

Minister for Energy

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE DOUNREAY TRI FLOATING WIND DEMONSTRATION PROJECT

PRIORITY AND PURPOSE

1. Immediate priority. The developer requires a decision on the application to enable them to apply for the Contracts for Difference Allocation Round 5 (“CfD AR5”), which has a closing date of 23 April 2023.
2. To seek your approval to vary the section 36 (“s.36”) consent granted on 16 March 2017 to construct and operate the Dounreay Tri Floating Wind Demonstrator (“the Development”).

RECOMMENDATION

3. Recommends that you: agree to vary ANNEX 1 of the s.36 consent to remove the stated generating capacity for the Development, in accordance with s.36C of the Electricity Act 1989 and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”).

CONTEXT AND ISSUES

4. Consent for the Development was granted on 16 March 2017 to Dounreay Tri Ltd under s.36 of the Electricity Act 1989 (“the Existing Consent”). The Existing Consent was then acquired by Highland Wind Limited (“the Company”) through assignation on 3 March 2021.
5. On 21 July 2021 the Scottish Ministers approved the request by the Company to extend the period for the commencement of the Development from five to eight years from the date of the Existing Consent.
6. An application was made by the Company on 9 March 2023 (“the Variation Application”) to vary the Existing Consent as follows:
 - Remove the individual wind turbine generator (“WTG”) capacity limit of 6MW; and
 - Remove the total generating capacity limit of 12MW.
7. In addition to the Variation Application, the Company also requested to vary its marine licence for the generating station to:

- Remove the total generating capacity limit of 12 MW; and
- Remove the individual WTG generating capacity limit of 8 to 12 MW.

Marine licences and marine licence variations are not routinely sent to Ministers for a determination, and, as such, this will be considered separately by officials under the Marine (Scotland) Act 2010.

8. In line with The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations (2017), only variation applications in respect of s.36 consents where the changes proposed by the variation may cause significant adverse environmental effects require an Environmental Impact Assessment (“EIA”). As the Variation Application only removes the total generating capacity and individual WTG capacity but does not seek to change physical parameters of the Development, there will be no adverse effects on the environment. Therefore, no EIA is required.
9. In line with the Conservation of the Habitats and Species Regulations 2017, as the Variation Application will not result in a likely significant effect on any European offshore marine site or European site (either alone or in-combination with other plans or projects), no further appropriate assessment or validation is required.

OPTIONS CONSIDERED AND ADVICE

10. Under s.36C (4) of the Electricity Act 1989, the Scottish Ministers will exercise judgement as to whether any variation sought is appropriate, having regard (in particular) to:
 - (a) The applicant’s reasons for seeking the variation;
 - (b) The variations proposed;
 - (c) Any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.
11. The Variation Application seeks to remove the individual capacity of each WTG, and the total capacity of the Existing Consent.
12. The Company states the following rationale for the proposed variations:

“This would allow larger capacity WTGs to be installed under the existing consent parameters. There are no changes proposed to the physical parameters of the development and no variation is sought or required to any other parameters of the consents and there would be no implications for the environmental effects of the project.”
13. The variations proposed in the Variation Application do not fundamentally alter the character or scale of the Development, and there will be no changes to the boundary of the Development.

14. Officials consider that you can be satisfied that, in this circumstance, the changes proposed are appropriate to be authorised (having regard to the variation proposed, the reasons for the variation, and the views of consultees) by means of the variation procedure in line with the Electricity Act 1989, the Variation Regulations and the Scottish Government Applications for Variation of Section 36 Consents Guidance published in May 2019.
15. Consideration of any representations made concerning the proposed variations and recommendation not to cause a public inquiry are outlined in the following paragraphs.

ASSESSMENT OF OPTIONS

16. Seventeen representations concerning the Variation Application were received during the consultation period. No formal objections were raised, and all statutory consultees had no comments to raise, or provided nil responses. A full summary of the consultation responses and how they have been addressed is detailed in ANNEX A.
17. Officials have considered the representations. Officials have concluded that there would be no additional environmental impacts resulting from the proposed changes within the Variation Application. Officials have also considered the benefits outlined by the Company of additional renewable energy generation from the Development as a result of the Variation Application.
18. Before determining a variation application, per the Electricity Act 1989 and the Variation Regulations, Scottish Ministers may cause a public inquiry to be held if it is deemed appropriate to do so. Having considered the representations received and all other material considerations, officials recommend that it is appropriate not to cause a public inquiry.

BUTE HOUSE AGREEMENT IMPLICATIONS

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

FINANCIAL AND LEGAL CONSIDERATIONS

20. The Variation Application was made in accordance with the Electricity Act 1989 and the Variation Regulations. The legislative requirements of the Variation Regulations regarding publication of and consultation on s.36 variation applications have been met. Further information on the legislative requirements and how these have been satisfied can be found in ANNEX A and ANNEX B.
21. This submission has been informed by appropriate advice from Scottish Government Legal Directorate. The legislative action falls within the competence of the Scottish Government and is a legally appropriate course of action to take.

SENSITIVITIES

22. Officials understand that the reason the Variation Application has been made is to allow the Company to be eligible to bid into CfD AR5, and that there is no intention to build out the Development. The Company has submitted an additional application for s.36 consent for a larger project of up to seven WTGs which is currently being processed by Marine Scotland - Licensing Operations Team (“MS-LOT”). A recommendation to the Cabinet Secretary on the larger project has not been possible within the CfD AR5 timeframes due to the complexity of working through an initial objection from NatureScot.

QUALITY ASSURANCE

23. This submission has been approved by Mike Palmer, Deputy Director for Marine Planning and Policy.

CONCLUSIONS AND NEXT STEPS

24. Should the Cabinet Secretary choose to approve the Variation Application, a draft decision notice is attached at ANNEX C, which MS-LOT will finalise and issue to the Company on the Cabinet Secretary’s behalf.

25. Following consideration by MS-LOT of the Company’s application to vary the marine licence attached to the Development, MS-LOT may exercise discretion, on behalf of the Scottish Ministers, under section 30(7) of the Marine (Scotland) Act 2010 to vary the generating station marine licence attached to the Development as requested by the Company to remove the total generating capacity and individual WTG capacity to ensure consistency between the s.36 consent and marine licence attached to the Development, if it is considered by officials to be appropriate to do so. In this case, we recommend that Scottish Ministers vary the license in line with the application made by the Company.

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

Ben Walker

Marine Scotland Licensing Operations Team

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|---|------------|------------------------------------|---------------------------------------|-----------------------------------|
| Minister for Energy | X | | | |

| Cabinet Secretaries and Ministers Copy List | For Action | For Information Portfolio interest | For Information Constituency interest | For Information General awareness |
|--|-------------------|---|--|--|
| Cabinet Secretary for Net Zero & Just Transition | | X | | |
| Cabinet Secretary for Rural Affairs, Land Reform and Islands | | X | | |
| Cabinet Secretary for Wellbeing Economy, Fair Work & Energy | | X | | |
| Minister for Environment & Land Reform | | X | | |
| Minister for Green Skills, Circular Economy and Biodiversity | | X | | |
| Minister for Just Transition, Employment and Fair Work | | X | | |

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Affairs

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ANNEX A Background and Consultation

1.1 Background Information

- 1.1.1 On 16 March 2017, the Scottish Ministers granted consent under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of the offshore generating station known as the Dounreay Tri Floating Wind Demonstration Project (“the Development”) to Dounreay Tri Ltd, located approximately 6 km offshore from Dounreay, Caithness (“the Existing Consent”). The Existing Consent was acquired by Highland Wind Limited (“the Company”) on 3 March 2021 through assignation.
- 1.1.2 On 21 July 2021 the Scottish Ministers approved a request by the Company to extend the period for the commencement of the Development from five to eight years from the date of the Existing Consent.
- 1.1.3 On 9 March 2023, the Scottish Ministers received an application from the Company, under section 36C(1) of the Electricity Act in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), to vary its Existing Consent (“the Variation Application”). The Variation Application seeks to remove the individual wind turbine generator (“WTG”) capacity limit of 6 megawatts (“MW”) and to remove the total generating capacity limit of 12 MW.
- 1.1.4 The Company stated that the proposed changes would allow larger capacity WTGs to be installed under the Existing Consent with no implications for the environmental effects of the Development.
- 1.1.5 Furthermore, the Company stated there are no changes proposed to the physical parameters of the Development and no variation is being sought to any other parameters of the Existing Consent.

1.2 Application Documentation

1.2.1 The Company submitted the following Variation Application documentation, which was issued for consultation on 10 March 2023:

- An application to vary the Existing Consent and associated marine licence;
- Proposed changes to the Existing Consent; and
- Proposed changes to the marine licence.

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

1.3 Application publication, notification and consultation

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

- Placed the Variation Application documentation on the [application website](#) alongside a link to the Existing Consent;
- Placed a public notice relating to the Variation Application in Lloyd’s List, Fishing News, Edinburgh Gazette, and the Scotsman once, and in the John O’Groats Journal for two weeks.

On the basis that there was no relevant planning authority under the Variation Regulations for the purposes of this variation, the Company did not serve the Variation Application on any planning authority.

1.3.2 Under the Variation Regulations there is no requirement for consultation. To ensure transparency Marine Scotland - Licensing Operations Team (“MS-LOT”) consulted a wide range of interested parties on the Variation Application including local planning authorities (in this case The Highland Council and the Orkney Islands Council), NatureScot, Scottish Environment Protection Agency (“SEPA”), Maritime Coastguard Agency (“MCA”) and the Northern Lighthouse Board (“NLB”), and placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing Consent.

1.4 Summary of consultation process

- 1.4.1 Several consultees had no comments to make, or did not provide a response to the consultation. In the case of no response, MS-LOT notified the relevant consultees that a “nil response” would be assumed.
- 1.4.2 Consultees did not raise any formal objections, however, comments were submitted. Summaries of the comments received from the consultees are presented in section [1.5](#). Section [1.6](#) lists all consultees who did not respond to the consultation.
- 1.4.3 No representations were received from members of the public in relation to the Variation Application.
- 1.4.4 Copies of the full consultation responses received have been made available on the Development page of the [Marine Scotland Information website](#).

1.5 Summary of consultation responses

1.5.1 No objections to the Variation Application were raised by any consultees.

1.5.2 Aberdeen Airports

Aberdeen Airport had no comments to make on the Variation Application.

1.5.3 Chamber of Shipping

Chamber of Shipping had no comments to make on the Variation Application and offered a nil response.

154 Defence Infrastructure Organisation

Defence Infrastructure Organisation made no objection to the Variation Application.

155 Highlands and Islands Airports Limited

Highlands and Islands Airports Limited stated that, as the variation did not involve any change to the height or location of turbines, its advice from the previous application still applied.

156 Historic Environment Scotland

Historic Environment Scotland stated that there will be no significant adverse effects on its historic environment interests and it has no further comments to make.

157 Maritime and Coastguard Agency

Maritime and Coastguard Agency had no concerns, on the understanding that the worst-case scenario remains as assessed in the Navigational Risk Assessment (“NRA”) and no other parameters detailed in the NRA will change.

158 National Air Traffic Services (“NATS”)

NATS reviewed the Variation Application from a technical safeguarding aspect and confirmed that the Variation Application did not conflict with its safeguarding criteria. Therefore no objection was submitted.

159 NatureScot

NatureScot provided no comment to the Variation Application on the understanding that there are no changes proposed to the physical parameters of the Development.

15.10 Northern Lighthouse Board

Northern Lighthouse Board raised no objection to the Variation Application.

15.11 Orkney Islands Council

Orkney Islands Council had no comments to make on the Variation Application.

15.12 Royal Society for the Protection of Birds

Royal Society for the Protection of Birds had no comments to make on the Variation Application.

15.13 Royal Yachting Association Scotland

Royal Yachting Association Scotland had no comments to make on the Variation Application.

1.5.14 **SEPA**

SEPA had no comments to make on the Variation Application and directed MS-LOT to the [SEPA standing advice](#).

1.5.15 **Scottish Fishermen's Federation**

Scottish Fishermen's Federation submitted a nil response

1.5.16 **The Highland Council**

The Highland Council confirmed it had no objection or comments to make on the Variation Application.

1.5.17 **Transport Scotland - Roads**

Transport Scotland - Roads confirmed it had no objection to the Variation Application.

1.5.18 **Wick Harbour**

Wick Harbour had no comments to make on the Variation Application.

1.6 Advice from third parties

MS-LOT did not seek advice from any third parties in relation to this Variation Application.

1.7 Nil responses

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

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|---|--|
| Angling Orkney | Orkney Fisheries Association |
| Association of Salmon Fishery Boards | Orkney Harbours |
| Brims - Open Hydro | Orkney Islands Council Marine Services |
| British Telecom | Orkney Islands Sea Angling Association |
| Caithness and Sutherland Visitor Attraction Group | Orkney Sailing Club |
| Caithness Chamber of Commerce | Pentland Firth Yacht Club |
| Caithness District Salmon Fishery Board | Planning, Policy and Environment |
| Caithness Kayak Club | Reay Golf Club |
| Caithness West Community Council | Scottish Canoe Association |
| Castletown Community Council | Scottish Creel Fishermen's Federation |
| Civil Aviation Authority | Scottish Fishermen's Organisation |
| Community Councils | Scottish Government Planning and Architecture Division |
| Develop Durness Group | Scottish Sea Farms |
| Dounreay Site Restoration Limited | Scottish Sub Aqua Club |
| Dounreay Stakeholder Group | Scottish Surfers Federation |
| Highlands and Islands Enterprise | Scottish Wildlife Trust |
| Historic Environment Scotland | Scrabster Fishery Office/ MS Compliance |
| Inshore Fisheries Groups - National | Scrabster Harbour |
| Inshore Fisheries Groups (IFGs) - Moray Firth & North Coast | Seafish |
| Inshore Fisheries Groups (IFGs) - Orkney | Sport Scotland |

| | |
|--|---|
| Joint Radio Company | Strathy & Armadale Community Council |
| Marine Safety Forum | Surfers Against Sewage |
| Melvich Community Council | Crown Estate Scotland |
| Meygen | Thurso Community Council |
| North Shore Surf Club | Transport Scotland - Ports and Harbours |
| Northern District Salmon Fishery Board | Visit Scotland |
| Nuclear Decommissioning Authority | Whale and Dolphin Conservation |

ANNEX B Legislative Requirements

1.1 Electricity Act Consenting and Variations

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

1.2 Environmental Impact Assessment

- 1.2.1 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 provide that environmental impact assessment (“EIA”) is required in relation to variation applications where the proposed changes are likely to have significant adverse effects on the environment. As the Variation Application only removes the total generating capacity and individual wind turbine generator capacity but does not seek to change physical parameters of the Development, there will be no adverse effects on the environment. Therefore, no EIA is required.

1.3 Appropriate Assessment

- 1.3.1 Regulation 63(1) of the Conservation of the Habitats and Species Regulations 2017 (“the Habitats Regulations”) requires that before deciding to undertake, or give any consent, permission or other authorisation for a plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site’s conservation objectives where it:

- (a) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

- 1.3.2 An appropriate assessment under the Habitats Regulations was completed in 2017 in respect of the application for the existing consent. Officials consider that the Variation Application will not result in a likely significant effect on any European offshore marine site or a European site (either alone or in combination with other plans or projects), and therefore no further AA or validation is required.

1.4 Marine Licence Variation

- 1.4.1 At the same time as the Variation Application, the Company applied to vary the marine licence for the Development under section 30(7) of the Marine (Scotland) Act 2010, to remove the generating capacity.
- 1.4.2 If the Variation Application for the s.36 consent is granted, MS-LOT, on behalf of Scottish Ministers, will also vary the marine licence in line with the consent variation.

1.5 Summary and conclusions

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

ANNEX C Draft Decision Notice and Proposed Variation

E: MS.MarineRenewables@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

Mr Richard Copeland
Highland Wind Limited
4th Floor
George Street
Edinburgh
EH2 4JN

DD April 2023

Dear Mr Copeland,

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 16 MARCH 2017 TO CONSTRUCT AND OPERATE THE DOUNREAY TRÌ OFFSHORE WIND DEMONSTRATION PROJECT, LOCATED APPROXIMATELY 6 KILOMETRES (“KM”) NORTH OF THE COAST OF DOUNREAY, CAITHNESS

I refer to the application to vary the consent for the Dounreay Trì Floating Wind Demonstration Project (“the Development”). This application (“the Variation Application”) was made by Highland Wind Limited (“the Company”) on 9 March 2023 for:

A variation under section 36C of the Electricity Act 1989 (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act to Dounreay Trì Ltd on 16 March 2017 (“the Existing Consent”). The Existing Consent was subsequently acquired by the Company on 3 March 2021. On 21 July 2021 the Scottish Ministers approved the request by the Company to extend the period for the commencement of the Development from five to eight years from the date of the Existing Consent.

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

1. Nature of the Variation Sought

1.1 **The Variation Application seeks to vary the Existing Consent granted on 16 March 2017 to allow the following:**

- Remove the individual wind turbine generator (“WTG”) capacity limit of 6 megawatts (“MW”); and
- Remove the total generating capacity limit of 12 MW;

1.2 In addition to the Variation Application, a request was made to vary the associated marine licence to remove capacity limits on individual WTGs and the Development as a whole. This application has been considered separately under the Marine (Scotland) Act 2010.

2. Environmental Impacts

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

2.2 The Scottish Ministers have considered the following:

- Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”);
- the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”); and
- the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”).

2.3 The Scottish Ministers do not consider that the proposed changes within the Variation Application will alter the conclusions of the Environmental Statement and the Habitats Regulation Appraisal supporting the application for s.36 consent which was submitted on 16 September 2016 (“the Original Application”).

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

2.5 An appropriate assessment under the Habitats Regulations was completed on 7 March 2017 in respect of the application for the Existing Consent (“the 2017 AA”). The Variation Application will not result in a likely significant effect on any European offshore marine site or European site (either alone or in-combination with other plans or projects), and therefore no further AA or validation is required.

3. Publication

3.1 Regulation 4 of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”) provides that an applicant must publish a variation application relating to an offshore generating station on a website, and also advertise the application by public notices in specified publications.

3.2 In line with Regulation 4, the Company published the Variation Application documentation on its website. Public notices were placed in the Edinburgh Gazette, the Fishing News Bulletin, Lloyd's List and the Scotsman once, and in the John O' Groat Journal for two successive weeks.

4. Consultation

4.1 Marine Scotland Licensing Operations Team ("MS-LOT"), on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Variation Application, including: Historic Environment Scotland ("HES"), NatureScot, Orkney Islands Council ("OIC"), the Highland Council ("THC"), the Maritime and Coastguard Agency ("MCA"), the Northern Lighthouse Board ("NLB") and the Scottish Environment Protection Agency ("SEPA"). The Scottish Ministers also placed the Variation Application documentation on the [Marine Scotland Information website](#) alongside the Existing Consent.

4.2 A number of organisations did not provide a response. In the case of no response, MS-LOT notified the relevant consultees that a "nil response" would be assumed.

4.3 No objections to the Variation Application were raised by any consultees.

4.4 The following consultees raised no objections to the Variation Application.

4.5 **Aberdeen International Airport** had no comment to make on the Variation Application as the Development is located outside of its consultation zone.

4.6 **HES** confirmed that it believed there will be no significant adverse effects on historic environment interests as a result of the Development.

4.7 **Highlands and Islands Airports** confirmed that, as the Variation Application will not change the height or location of the wind turbines, its response to the Original Application stands.

4.8 The **MCA** had no concerns provided the worst-case scenario remains as assessed in the Navigation Risk Assessment ("NRA") for the Original Development and no other parameters in the NRA will change.

4.9 The **MoD** confirmed that it had no objection to the removal of the individual or overall generation capacity limit.

4.10 **NATS** confirmed it had no safeguarding objection to the proposal but that it was MS-LOT's responsibility to ensure that all appropriate parties were consulted as it could only provide advice relating to the management of en route air traffic.

4.11 **NatureScot** confirmed that, as there were no changes proposed to the physical parameters of the Development, there were no implications to environmental impacts as a result of the Variation Application and it had no further comment to make.

- 4.12 The **NLB** had no objection to the Variation Application and advised the Company to continue to engage with the NLB with regard to navigational safety across the revised Development.
- 4.13 **OIC** had no comments to make on the Variation Application.
- 4.14 The **Royal Society for the Protection of Birds** had no comments to make on the Variation Application
- 4.15 The **RYA Scotland** had no comments to make on the Variation Application.
- 4.16 **SEPA** had no comments to make on the Variation Application.
- 4.17 The **Scottish Fishermen’s Federation** submitted a “nil return”.
- 4.18 **THC** confirmed it had no objection or further comments to the Variation Application.
- 4.19 **Transport Scotland** had no comments to make on the Variation Application.
- 4.20 The **UK Chamber of Shipping** submitted a “nil return”.
- 4.21 **Wick Harbour** had no comments to make on the Variation Application.

5. Public Representations

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

6. Advice from Third Parties

- 6.1 MS-LOT did not seek advice from third parties.

7. The Scottish Ministers’ Determination

- 7.1 The Scottish Ministers have considered the Variation Application documentation and all responses from consultees. Having granted consent (the Existing Consent) for the Development on 16 March 2017 and provided their reasons for doing so in the decision letter associated with that consent, and being satisfied that the changes proposed in the Variation Application do not fundamentally alter the character or scale of the Development, the Scottish Ministers are content to vary the Existing Consent.
- 7.2 The Scottish Ministers consider that the proposed variation is appropriate, having regard to the variation proposed, the reasons for the variation, and the views of consultees.
- 7.3 Accordingly, the Scottish Ministers hereby vary the Existing Consent as set out in the table below.

| | |
|--|---|
| ANNEX | Variation |
| In ANNEX 1 of the Dounreay Tri Floating Wind Demonstrator s.36 Consent | <p>Substitute:</p> <p>DESCRIPTION OF THE DEVELOPMENT</p> <p>The Development shall be approximately 6 km offshore from Dounreay, Caithness, with a permitted generating capacity not exceeding 12 MW and shall be comprised of:</p> <ul style="list-style-type: none"> • one single floating, semi-submersible, column-stabilised platform, comprising of buoyancy columns interconnected in a steel lattice truss framework. The maximum length will be 230 m, maximum width will be 135 m and maximum 15 m above water surface; the platform will rotate 360° and have a passive mooring system. The mooring system will consist of up to 8 mooring lines, passing through a 600 tonne clump weight suspended in the water beneath the platform. A total of 16 anchors will be attached to the mooring lines, two per line, with a maximum radius of 800 m from the platform centre; • two Demonstration offshore wind turbine generators (“WTGs”) each with an installed capacity of up to 6 MW, giving a total maximum generating capacity not exceeding 12MW. Each turbine will be a three bladed structure with a maximum hub height of 124 m above Lowest Astronomical Tide (“LAT”), including the jacket, and with a maximum blade tip height of up to 201 m above LAT and a maximum rotor diameter of 154 m; • grid infrastructure including the installation of one subsea cable which will bring the power ashore immediately to the west of the |

Dounreay Restoration Site fence line; and

- associated onshore infrastructure, including, underground cabling and turbine transformers comprising medium and low voltage container units, to be located at, or near to the existing Dounreay 132/33/11kV substation.

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

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

For:

DESCRIPTION OF THE DEVELOPMENT

The Development shall be approximately 6 km offshore from Dounreay, Caithness, with a generating capacity exceeding 1MW, and shall be comprised of:

- one single floating, semi-submersible, column-stabilised platform, comprising of buoyancy columns interconnected in a steel lattice truss framework. The maximum length will be 230 m, maximum width will be 135 m and maximum 15 m above water surface; the platform will rotate 360° and have a passive mooring system. The mooring system will consist of up to 8 mooring lines, passing through a 600 tonne clump weight suspended in the water beneath the platform. A total of 16 anchors will be attached to the mooring lines, two per line, with a maximum radius of 800 m from the platform centre;

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| | <ul style="list-style-type: none"> • two Demonstration offshore wind turbine generators (“WTGs”). Each turbine will be a three bladed structure with a maximum hub height of 124 m above Lowest Astronomical Tide (“LAT”), including the jacket, and with a maximum blade tip height of up to 201 m above LAT and a maximum rotor diameter of 154 m; • grid infrastructure including the installation of one subsea cable which will bring the power ashore immediately to the west of the Dounreay Restoration Site fence line; and • associated onshore infrastructure, including, underground cabling and turbine transformers comprising medium and low voltage container units, to be located at, or near to the existing Dounreay 132/33/11kV substation. <p>The Development must be constructed in accordance with that specified in the Application and by the conditions imposed by the Scottish Ministers.</p> <p>References to “the Development” in this consent must be construed accordingly.</p> |
| <p>In ANNEX 2 of the Dounreay Tri Floating Wind Demonstrator s.36 Consent</p> | <p>Insert:</p> <p>Condition 3. Decommissioning</p> <p>There must be no Commencement of the Development until a Decommissioning Programme, as defined in any section 105 notice served by the appropriate Minister, has been approved under section 106 of the Energy Act 2004 by the appropriate Minister.</p> <p>Reason: <u>To ensure the decommissioning and removal of the Development in an appropriate and</u></p> |

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| | <p><u>environmentally acceptable manner, and in the interests of safety and environmental protection.</u></p> |
| <p>In ANNEX 2 of the Dounreay Tri Floating Wind Demonstrator s.36 Consent</p> | <p>Substitute:</p> <p>Condition 6. Implementation in accordance with approved plans and requirements of this consent</p> <p>Except as otherwise required by the terms of this consent and its associated deemed planning permission, the Development must be constructed and operated in accordance with the Application and the Environmental Statement submitted by the Company on 19th October 2016 and any other documentation lodged in support of the Application.</p> <p><u>Reason: To ensure that the Development is carried out in accordance with the approved details.</u></p> <p>For:</p> <p>Condition 7. Implementation in accordance with approved plans and requirements of this consent</p> <p>Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application (taking into account amendments or updates made by the Variation Application) and the Environmental Statement (“ES”) submitted by the Company on 19th October 2016 and any other documentation lodged in support of the Application and Variation Application.</p> <p><u>Reason: To ensure that the Development is carried out in accordance with the approved details.</u></p> |

- 7.3.1 Revised copies of ANNEX'S 1, 2 and 3 of the s.36 consent for the Development are issued together with this decision letter.
- 7.3.2 This letter has been published on the [Marine Scotland Information website](#).
- 7.3.3 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.
- 7.3.4 Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

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

20 April 2023

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

“FWG” means Fisheries Working Group;

“HES” means Historic Environment Scotland;

“km” means kilometre;

“MCA” means the Maritime and Coastguard Agency;

“MS-LOT” means Marine Scotland – Licensing and Operations Team;

“MW” means megawatts;

“NLB” means the Northern Lighthouse Board;

“NRA” means Navigational Risk Assessment;

“OIC” means Orkney Islands Council;

“SEPA” means Scottish Environment Protection Agency;

“the 2017 AA” means the AA under the Habitats Regulations, completed on 7 March 2017 in respect of the application for the Existing Consents;

“the Company” means Highland Wind Limited (Company Number SC675148) having its registered office at 4th Floor 115 George Street, Edinburgh, Midlothian, Scotland, EH2 4JN;

“the Development” means the Dounreay Tri Floating Wind Demonstration Project approximately 6 km offshore from Dounreay, Caithness, as described in ANNEX 1 of this letter authorised by this consent;

“the Existing Consent” means the s.36 consent granted by the Scottish Ministers in favour of Dounreay Tri Ltd on 16 March 2017;

“the Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017;

“the Original Application” means the application for s.36 consent made on 16 September 2016;

“the Original Development” means The Dounreay Tri Floating Wind Demonstration Project approximately 6 km offshore from Dounreay, Caithness, as described in ANNEX 1 of the Existing Consent;

“the Variation Application” means the application made by the Company on 9 March 2023 to vary the current s.36 consent;

“the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017;

“the 2017 MW Regulations” means the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017;

“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013;

“THC” means The Highland Council;

“WTG” means wind turbine generator.

ANNEX 1 of the Dounreay Tri Floating Demonstrator Project Consent

DESCRIPTION OF THE DEVELOPMENT

The Development shall be approximately 6 km offshore from Dounreay, Caithness, with a generating capacity exceeding 1MW, and shall be comprised of:

- one single floating, semi-submersible, column-stabilised platform, comprising of buoyancy columns interconnected in a steel lattice truss framework. The maximum length will be 230 m, maximum width will be 135 m and maximum 15 m above water surface; the platform will rotate 360° and have a passive mooring system. The mooring system will consist of up to 8 mooring lines, passing through a 600 tonne clump weight suspended in the water beneath the platform. A total of 16 anchors will be attached to the mooring lines, two per line, with a maximum radius of 800 m from the platform centre;
- two Demonstration offshore wind turbine generators (“WTGs”). Each turbine will be a three bladed structure with a maximum hub height of 124 m above Lowest Astronomical Tide (“LAT”), including the jacket, and with a maximum blade tip height of up to 201 m above LAT and a maximum rotor diameter of 154 m;
- grid infrastructure including the installation of one subsea cable which will bring the power ashore immediately to the west of the Dounreay Restoration Site fence line; and
- associated onshore infrastructure, including, underground cabling and turbine transformers comprising medium and low voltage container units, to be located at, or near to the existing Dounreay 132/33/11kV substation.

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

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

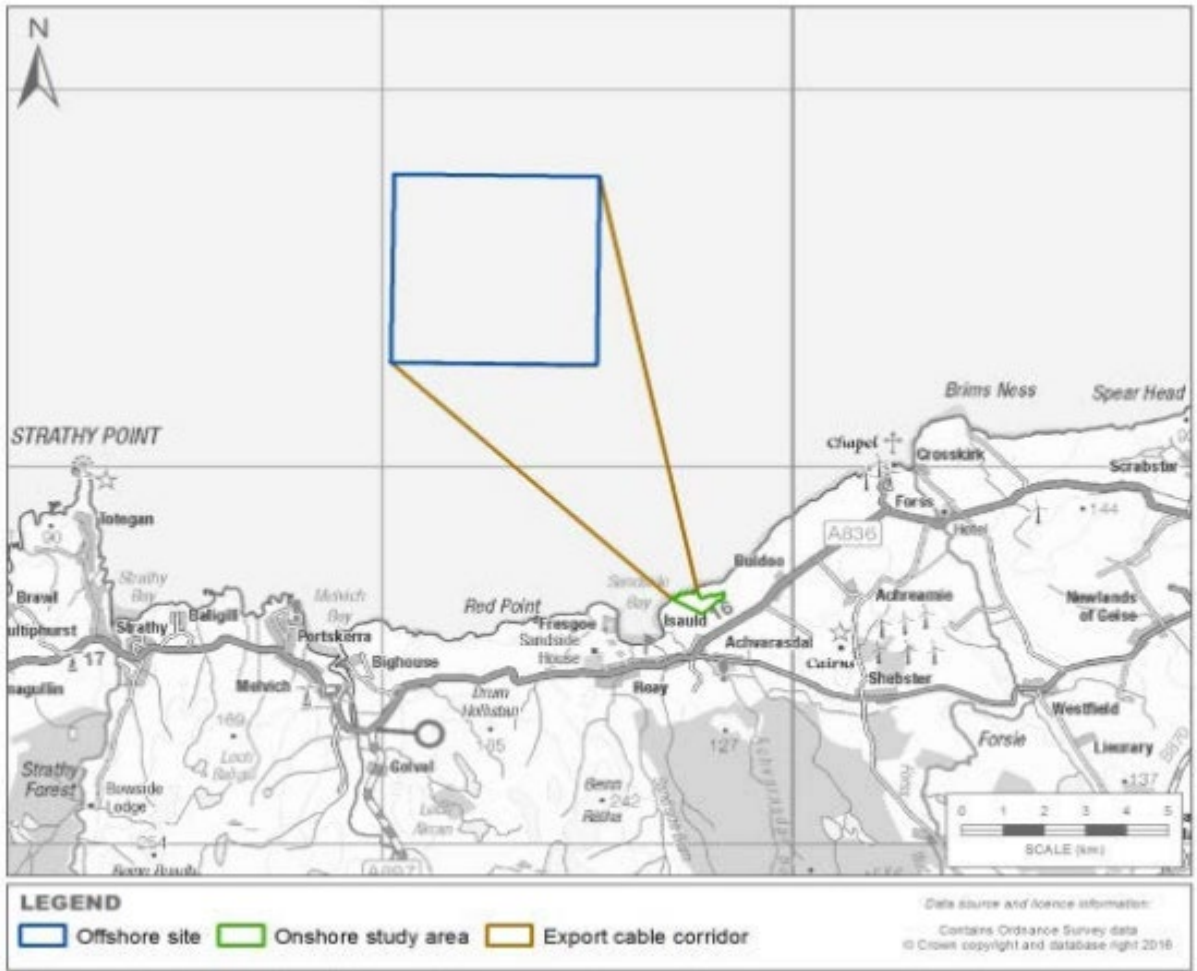


Figure 1: Development Location – Douneay Trì Floating Wind Demonstration Project Onshore and Offshore Project Boundary and Phase 1 turbine deployment locations

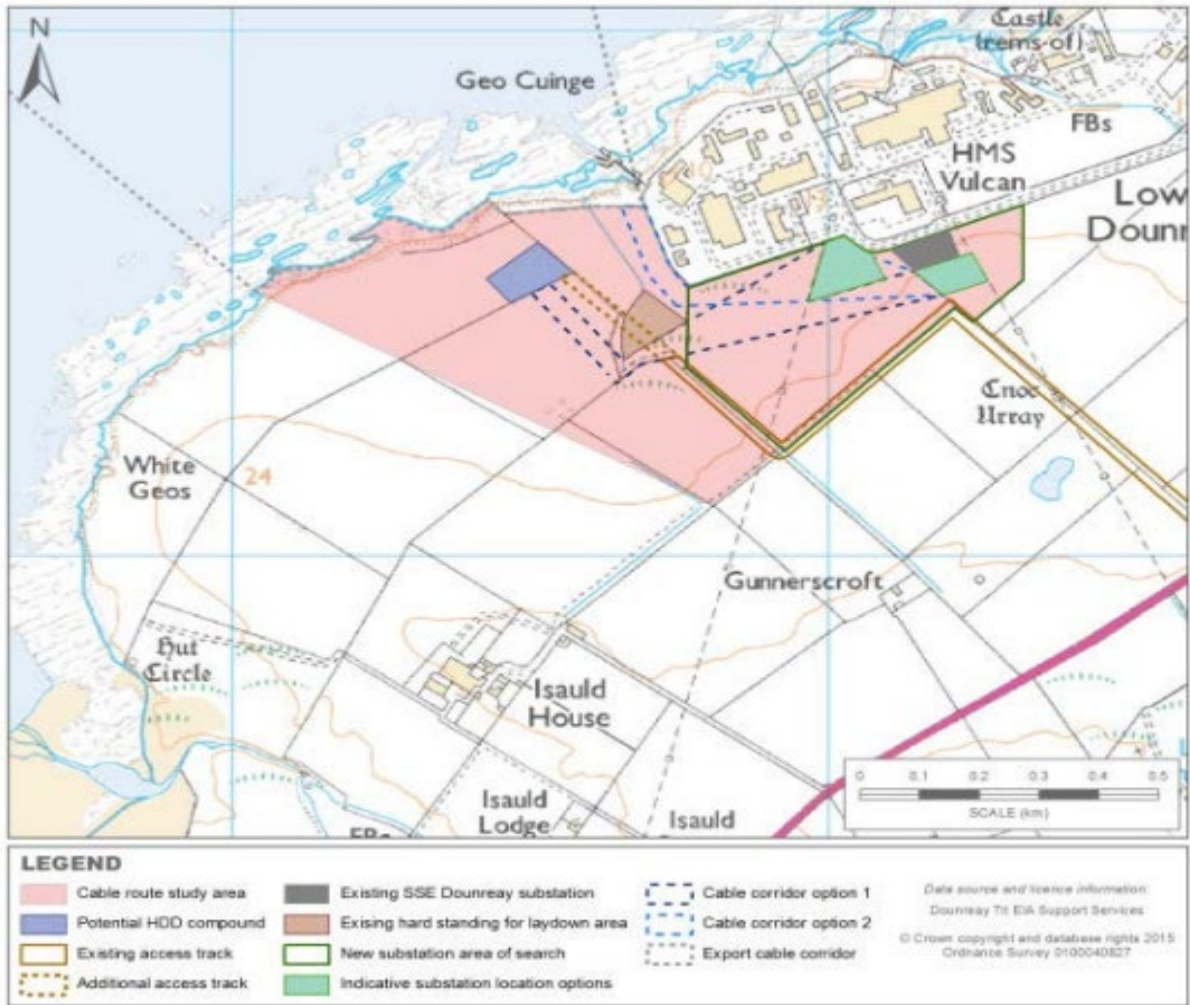


Figure 2: Dounreay Trì Floating Wind Demonstration Project - Onshore Project Boundary, export cable corridor, and onshore cable corridor option 1 and option 2.

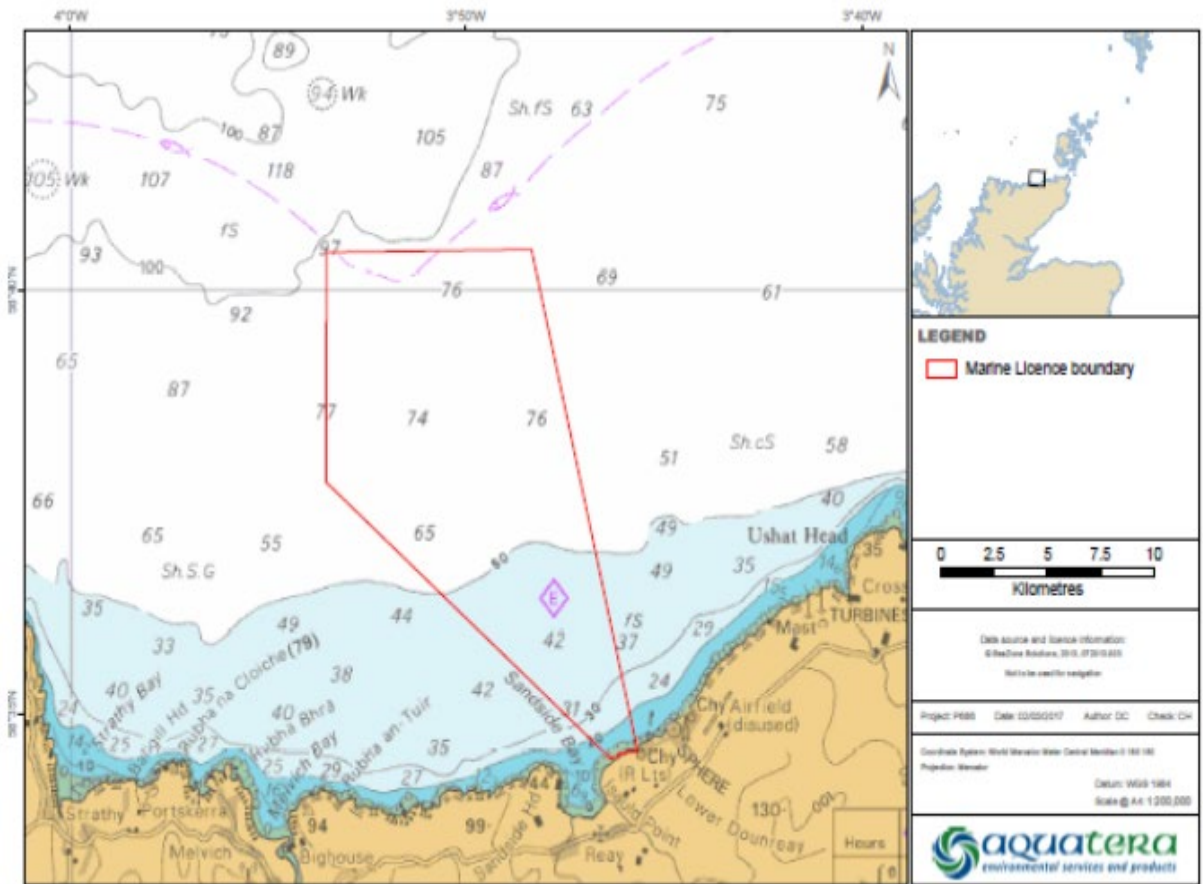


Figure 3: Dounreay Tri Floating Wind Demonstration Project Offshore export cable corridor.

ANNEX 2 of the Dounreay Tri Floating Demonstrator Project Consent

CONDITIONS OF THE SECTION 36 CONSENT

The consent granted under Section 36 of the Electricity Act 1989 is subject to conditions 1 to 22 as narrated in ANNEX 2 to the Existing Consent and which are hereby amended as follows:

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

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

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

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

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

1. Duration of the Consent

The consent is for a period of 25 years from the date of the Final Commissioning of the first Wind Turbine Generator (“WTG”).

Written confirmation of the date of the Final Commissioning of the first WTG must be provided by the Company to the Scottish Ministers, THC and NatureScot no later than one calendar month after the Final Commissioning of the first WTG.

Reason: To define the duration of the consent.

2. Commencement of Development

The Commencement of the Development must be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter agree and confirm in writing. Written confirmation of the intended date of Commencement of the Development must be provided to THC, OIC and the Scottish Ministers no later than one calendar month before that date or at such as time as agreed with the Scottish Ministers.

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

3. Decommissioning

There must be no Commencement of the Development until a Decommissioning Programme, as defined in any section 105 notice served by the appropriate Minister, has been approved under section 106 of the Energy Act 2004 by the appropriate Minister.

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

4. Assignment

This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent or refuse assignment as they may see fit. The consent is not capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company must notify THC in writing of the name of the assignee, the principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

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

5. Redundant turbines

In the event that for a continuous period of 6 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 the Company and any advisors as required at the discretion of the Scottish Ministers, any such WTG may be deemed by the Scottish Ministers to cease to be required. If so deemed, the WTG (together with any related infrastructure) must, within the period of 12 months from the date of the deeming decision by the Scottish Ministers, be decommissioned and the area of the Site upon which the WTG is located must be reinstated by the Company in accordance with the procedures laid out within the Company's Decommissioning Plan.

Reason: To ensure that any redundant wind turbine generators are removed from the Site, in the interests of safety, amenity and environmental protection.

6. Incident Reporting

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

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

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

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application (taking into account amendments or updates made by the Variation Application) and the Environmental Statement (“ES”) submitted by the Company on 19th October 2016 and any other documentation lodged in support of the Application and Variation Application.

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

8. Transportation for site inspections

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

Reason: To ensure access to the Site for the purpose of inspecting compliance with this Consent.

9. Construction Programme

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, 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 NatureScot, MCA, NLB, SEPA, THC and OIC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CoP must set out, but not be limited to, the following:

- a) the proposed date for Commencement of the 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.

The Company must, prior to the Commencement of the Development, provide a copy of the final CoP, and any subsequent revisions as agreed by the Scottish Ministers, to the Defence Geographic Centre (“DGC”).

Reason: To confirm the timing and programming of construction.

10. Offshore Construction Method Statement

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit an Offshore Construction Method Statement (“OffCMS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot, SEPA, THC, OIC, Dounreay Site Restoration Limited (“DSRL”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) the construction procedures and good working practices for installing the Development;
- b) details of the roles and responsibilities, chain of command and contact details of company personnel and any contractors or sub-contractors involved during the construction of the Development;
- c) details of how the construction related mitigation steps proposed in the ES are to be delivered;
- d) a waste management plan for the construction phase of the Development; and
- e) continuous monitoring of radioactive particles.

The OffCMS must adhere to the construction methods assessed in the Application and ES. The OffCMS must also, so far as is reasonably practicable, be consistent with the Design Statement (“DS”), the Offshore Environmental Management Plan (“OffEMP”), the Vessel Management Plan (“VMP”), the Navigational Safety Plan (“NSP”), and conditions contained within Marine Licences 06178/17/0 and 06174/17/0.

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. Development Specification Layout Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, 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 NatureScot, SEPA, MoD, CAA, MCA, NLB, NATS, MCC, THC and OIC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) a plan showing the location of the floating platform (subject to any required micro-siting), including WTG identification/numbering, seabed conditions, bathymetry, confirmed anchor and mooring system for the platform and any key constraints recorded on the Site;
- b) a list of latitude and longitude coordinates accurate to three decimal places of minutes of arc for each anchor point. This should also be provided as a

- Geographic Information System (“GIS”) shapefile using the World Geodetic System 1984 (“WGS84”) format;
- c) a table or diagram of each WTG dimensions including – height to blade tip (measured above Lowest Astronomical Tide (“LAT”)) to the highest point, height to hub (measured above LAT to the centreline of the generator shaft), rotor diameter and maximum rotation speed;
 - d) the generating capacity of each WTG used on the Site, and a confirmed generating capacity for the Site overall;
 - e) the finishes for each WTG (and in accordance with conditions contained within Marine Licences 06178/17/0 and 06174/17/0); and
 - f) the length and proposed arrangements on the seabed of the anchor and mooring system.

Reason: To confirm the final Development specification and layout.

12. Design Statement

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Design Statement (“DS”), in writing, to the Scottish Ministers. The DS, which must be signed off by at least one qualified landscape architect as instructed by the Company prior to submission to the Scottish Ministers, must include representative wind farm visualisations from key viewpoints as agreed with the Scottish Ministers, based upon the final DSLP as approved by the Scottish Ministers (as updated or amended if relevant). The Company must provide the DS, for information only, to NatureScot, THC, OIC, HES, MCC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

13. Offshore Environmental Management Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit an Offshore Environmental Management Plan (“OffEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot, SEPA, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The OffEMP 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 (in accordance with conditions contained within Marine Licences 06178/17/0 and 06174/17/0).

The OffEMP must be in accordance with the ES insofar as it relates to environmental management measures. The OffEMP must set out the roles, responsibilities and chain of command for the Company personnel and 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 monitoring or data collection, and include the relevant parts of the Offshore and Onshore CMS;
- b) a Pollution Prevention and Control Method Statement, including contingency plans;
- c) management measures to prevent the introduction of invasive non-native marine species;
- d) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, re-use and recycle should be encouraged;
- e) the reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, NatureScot and SEPA) 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, or at such a time as agreed with the Scottish Ministers, submit an updated OffEMP to cover the operation and maintenance activities for the Development, in writing to the Scottish Ministers for their written approval. Such approval may be given only following consultation with NatureScot, SEPA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OffEMP must be regularly reviewed by the Company and the Scottish Ministers, at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

The OffEMP must be informed, so far as is reasonably practicable, by the baseline monitoring or data collection undertaken as part of the Application and the Project Environmental Monitoring Programme ("PEMP").

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

14. Vessel Management Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, 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 NatureScot, WDC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) the number, types and specification of vessels required;
- b) how vessel management will be co-ordinated, particularly during construction but also during operation; and
- c) 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 during construction and operation of the Development.

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

The VMP must, so far as is reasonably practicable, be consistent with the OffCMS, the OffEMP, the PEMP, the NSP and conditions contained within Marine Licences 06178/17/0 and 06174/17/0.

Reason: To mitigate disturbance or impact to marine mammals and birds.

15. Offshore Operation and Maintenance Programme

The Company must, no later than 6 months prior to the Commissioning of the first WTG or at such a time as agreed with the Scottish Ministers, submit an Offshore Operation and Maintenance Programme (“OffOMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot, THC, OIC, SEPA, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The OffOMP must set out the procedures and good working practices for operations and the maintenance of the WTGs and substructures of the Development.

The OffOMP must, so far as is reasonably practicable, be consistent with the OffEMP, the PEMP, the VMP, the NSP,) and conditions contained within Marine Licences 06178/17/0 and 06174/17/0.

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

16. Navigational Safety Plan

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, 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, RYA Scotland 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:

- 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 coordination arrangements (“ERCoP”) for the construction, operation and decommissioning phases of the Development and to be in accordance with conditions contained in Marine Licences 06178/17/0 and 06174/17/0; 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 543 (“MGN 543”), and its ANNEXES that may be appropriate to the Development, or any other relevant document which may supersede said guidance prior to approval of the NSP.

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

17. Project Environmental Monitoring Plan

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, 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 NatureScot, RSPB Scotland, WDC and any other ecological advisors or organisations as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the Application and 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 whole Development, including offshore and onshore works. Monitoring is required throughout the lifespan of the Development where this is deemed necessary by the Scottish Ministers. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing.

Monitoring must be done in such a way so as to ensure that the data which is collected allows useful and valid comparisons between different phases of the Development. Monitoring may also serve the purpose of verifying key predictions in the Application and the ES. In the event that further potential adverse environmental effects are

identified, for which no predictions were made in the Application or the ES, the Scottish Ministers may require the Company to undertake additional monitoring.

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

- a) pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring or data collection as relevant in terms of the ES and any subsequent monitoring or data collection for:
 - i. birds. This should include, but not be limited to, a detailed entanglement monitoring and reporting schedule, as well as a post-consent monitoring plan for bird strike;
 - ii. marine mammals. This should include, but not be limited to, a detailed entanglement monitoring and reporting schedule, particularly of load on the moorings from derelict fishing gear; and
 - iii. onshore impacts of the development; and
- b) the participation and contribution to be made by the Company to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers, and may include but not necessarily be limited to:
 - i. the density and distribution of seabirds within the site-specific survey area; and
 - ii. the behaviour and interaction of marine mammals and seabirds around the platform and turbine structures.

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

The PEMP is a live document which will be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with ecological advisors or organisations as required at the discretion of the Scottish Ministers, 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, by the Scottish Ministers, with the NatureScot, RSPB Scotland, WDC and any other ecological advisors or organisations as may be required at the discretion of the Scottish Ministers.

The Company must submit written reports and associated raw data of such monitoring or data collection to the Scottish Ministers at timescales to be determined by them. Subject to any legal restrictions regarding the treatment of the information, the results will 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.

18. Fisheries Management and Mitigation Strategy

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Fisheries Management and Mitigation Strategy (“FMMS”), in writing, to the Scottish Ministers for their written approval.

In order to inform the production of the FMMS, the Company must monitor or collect data as relevant and agreed with Scottish Ministers in terms of the ES and any subsequent monitoring or data collection for:

- a) the impacts on the adjacent coastline;
- b) the effects on local fishermen; and
- c) the effects on other users of the sea.

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

Reason: To mitigate the impact on commercial fishermen.

19. Environmental Clerk of Works

Prior to the Commencement of the Development, the Company must at its own expense, and with the approval of the Scottish Ministers in consultation with NatureScot and SEPA, appoint an independent Onshore and Offshore Environmental Clerk of Works (“ECoW”). The ECoW must be appointed in time to review and approve the draft version of the first plan or programme submitted under this consent to the Scottish Ministers, and remain in post until agreed by the Scottish Ministers. The terms of appointment must be approved by Scottish Ministers, in consultation with NatureScot, SEPA and THC.

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

- a) quality assurance of final draft versions of all plans and programmes required under this consent;
- b) responsibility for the monitoring and compliance of the consent conditions and the environmental mitigation measures;
- c) provision of on-going advice and guidance to the Company in relation to achieving compliance with consent conditions, including but not limited to the conditions relating to the Offshore and Onshore CMS, the Offshore and Onshore EMP, the CaP, the PEMP, and the VMP;
- d) provision of reports on point c) above to the Scottish Ministers at timescales to be determined by the Scottish Ministers;
- e) inducting and toolbox talks to onsite construction teams on environmental policy and procedures and keeping a record of these;

- f) monitoring that the Development is being constructed according to the plans and this consent, the Application, the Variation Application and ES and compliance with all relevant legislation;
- g) reviewing and reporting incidents/near misses and reporting any changes in procedures as a result; and
- h) agreement of a communication strategy with the Scottish Ministers.

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

20. Fisheries Liaison Officer

Prior to the Commencement of the Development, a Fisheries Liaison Officer (“FLO”) must be appointed by the Company and approved, in writing, by the Scottish Ministers following consultation with SFF, the East Coast and Northern Inshore Fisheries Group and any other advisors or organisations as may be required at the discretion of Scottish Ministers. The FLO must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The identity and credentials of the FLO must be included in the OffEMP. The FLO must establish and maintain effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

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

- 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 OffCMS and site environmental procedures;
- b) the provision of information relating to the safe operation of fishing activity at 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.

21. SpORRAn (Scottish Offshore Renewables Research Framework)

The Company must, to the satisfaction of the Scottish Ministers, participate in the monitoring requirements as laid out in the Scottish Offshore Renewables Research Framework (“SpORRAn”), in particular for diadromous fish. The extent and nature of the Company’s participation must be agreed by the Scottish Ministers.

Reason: To ensure effective monitoring of the effects on migratory fish at a local level.

22. Fisheries Working Group

The Company must participate in a Fisheries Working Group (“FWG”), or any successor group, formed to facilitate commercial fisheries dialogue, for the purposes

of defining and finalising a Fishing Management and Mitigation Strategy (“FMMS”). The FWG must adhere to the working group protocol.

Reason: To mitigate the impacts on commercial fishermen.

23. Scottish Strategic Marine Environment Group

The Company must participate in any Scottish Strategic Marine Environment Group (“SSMEG”) established by the Scottish Ministers for the purposes 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.

ANNEX 3 of the Dounreay Tri Floating Demonstrator Project Consent

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in ANNEX 1 and 2:

“AA” means Appropriate Assessment;

“Commencement of the Development” means the date on which the first vessel arrives on Site to begin construction;

“Commissioning of the first WTG” means the date on which electricity is first exported to the grid network on a commercial basis from the first WTG forming part of the Development;

“Date of First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development;

“ECoW” means Environmental Clerk of Works;

“EIA” means Environmental Impact Assessment;

“ERCoP” means Emergency Response & Cooperation Plan, which is conditioned in the Marine Licences;

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Company on 19 October 2016 as part of the Application defined above;

“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;

“Final Commissioning of the first Wind Turbine Generator” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the development, or such earlier date as the Scottish Ministers deem the first WTG to be complete;

“FLO” means Fisheries Liaison Officer;

“GIS” means Geographic Information System;

“GWh” means gigawatt hour;

“HRA” means Habitats Regulations Appraisal;

“km” means kilometre;

“LAT” means Lowest Astronomical Tide;

“MGN 543” means the maritime and Coastguard Agency Marine Guidance Note 543 Offshore Renewable Energy Installations (“OREI’s”) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues;

“MHWS” means Mean High Water Spring tides;

“MLWS” means Mean Low Water Spring tides;

“MW” means megawatt;

“nm” means nautical miles;

“the Application” means the Application letters and Environmental Statement submitted to the Scottish Ministers, by Dounreay Tri Ltd on 19 October 2016 for consent under section 36 of the Electricity Act for the construction and operation of The Dounreay Tri Floating Wind Demonstration Project Approximately 6 km Offshore From Dounreay, Caithness;

“the Company” means Highland Wind Limited (Company Number SC675148) having its registered office at 4th Floor 115 George Street, Edinburgh, Midlothian, Scotland, EH2 4JN;

“the Development” means The Dounreay Tri Floating Wind Demonstration Project Approximately 6 km Offshore From Dounreay, Caithness., as described in ANNEX 1 of this letter authorised by this consent;

“the Existing Consent” means the s.36 consent granted by the Scottish Ministers in favour of Dounreay Tri Ltd on 16 March 2017;

“the Site” means the area outlined in the Figures 1 - 3 attached to this consent;

“the Works” means all works relating to the Development below MLWS;

“the 2017 AA” means the AA under the Habitats Regulations, completed on 7 March 2017 in respect of the application for the Existing Consents;

“WGS84” means the World Geodetic System 1984;

“WTG” means wind turbine generator;

ORGANISATIONS

“CAA” means The Civil Aviation Authority;

“DSRL” means Dounreay Site Restoration Limited;

“HES” means Historic Environment Scotland;

“MCA” means The Maritime and Coastguard Agency;

“MCC” means Melvich Community Council;

“MoD” means Ministry of Defence;

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

“NATS” means National Air Traffic Service (En Route) Plc;

“NLB” means The Northern Lighthouse Board;

“OIC” means Orkney Islands Council;

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

“RYA Scotland” means Royal Yachting Association Scotland;

“SEPA” means The Scottish Environment Protection Agency;

“SFF” means The Scottish Fishermen’s Federation;

“THC” means The Highland Council;

“TS” means Transport Scotland;

“WDC” means Whale and Dolphin Conservation;

PLANS, PROGRAMMES AND STATEMENTS

“CaP” means Offshore Cable Plan;

“CoP” means Construction Programme;

“DP” means Decommissioning Plan which is conditioned within the Marine Licences;

“DS” means Design Statement;

“DSLPP” means Development Specification and Layout Plan;

“EMP” means Environmental Management Plan;

“FMMS” means Fisheries Management and Mitigation Strategy;

“FMP” means Fisheries Management Plan;

“FRA” means Flood Risk Assessment;

“NSP” means Navigational Safety Plan;

“OffCMS” means Offshore Construction Method Statement;

“OffEMP” means Offshore Environmental Management Plan;

“OffOMP” means Offshore Operation and Maintenance Programme;

“OnCaP” means Onshore Cable Plan;

“OnCMS” means Onshore Construction Method Statement;

“OnEMP” means Environmental Management Plan and covers points raised with requests for a Construction Environmental Management Plan;

“OnEMP” means Onshore Environmental Management Plan;

“OnOMP” means Onshore Operation and Maintenance Programme;

“PEMP” means Project Environmental Monitoring Programme;

“TTP” means Traffic and Transportation Plan;

“VMP” means Vessel Management Plan;

LEGISLATION

“s.36” means Section 36 of the Electricity Act;

“the 2010 Act” means Marine (Scotland) Act 2010 (as amended);

“the EIA Regulations” means Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000;

“the Electricity Act” means the Electricity Act 1989 (as amended);

“the Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017;