting and marking requirements will be given by the NLB during the finalisation of the Development Specification and Layout Plan (“DSLPL”) once submitted by the Company. Submission of a DSLPL is a condition of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on shipping and navigational safety that would require consent to be withheld.

Impacts on aviation

NATS objected because of potential impacts on the Allanshill radar and associated air traffic operations. Following discussions between MORL and NATS, an agreement has been entered into between the two parties for the design and implementation of an identified and defined mitigation solution in relation to the Development and the Proposal. Consequently, NATS have withdrawn their objection.

The DIO initially objected to the Proposal citing concerns with the Air Traffic Control radar at RAF Lossiemouth and the Air Defence Radar at RAF Buchan. Following discussions with the DIO, and further consideration of the mitigation proposals submitted by MORL, the DIO confirmed that it was prepared to withdraw their objection subject to conditions being attached to any consent (**Annex 2**).

The CAA highlighted relevant Policy Statements and guidance relating to standards for offshore helicopter landing areas, lighting of offshore WTGs and the failure of aviation warning lighting on WTGs which the Company should adhere to. The CAA stated that there was a requirement to notify the UKHO of final positions and maximum heights of the WTGs for aviation and maritime charting. A condition capturing this requirement is reflected in this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on aviation that would require consent to be withheld.

Impacts on recreation and tourism

Some concerns have been raised through the consultation regarding the Proposal’s potential impact upon tourism, particularly relating to the dolphin watching in the Moray Firth, by WDC. Although there is likely to be some short term displacement of marine

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mammals during construction, this is not considered to be significant in the longer term and so will not significantly reduce the opportunities for marine mammal watching.

Concerns were also raised by Surfers Against Sewage (“SAS”) that the Proposal could impact surfing locations around the Moray coast. The Scottish Ministers are satisfied that the wave climate will not be altered by the Development or the Proposal to such an extent as to impact on surfing.

No concerns were raised by either the Scottish Canoe Association (“SCA”) or the Royal Yachting Association Scotland (“RYA Scotland”). However, the RYA Scotland did ask that a condition be attached to all marine licences to inform the ‘Clyde Cruising Club Sailing directions and Anchorages’ of the location of the Development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s impact on recreation and tourism that would require consent to be withheld.

Visual impacts of the Development

SNH, the Scottish Ministers statutory advisors on visual impacts and designated landscape features, was consulted and did not object to the proposed Development or Proposal on the grounds of visual impacts. SNH and the JNCC advised that there would be a major change to Caithness’ coastal character and scenery in the core area of Noss Head (Wick) to Dunbeath and that the Development or Proposal together with BOWL will form a prominent new feature (some 19 km in length) on the skyline of the open sea. These landscape and visual impacts are primarily caused by BOWL rather than the Development, due to its closer proximity to shore. The JNCC and SNH advised that the visual impact of the MORL Proposal and BOWL development on the Moray and Aberdeenshire coast would be negligible. The Highland Council has asked to be consulted on the final layout of the farm, but have accepted that seabed conditions and navigational safety will be the primary drivers in the design of the Development. As part of this consent, a condition has been placed on the Company to provide final visualisations to the Highland Council and all Consultees with an interest in visual amenity (**Annex 2**).

No Consultees, Statutory or otherwise, have objected to the development on landscape and visual impacts. This was primarily due to the distance the development is from the shore (over 12 nm).

The Scottish Ministers recognise that the MORL Proposal and BOWL development will be a prominent new feature on the seascape from the Caithness coastline.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the Development’s visual impacts that would require consent to be withheld.

Impact on telecommunications

The Highland Council raised a concern that the Development or the Proposal could cause an impact upon television reception in the area around Helmsdale which may

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look to Moray/Aberdeenshire for reception rather than to a point in Highland. The Scottish Ministers have therefore included a condition within the consent which sets out the mitigation measures that would be taken to investigate and rectify any complaint made (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the conditions proposed, there are no outstanding concerns in relation to the Development's impact on recreation and tourism that would require consent to be withheld.

The efficiency of wind energy

No form of electricity generation is 100% efficient and wind farms, in comparison with other generators, are relatively efficient. Less than half the energy of the fuel going into a conventional thermal power station is turned into useful electricity – a lot of it ends up as ash, nuclear waste or air pollution harmful to health as well as carbon dioxide. Also, the fuel for a wind farm does not need to be mined, refined or shipped and transported from foreign countries. The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the efficiency of wind energy that would require consent to be withheld.

The development of renewable energy

The Scottish Ministers must ensure that the development of the offshore wind sector is achieved in a sustainable manner in the seas around Scotland. This Development forms part of the Zone 1, of Round 3 offshore wind farm sites to be consented in Scotland and as such will raise confidence within the offshore wind industry that Scotland is delivering on its commitment to maximise offshore wind potential. This Development will also benefit the national and local supply chains. The Scottish Ministers aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland's manufacturing capacity, to develop new indigenous industries, and to provide significant export opportunities.

This 372 MW Development has the potential to annually generate renewable electricity equivalent to the demand from approximately 236,895 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020. Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of renewables generation, a balanced electricity mix is required to support the security of supply requirements. This does not mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

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The Scottish Ministers consider that, having taken account of the information provided by the Company and representations received, there are no outstanding concerns in relation to the development of renewable energy that would require consent to be withheld.

Proposed location of the Development

The Scottish Ministers consider that MORL has carefully considered the location of the Development and selected the Outer Moray Firth due to its many advantages. The suitability of the site was further affirmed in May 2010 with the Scottish Government's publication of the SEA in the Draft Plan for Offshore Wind Energy in Scotland, which confirmed that all ten Scottish Territorial Waters 2009 lease round sites could be developed between 2010 and 2020 if "appropriate mitigation is implemented to avoid, minimise and offset significant environmental impacts".

The Marine Renewable Energy and the Natural Heritage: an Overview and Policy Statement (SNH, 2004) and Matching Renewable Electricity Generation and Demand (Scottish Government, 2006) indicated the Moray Firth Area was favoured for development of large scale offshore wind farms. The Company identified the wind farm site as a suitable site for offshore wind farm development; there are a number of reasons for the site being suitable:

- its distance from shore (over 12 nm) reduces visual impact;
- its excellent wind resource;
- its water depths and ground conditions suitable for jacket foundation technology;
- its good access, suitable ports and supply chain for construction and operations;
- it being situated outside any conservation-designated area;
- it being situated outwith any helicopter safety zones around oil platforms;
- it being situated outwith shipping access routes to oil platforms; and
- its access to the strong local skills base required to deliver energy from wind offshore.

MORL have chosen to develop the MORL Eastern Development Area ("EDA") of Zone 1 first because the MORL Western Development Area ("WDA") was assessed to have more significant spatial constraints to wind farm development.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies and members of the public, there are no outstanding concerns with regards to the proposed location of the Development that would require consent to be withheld.

Cumulative impacts of the Development

The close proximity of the Development (as part of the Proposal) to the proposed adjacent BOWL wind farm has meant that cumulative impacts have raised significant concerns. The issue of potential cumulative impact on landscape and visual amenity was considered by the JNCC and SNH with no significant concerns raised regarding cumulative visual impact with other onshore and offshore developments.

Cumulative impacts on marine wildlife were raised by several organisations including the JNCC, SNH, RSPB Scotland, WDC, the ASFB and the MFSTP. Cumulative impacts on benthic ecology, birds, marine mammals and fish interests have been fully

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considered in this consent and conditions have been put in place to minimise the impacts and ensure that residual impacts are within acceptable limits (**Annex 2**).

The impact upon birds is a matter of particular significance in assessing the applications. The cumulative impacts on certain bird species has led to the original design envelope being reduced to ensure that any impacts are within calculated acceptable levels. The cumulative impacts on any protected species or habitats have also been considered in the AA, undertaken by MS-LOT, on behalf of the Scottish Ministers.

Cumulative impacts on commercial fisheries were also raised by the SFF, however a working group (MFOWDG-CFWG) has been established in order to discuss and address any issues. A condition to ensure the Company continues its membership of the working group and its commitment to any mitigation strategy forms part of this consent (**Annex 2**). Concerns were also raised on the cumulative impacts on navigation by the CoS. Conditions ensuring that consultation with the CoS is undertaken prior to commencement of the Development forms part of this consent (**Annex 2**).

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies, and having regard to the mitigation measures and conditions proposed, there are no outstanding concerns in relation to the cumulative impact of this Development with other developments in the Moray Firth that would require consent to be withheld.

Economic Benefits

MORL estimate the total gross cost of constructing the Proposal and the OfTI to be £4.4 billion excluding Operational Expenditure ("OPEX"). In Scotland the expenditure made by the Proposal and OfTI could generate Gross Value Added ("GVA") of between £590 million and £1,510 million over its lifetime (including decommissioning phase). Between £310 million and £910 million of this total GVA could be in Moray, Highland, Aberdeen City and Aberdeenshire ("the Study Area").

MORL estimate that the Proposal could support between 8,300 and 17,800 job-years' worth of employment in Scotland across the whole lifetime of the project, of which between 4,300 and 11,200 could be in the Study Area. The construction of the OfTI could create an additional 1,000 - 1,500 job-years' worth of employment in Scotland, and 600 - 800 job-years' worth of employment in the Study Area.

MORL estimate that the Proposal and the OfTI could support between 990 and 2,410 jobs in Scotland and between 350 and 1,400 jobs in the Study Area during the peak of the construction phase. During the operations phase it is estimated this could fall to 210 - 330 jobs in Scotland and 140 - 220 jobs in the Study Area. During the decommissioning phase it is estimated there could be 100 - 460 jobs in Scotland and 40 - 260 jobs in the Study Area.

The above estimates are based on two scenarios:

5. Base Case – the total value of contracts that have been delivered, or are expected to be delivered, from within each geography, assuming the current supply chain; and

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6. High Case – the total value of contracts that could be secured by firms based in Scotland (and the Study Area) with a stronger supply chain. This assumes that where Scottish-based firms are not currently in a position to tender for work, (but there is good reason to expect them to be in the future), they are successful.

MORL anticipates that there could be a spend of 15% of the overall expenditure for the Proposal in Scotland under the Base Case. Under the High Case, there could be a total budget spend of 40% in Scotland.

It should be recognised however that at this stage, many development and procurement decisions are still to be made. Changes in the anticipated expenditure or procurement patterns from those anticipated during the assessment will change the associated estimates of employment and GVA. The effect on employment through the supply chain depends critically on the design, construction and operation decisions that are yet to be taken, and on the extent to which Scottish companies are able to secure contracts. These figures also assume that the full Proposal of 1,116 MW is developed.

The Scottish Ministers have taken account of the economic information provided by MORL and consider that there are no reasons in relation to this that would require consent to be withheld.

Summary

The Scottish Ministers consider the following as principal issues material to the merits of the section 36 consent application made under the Electricity Act:

- MORL has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- MORL's ES and the consultation process has identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES and Additional Ornithology Information, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;
- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004 such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Secretary of State before the Commencement of the Development (**Annex 2**);
- The Scottish Ministers have considered material details of how the Proposal can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;
- The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the Additional Ornithology Information, all relevant

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responses from consultees and the fifteen (15) public representations received; and

- On the basis of the AA, the Scottish Ministers have ascertained to the appropriate level of scientific certainty that the Proposal (in combination with the BOWL development, and in light of mitigating measures and conditions proposed) will not adversely affect site integrity of any European protected sites, in view of such sites' conservation objectives.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act for the construction and operation of the Development with a permitted capacity of up to **372 MW** (as described in **Annex 1**).

Deemed planning for the onshore ancillary development was not applied for by the Company.

In accordance with the 2000 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development.

In reaching their decision, the Scottish Ministers have had regard to all, representations and relevant material considerations, and, subject to the conditions included in this consent (**Annex 2**), are satisfied that it is appropriate for the Company to construct and operate the generating station in the manner as set out in the Application and as described in **Annex 1**.

Copies of this letter and the consent have been sent to Aberdeenshire Council, Highland Council and Moray Council. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found at Chapter 58 of the Court of Session rules on the website of the Scottish Courts –

<http://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

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

Yours sincerely

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JAMES MCKIE

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

19th March 2014

Annex 1

DESCRIPTION OF THE DEVELOPMENT

The Development, located as shown on Figure 1 below, shall have a permitted generating capacity not exceeding 372 MW and shall comprise a wind-powered electricity generating station in the Outer Moray Firth, including:

1. not more than 62 three-bladed horizontal axis wind turbine generators each with:
 - a. a maximum blade tip height of 204 metres;
 - b. a rotor diameter of between 150 and 172 metres;
 - c. a minimum crosswind spacing of 1,050 metres; and
 - d. a minimum downwind spacing of 1,200 metres;
2. all foundations, substructures, fixtures, fittings, fixings, and protections;
3. inter array cabling and cables up to and onto the offshore substation platforms; and
4. transition pieces including access ladders / fences and landing platforms,

all as specified in the Application and by the conditions imposed by the Scottish Ministers. References to “the Development” in this consent shall be construed accordingly.

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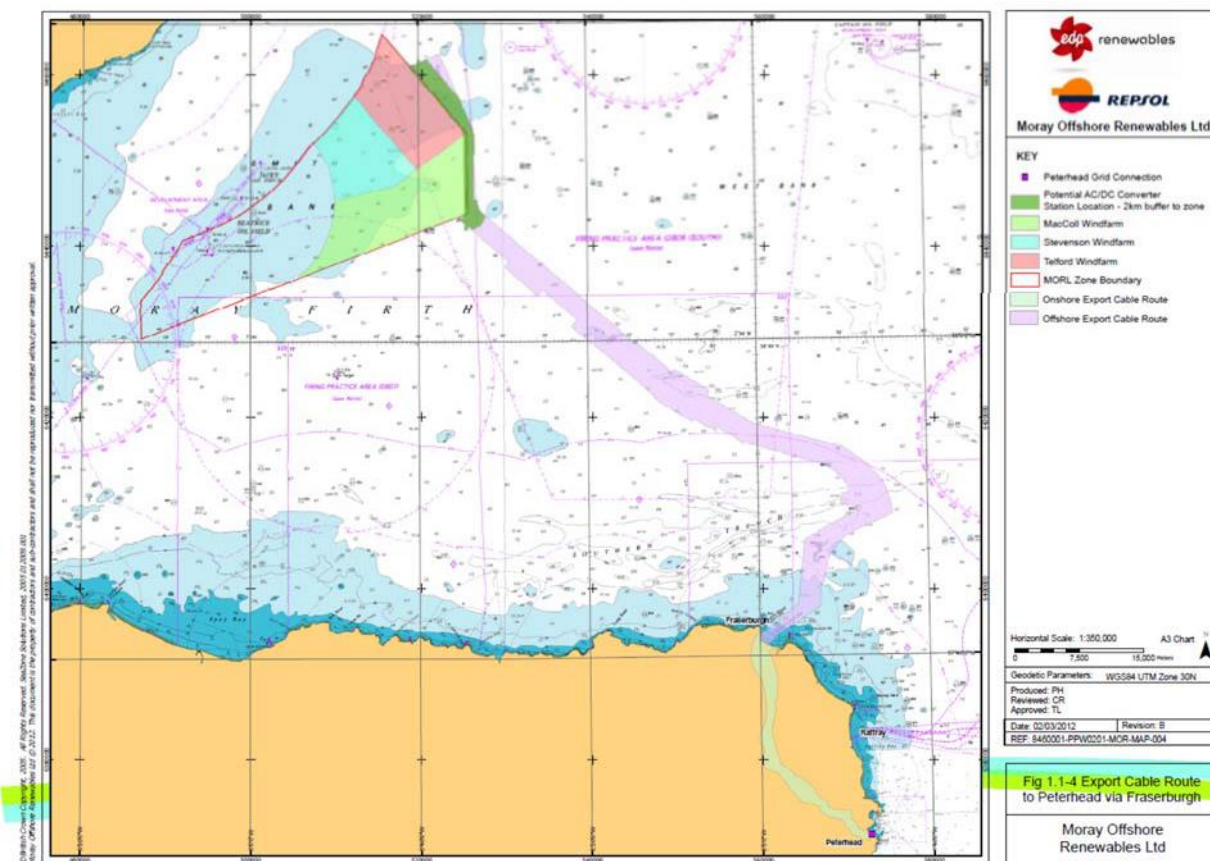


Figure 1. Development Location – see KEY

Annex 2

CONDITIONS OF THE SECTION 36 CONSENT

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

1. The consent is for a period from the date this consent is granted until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, the Planning Authority, JNCC and SNH no later than one calendar month after the Final Commissioning of the Development. Where the Scottish Ministers deem the Development to be complete on a date prior to the date when all wind turbine generators forming the Development have supplied electricity on a commercial basis to the National Grid then the Scottish Ministers will provide written confirmation of the date of the Final Commissioning of the Development to the Company, the Planning Authority, JNCC and SNH no later than one calendar month after the date on which the Scottish Ministers deem the Development to be complete.

Reason: To define the duration of the consent.

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

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

3. Where the Secretary of State has, following consultation with the Scottish Ministers, given notice requiring the Company to submit to the Secretary of State a Decommissioning Programme, pursuant to section 105(2) and (5) of the Energy Act 2004, then construction may not begin on the site of the Development until after the Company has submitted to the Secretary of State a Decommissioning Programme in compliance with that notice.

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

4. The Company is not permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant (with or without conditions) or refuse such authorisation as they, at their own discretion, see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

5. In the event that for a continuous period of 12 months or more any WTG installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with any advisors as required at the discretion of the Scottish Ministers, any such WTG and all associated foundations and ancillary equipment may be deemed by the Scottish Ministers to cease to be required. If so deemed, the WTG and all its associated foundations and ancillary equipment must be dismantled and removed from the Site by the Company, following the procedures laid out within the Company's Decommissioning Programme, within the period of 24 months from the date of the deeming decision by the Scottish Ministers and the Site must be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers after consultation with any such advisors on decommissioning as may be required at the discretion of the Scottish Ministers.

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

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

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

7. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES, the Additional Ornithological Information, [the Section 36 Consents Variation Application Report for Telford, Stevenson and MacColl Offshore Wind Farms dated December 2017](#) and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.

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

8. 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 inspection.*

9. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CoP must be in accordance with the ES. The Development must, at all times, be constructed in accordance with the approved CoP (as updated and amended from time to time by the Company). Any updates or amendments made to the CoP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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.

Reason: To confirm the timing and programming of construction.

10. The Company must, no later than 6 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 the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CMS must set out the construction procedures and good working practices for installing the Development. The CMS must be in accordance with the construction methods assessed in the ES and must include details of how the construction related mitigation steps proposed in the ES are to be delivered. The Development must, at all times, be constructed in accordance with the approved CMS (as updated and amended from time to time by the Company). Any updates or amendments made to the CMS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

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. In the event that pile foundations are to be used, the Company must, no later than 6 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 the JNCC, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved PS (as updated and amended from time to time by the Company). Any updates or amendments made to the PS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The PS must include:

- a. Full details of the proposed method and anticipated duration of pile-driving at all locations;
- b. Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- c. Details of mitigation and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the ES and reflect any surveys 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 of the following species: bottlenose dolphin; harbour seal; Atlantic salmon; cod; and herring.

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

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

12. The Company must, no later than 6 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, CoS, the JNCC, SNH, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved DSLPL (as updated and amended from time to time by the Company). Any updates or amendments made to the DSLPL by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. A plan showing the proposed location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, location of the substation platforms,

- 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 for each WTG, this should also be provided as a GIS shape file using WGS84 format;
 - c. A table or diagram of each WTG dimensions including - height to blade tip (measured above HAT), height to hub (measured above HAT to the centreline of the generator shaft), rotor diameter and rotation speed;
 - d. The generating capacity of each WTG used on the Site and a confirmed generating capacity for the Site overall;
 - e. The finishes for each WTG (see condition 19 on WTG lighting and marking); and
 - f. The length and proposed arrangements on the seabed of all inter-array cables.

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

13. The Company must, prior to the Commencement of the Development, submit a Design Statement ("DS"), in writing, to the Scottish Ministers that includes representative wind farm visualisations from key viewpoints agreed with the Scottish Ministers, based upon the DSLP, as approved by the Scottish Ministers (as updated and amended from time to time by the Company). The DS must be provided, for information only, to the Planning Authorities and the JNCC, SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The DS must be prepared and signed off by at least one qualified landscape architect, instructed by the Company prior to submission to the Scottish Ministers.

Reason: *To inform interested parties of the final wind farm scheme proposed to be built.*

14. The Company must, no later than 6 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 the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved EMP (as updated and amended from time to time by the Company). Any updates or amendments made to the EMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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 condition 3).

The EMP must be in accordance with the ES 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 ES and pre-consent and pre-construction surveys, and include the relevant parts of the CMS (refer to condition 10);
- b. Pollution prevention measures and contingency plans;
- c. Management measures to prevent the introduction of invasive non-native marine species;
- d. Measures to minimise, recycle, reuse and dispose of waste streams; and
- e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, the JNCC, SNH, SEPA, RSPB Scotland, MCA and NLB) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development, submit an updated EMP, in writing, to cover the operation and maintenance activities for the Development to the Scottish Ministers for their written approval. Such approval may be given only following consultation with the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must be regularly reviewed by the Company and the MFRAG (referred to in condition 27) over the lifespan of the Development, and be kept up to date (in relation to the likes of construction methods and operations of the Development in terms of up to date working practices) by the Company in consultation with the MFRAG.

The EMP must be informed, so far as is reasonably practicable, by the baseline surveys undertaken as part of the ES and the PEMP.

Reason: To mitigate the impacts on the environmental interests during construction and operation.

- 15. The Company must, no later than 6 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

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granted following consultation by the Scottish Ministers with the JNCC, SNH, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved VMP (as updated and amended from time to time by the Company). Any updates or amendments made to the VMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. The number, types and specification of vessels required;
- b. Working practices to minimise the unnecessary use of ducted propellers;
- c. How vessel management will be co-ordinated, particularly during construction but also during operation; and
- d. Location of working port(s), how often vessels will be required to transit between port(s) and the site and indicative vessel transit corridors proposed to be used.

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 thereafter, any changes to the details supplied must be notified, as soon as practicable, to the Scottish Ministers 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 disturbance or impact to marine mammals and birds.

16. The Company must, no later than 3 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 JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority 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 the operations and 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.

Operation and maintenance of the Development must, at all times, proceed in accordance with the approved OMP (as updated and amended from time to time by the Company). Any updates or amendments made to the OMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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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.

Reason: *To safeguard environmental interests during operation of the offshore generating station.*

17. The Company must, no later than 6 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. Emergency response and co-ordination arrangements for the construction, operation and decommissioning phases of the Development; and
 - g. 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 Guidance Note 371, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance. The Development must, at all times, be constructed and operated in accordance with the approved NSP (as updated and amended from time to time by the Company). Any updates or amendments made to the NSP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

18. The Company must, no later than 6 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 the JNCC, SNH, MCA 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 ES. The Development must, at all times, be constructed and operated in accordance with the approved CaP (as updated and amended from time to time by the Company). Any updates or amendments made to the CaP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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The CaP must include the following:

- a. Details of the location and cable laying techniques for the inter array cables;
- b. The results of survey 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 if burial depths can be achieved. In locations where this is not possible then suitable protection measures must be provided;
- e. Methodologies for over trawl surveys 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. Measures to address exposure of inter array cables.

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

19. The Company must, no later than 6 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 MCA, NLB, CAA and DIO and any such other advisors 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 DIO 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 said guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in IALA Recommendation O-139 or any other documents that may supersede said guidance prior to approval of the LMP.

The Company must provide the LMP to the Highland Council, Moray Council, the JNCC, SNH and any other bodies as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved LMP (as updated and amended from time to time by the Company). Any updates or amendments made to the LMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

Reason: *To ensure safe marking and lighting of the offshore generating station.*

20. The Company must, prior to the erection of any WTGs on the Site, 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 by the Scottish Ministers with the DIO.

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No WTGs shall become operational until:

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

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

Reason: To mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the operations of the DIO.

21. No part of any turbine shall be erected above sea level until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Ministers in order to avoid the impact of the Development on the Primary Radar of the Operator located at Allanshill and associated air traffic management operations.

Reason: To mitigate the adverse impact of the development on air traffic operations.

22. No blades shall be fitted to any turbine unless and until the approved Primary Radar Mitigation Scheme has been implemented and the Development shall thereafter be operated fully in accordance with such approved Scheme.

Reason: To mitigate the adverse impact of the development on air traffic operations.

23. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Television and Radio Reception Mitigation Plan ("TRRMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the Highland Council. The TRRMP must provide for a baseline television reception survey to be carried out at a location(s) to be agreed by the Scottish Ministers in consultation with the Highland Council, paid for by the Company, prior to the commencement of any WTG installation. The results of which must be submitted by the Company, in writing, to the Highland Council within the time limit set in the TRRMP.

From Commencement of the Development until the date occurring 12 months after the Final Commissioning of the Development, any reasonable claim by any individual person regarding television picture loss or interference at their house, business premises or other building, which they claim is attributable to the Development, and which is notified to the Company, must be investigated by a qualified engineer approved by the Scottish Ministers in consultation with the Highland Council. The Company is liable for any costs incurred by any

such investigation. The results of any investigation must be submitted by the Company to the Scottish Ministers and the Highland Council within 2 months of completion of the investigation. Any impairment to the television signal shall be remedied by the Company, at its own expense, as soon as practicable to provide that the standard of reception at any affected property is equivalent to the baseline television and radio reception as existing at that property before the operation of the Development.

Reason: For the protection of the local amenity.

24. 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 UKHO for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the “as-built” positions and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: For aviation and navigational safety.

25. The Company must, no later than 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan (“TTP”), 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, the Planning Authorities, and any such other advisors as may be required at the discretion of the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must, at all times, be constructed and operated in accordance with the approved TTP (as updated and amended from time to time, following written approval by the Scottish Ministers).

Reason: To minimise the impact on public roads.

26. The Company must, no later than 6 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 the JNCC, SNH, RSPB Scotland, WDC, ASFB and any other ecological advisors as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the ES 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.

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Monitoring should be done in such a way as to ensure that the data which is collected allows useful and valid comparisons as between different phases of the Development. Monitoring may also serve the purpose of verifying key predictions in the ES. Additional monitoring may be required in the event that further potential adverse environmental effects are identified for which no predictions were made in the ES.

The Scottish Ministers may agree that monitoring may cease before the end of the lifespan of the Development.

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 surveys as relevant in terms of the ES and any subsequent surveys for:
 1. Birds;
 2. Cod;
 3. Herring;
 4. Sandeels;
 5. Diadromous fish;
 6. Benthic communities; and
 7. Seabed scour and local sediment deposition.
- b. The participation by the Company in surveys to be carried out in relation to marine mammals as set out in the MMMP; and
- c. The participation by the Company in surveys to be carried out in relation to regional and strategic bird monitoring;

All the initial methodologies for the above monitoring must be approved, in writing, by the Scottish Ministers and, where appropriate, in consultation with the MFRAG referred to in condition 27 of this consent. Any pre-consent surveys carried out by MORL to address any of the above species may be used in part to discharge this condition.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by the Scottish Ministers, in consultation with the MFRAG to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the MFRAG, 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 MFRAG and any other ecological, or such other advisors as may be required at the discretion of the Scottish Ministers. The PEMP, as amended from time to time, must be fully implemented by the Company at all times.

The Company must submit written reports of such monitoring surveys to the Scottish Ministers at timescales to be determined by the Scottish Ministers in consultation with the MFRAG. Subject to any legal restrictions regarding the

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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.

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

27. The Company must participate in any Moray Firth Regional Advisory Group ("MFRAG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish. Should a SSMEG be established (refer to condition 28), the responsibilities and obligations being delivered by the MFRAG will be subsumed by the SSMEG at a timescale to be determined by the Scottish Ministers.

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

28. The Company must participate in any Scottish Strategic Marine Environment Group ("SSMEG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish.

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

29. 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 the JNCC and SNH, appoint an Ecological Clerk of Works ("ECoW"). The term of appointment for the ECoW shall be from no later than 9 months post consent until the Final Commissioning of the Development.

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

- a. Quality assurance of final draft version of all plans and programmes required under this consent;
- b. Provide advice to the Company on compliance with consent conditions, including the conditions relating to the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- c. Monitor compliance with the CMS, the EMP, the PEMP, the PS (if required), the CaP and the VMP;
- d. Provide reports on point c) above to the Scottish Ministers at timescales to be determined by the Scottish Ministers; and
- e. Inducting site personnel on site / works environmental policy and procedures.

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

30. The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the 'Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy' so far as they apply at a local level (the Moray Firth). The extent and nature of the Company's participation is to be agreed by the Scottish Ministers in consultation with the MFRAG.

Reason: *To ensure effective monitoring of the effects on migratory fish at a local level (the Moray Firth).*

31. The Company must continue its membership in the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group ("MFOWDG-CFWG"), or any successor group formed to facilitate commercial fisheries dialogue to define and finalise the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C)). As part of the finalised Commercial Fisheries Mitigation Strategy ("CFMS"), the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development. Should it be deemed necessary by the MFOWDG-CFWG, investigations into alternative gear for the scallop fishing industry in the Moray Firth must form part of the CFMS. The CFMS to be implemented must be approved in writing by the Scottish Ministers. The Company must implement all mitigation measures committed to be carried out by the Company within the CFMS, so far as is applicable to the Development. Any contractors, or sub-contractors working for the Company, must co-operate with the fishing industry to ensure the effective implementation of said CFMS.

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

32. Prior to the Commencement of the Development, a Fisheries Liaison Officer ("FLO"), approved by Scottish Ministers, must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The Company must notify the Scottish Ministers of the identity and credentials of the FLO before Commencement of the Development by including such details 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 include, but not 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 project and any amendments to

- the CMS and site environmental procedures;
- b. 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 mitigate the impact on commercial fishermen.

- 33.** In the event that pile foundations are to be used, the Company must undertake herring surveys every year during the months of August and September commencing the first August and September following the date of this consent, up until, and including, the last August and September prior to Commencement of the Development, unless otherwise agreed in writing by the Scottish Ministers. The methodology of the herring surveys must be agreed, in writing, by the Scottish Ministers, following consultation with Marine Scotland Science, prior to the surveys commencing. The results of the herring surveys will be used to better inform the knowledge of spawning behaviour / characteristics of the Orkney / Shetland herring stock, thus allowing the Company to devise mitigation options to minimise noise impacts from piling activity on all life stages of herring and to inform the Company's PS (if a PS is required).

Following the results of the herring surveys undertaken in the last August and September prior to the Commencement of the Development, the Company must submit, in writing, its mitigation strategy to minimise the noise impacts on herring from piling activity, to the Scottish Ministers for their written approval. Once the Scottish Ministers have provided their written approval, the mitigation must be deployed during the annual herring spawning period (August and September) in any year of construction involving piling. Failing any agreement on mitigation, a piling restriction not exceeding sixteen (16) days within the months of August and September will take place in the area marked 'mitigation zone', as shown on the Stevenson Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, in any year of construction involving piling. The sixteen (16) days are not necessarily to be consecutive. The relevant sixteen (16) days of piling restrictions will be notified to the Company by the Scottish Ministers, in writing, at least 90 days prior to the first day of piling restriction.

Reason: To mitigate the risk to herring numbers in the Orkney/Shetland stock.

- 34.** The cod surveys undertaken on 17-26th February 2013 and 10-19th March 2013 in the Moray Firth by MORL will remain valid as a pre-construction baseline survey provided the Commencement of the Development occurs no later than 1st April 2018. If Commencement of the Development is later than 1st April 2018, the Company must undertake a further baseline cod survey during the months of February and March immediately prior to the Commencement of the Development in the area marked 'Cod Survey Area'

shown on the Stevenson Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any further baseline cod survey for approval, in writing, by the Scottish Ministers.

The Company must undertake a post-construction cod survey in the first February and March, occurring no earlier than 12 months, following the Final Commissioning of the Development. This cod survey must be undertaken in the area marked 'Cod Survey Area' shown on the Stevenson Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any post-construction cod survey for approval, in writing, by the Scottish Ministers.

Reason: To validate conclusions of impact assessments made in the ES on cod populations in the Moray Firth.

35. The sandeel survey undertaken between 30th January and 2nd March 2012 in the Moray Firth by MORL will remain valid as a pre-construction baseline survey provided that the Commencement of the Development occurs no later than 1st April 2017. If Commencement of the Development occurs later than 1st April 2017, the Company must undertake a further baseline sandeel survey prior to the Commencement of the Development of the area marked 'Sandeel Survey Area' shown on the Stevenson Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted by the Company, in writing, to the Scottish Ministers within 6 months following completion of any further baseline sandeel survey for approval, in writing, by the Scottish Ministers.

No earlier than 12 months following Final Commissioning of the Development, the Company must undertake a post-construction sandeel survey using a methodology agreed, in writing, with the Scottish Ministers. The post-construction sandeel survey will cover the area marked 'Sandeel Survey Area' shown on the Stevenson Wind Farm Fish Mitigation and Monitoring Plan in Figure 2, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 6 months following completion of any post-construction sandeel survey for approval, in writing, by the Scottish Ministers.

Reason: To validate conclusions of impact assessments made in the ES on sandeel populations in the Moray Firth.

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- 36.** The Company must, no later than 6 months prior to the Commencement of the Development, submit a Reporting Protocol 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 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.*

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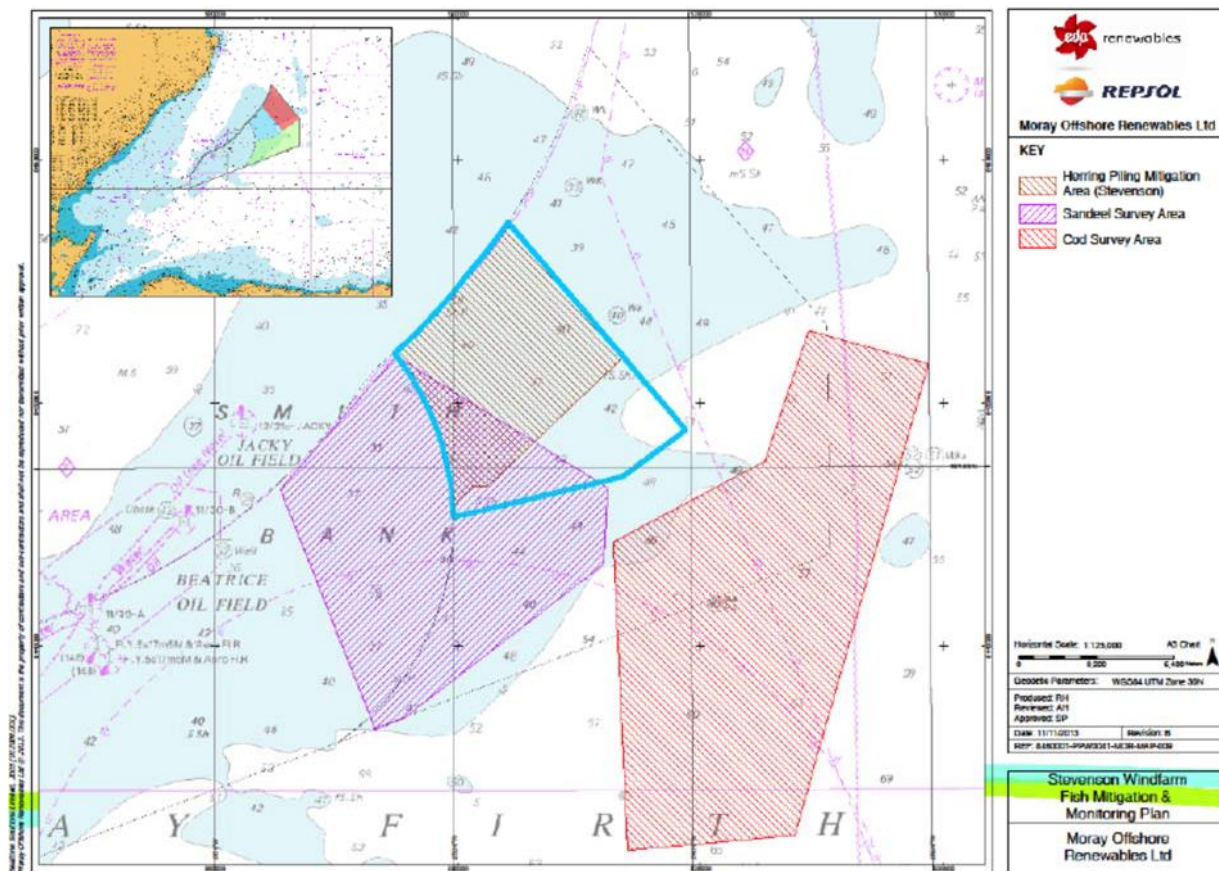


Figure 2. Stevenson Herring Piling Mitigation Area and Post Construction Cod and Sandeel Survey Areas

Annex 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment.

“ABC” means the Acceptable Biological Change tool.

“Additional Ornithology Information” means the covering letter and report, submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013, concerning the reworking of bird data provided in the original Environmental Statement.

“the Application” means the Application letter and Environmental Statement submitted to the Scottish Ministers by Moray Offshore Renewables Limited, on behalf of Stevenson Offshore Windfarm Limited, on 2nd August 2012, and the Additional Ornithology Information submitted to the Scottish Ministers by Moray Offshore Renewables Limited on the 17th June 2013.

“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme. A detailed scheme to mitigate the adverse impacts of the Development on the air traffic control radar at RAF Lossiemouth and the air surveillance and control operations of the Defence Infrastructure Organisation (Ministry of Defence). The scheme will set out the appropriate measures to be implemented to that end.

“CFMS” means Commercial Fisheries Mitigation Strategy - the final document produced from consultation between Moray Offshore Renewables Limited and the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group (“MFOWDG-CFWG”), based on the draft Commercial Fisheries Mitigation Strategy (dated 1st July 2013 (Revision C) produced by Moray Offshore Renewables Limited).

“Commencement of the Development” means the date on which Construction begins on the site of the Development in accordance with this consent.

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

“the Company” means Stevenson Offshore Wind farm Limited, 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 07386838.

“Construction” means as defined at section 64(1) of the Electricity Act 1989, read with section 104 of the Energy Act 2004

“Decommissioning Programme” means the programme for decommissioning the relevant object, to be submitted by the Company to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended).

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“the Development” means the Stevenson Offshore Wind Farm in the Outer Moray Firth.

“ECC” means East Caithness Cliffs Special Protection Area.

“ECoW” means Ecological Clerk of Works.

“EDA” means the Eastern Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“EIA” means Environmental Impact Assessment.

“EMF” means electromagnetic fields.

“EPS” means European Protected Species.

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Moray Offshore Renewables Limited on 2nd August 2012 as part of the Application as defined above.

“EU” means European Union.

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

“FLO” means a Fisheries Liaison Officer.

“GIS” means Geographic Information System.

“GVA” means a measure of the contribution to the economy of each individual producer, industry or sector in the United Kingdom.

“GW” means gigawatt.

“HAT” means Highest Astronomical Tide - the highest level of water which can be predicted to occur under any combination of astronomical conditions.

“HRA” means Habitats Regulations Appraisal.

“IALA Recommendation O-139” means the International Association of Marine Aids to Navigation and Lighthouse Authorities Recommendation O-139 On The Marking of Man Made Offshore Structures.

“Marine Guidance Note 371” means the Maritime and Coastguard Agency Marine Guidance Note 371 Offshore Renewable Energy installations (OREI’s) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

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“MFOWDG-CFW” means Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group. A group formed, and set up, to develop the Commercial Fisheries Mitigation Strategy, and as forum to facilitate on-going dialogue with the commercial fishing industry.

“MFRAG” means Moray Firth Regional Advisory Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a regional scale, set up by the Scottish Ministers

“MW” means megawatt.

“NCC” means North Caithness Cliffs Special Protection Area.

“nm” means nautical miles.

“NRA” means Navigational Risk Assessment.

“OfTI” means the Offshore Transmission Infrastructure.

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“OPEX” means Operational Expenditure.

“PBR” means Potential Biological Removal.

“the Planning Authorities” means Aberdeenshire Council, the Highland Council and Moray Council.

“the Planning Authority” means Aberdeenshire Council.

"Primary Radar Mitigation Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Allanshill primary radar and air traffic management operations of the Operator.

“the Proposal” means the proposed MORL development, consisting of all three wind farms; Telford Offshore Wind Farm, Stevenson Offshore Wind Farm and MacColl Offshore Wind Farm.

“PVA” means Population Viability Analysis

“SAC” means Special Area of Conservation.

“Scottish Atlantic Salmon, Sea Trout and European Eel Monitoring Strategy” means a strategy that will be formulated from the Marine Scotland Science Report 05/13 – “The Scope of Research Requirements for Atlantic Salmon, Sea Trout and European

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Eel in the Context of Offshore Renewables” to monitor migratory fish at a strategic level.

“Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010.

“Scottish offshore region” has the meaning given in section 322 of the Marine and Coastal Access Act 2009 (as amended).

“SEA” means Strategic Environmental Assessment.

“the Site” means the area shaded in blue in Figure 1, attached to this consent at Annex 1.

“Soft start piling” means the gradual increase of piling power, incrementally over a set time period, until full operational power is achieved.

“SPA” means Special Protection Area.

“SSMEG” means Scottish Strategic Marine Environment Group. A group yet to be formed, responsible for overseeing monitoring and mitigation on a National scale, set up by the Scottish Ministers.

“SSSI” means Site of Special Scientific Interest.

“the Study Area” means Moray, Highland, Aberdeen City and Aberdeenshire.

“WDA” means the Western Development Area of Zone 1 of Round 3 leasing agreements in the UK Renewable Energy Zone.

“WGS84” means the World Geodetic System 1984.

“WTG” means wind turbine generator.

Organisations

“ASFB” means The Association of Salmon Fishery Boards.

“BOWL” means Beatrice Offshore Windfarm Limited (Company Number SC350248) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ.

“CAA” means The Civil Aviation Authority.

“CoS” means The Chamber of Shipping.

“DECC” means Department of Energy and Climate Change.

“DIO” means The Defence Infrastructure Organisation (Ministry of Defence).

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

“JNCC” means The Joint Nature Conservation Committee.

“MCA” means The Maritime and Coastguard Agency.

“MFSTP” means Moray Firth Sea Trout Project.

“MMO” means Marine Management Organisation.

“MORL” means Moray Offshore Renewables Limited, and having its registered office at 1st floor, 14/18 City Road, Cardiff, CF24 3DL. Registration Number: 7101438.

“MPFSPG” Moray and Pentland Firth Salmon Protection Group.

“MS-LOT” means Marine Scotland Licensing Operations Team.

“MSS” means Marine Scotland Science.

“NATS” means National Air Traffic Service.

“NLB” means The Northern Lighthouse Board.

“NREAP” means UK Government's National Renewable Energy Action Plan.

“RSPB Scotland” means The Royal Society for the Protection of Birds Scotland.

“RYA Scotland” means Royal Yachting Association Scotland.

“SAS” means Surfers Against Sewage.

“SCA” means – Scottish Canoe Association

“SEPA” means The Scottish Environment Protection Agency.

“SFF” means The Scottish Fisherman’s Federation.

“SMRU” means Sea Mammal Research Unit.

“SNH” means Scottish Natural Heritage.

“UNECE” means United Nations Economic Commission for Europe.

“UKHO” means United Kingdom Hydrographic Office.

“WDC” means Whale and Dolphin Conservation.

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Plans, Programmes and Statements

“ACSSDP” means Aberdeen City and Shire Strategic Development Plan, proposed February 2013.

“ALDP” means The Aberdeenshire Local Development Plan, June 2012.

“CaP” means Cable Plan.

“CFMS” means Commercial Fisheries Mitigation Strategy.

“CMS” means Construction Method Statement.

“CoP” means Construction Programme.

“DIO Scheme” means Air Traffic Control Radar Mitigation Scheme.

“DS” means Design Statement.

“DSL P” means Development Specification and Layout Plan.

“EMP” means Environmental Management Plan.

“HRESPG” means Highland Renewable Energy Strategy and Planning Guidelines, May 2006.

“HwLDP” means The Highland – wide Local Development Plan, April 2012.

“LMP” means Lighting and Marking Plan.

“MES” means Moray Economic Strategy, October 2012.

“MLP” means The Moray Local Plan, November 2008.

“MMMP” means Marine Mammal Monitoring Programme.

“MSP 2007” means The Moray Structure Plan, April 2007.

“NPF2” means Scotland’s National Planning Framework 2.

“NPF3” means Scotland’s National Planning Framework 3.

“NSP” means Navigational Safety Plan.

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy.

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“SEIS” means Supplementary Environmental Information Statement. “the Statement” means The UK Marine Policy Statement 2011.

“the Structure Plan” means Aberdeen City and Shire Structure Plan, August

2009. “TRRMP” means Television and Radio Reception Mitigation Plan.

“TTP” means Traffic and Transportation Plan

“VMP” means Vessel Management Plan.

Legislation

“Wild Birds Directive” means Council Directive 79/409/EEC of 2nd 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 (as amended).

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

“the Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended).

“the 1990 Regulations” means the Electricity (Applications for Consent) Regulations 1990 (as amended).

“the 1994 Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended).

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended).

“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as

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amended).

“the 2009 Act” means Marine and Coastal Access Act 2009 (as amended). “the 2010 Act” means Marine (Scotland) Act 2010