

From: [REDACTED]

Marine Scotland Licensing Operations Team

Marine Scotland

9 May 2019

Minister for Energy, Connectivity and the Islands

APPLICATION TO VARY ANNEX 1 AND ANNEX 3 OF THE FORTHWIND OFFSHORE WIND DEMONSTRATION PROJECT SECTION 36 CONSENT UNDER SECTION 36C OF THE ELECTRICITY ACT IN ACCORDANCE WITH THE ELECTRICITY GENERATING STATIONS (APPLICATION FOR VARIATION OF CONSENT (SCOTLAND) REGULATIONS 2013

1. Submission to Ministers

1.1 Purpose

- 1.1.1 To seek your approval to grant the application to vary the consent for the Forthwind Offshore Wind Demonstration Project ('the Development'). This application ('the Variation Application') was made by Forthwind Limited ('the Company') on 20 December 2018 and relates to the consent granted on 21 December 2016 under section 36 ('s.36') of the Electricity Act 1989 ('the Electricity Act') for the construction and operation of the Development located approximately 1.5km off the coast of Methil, Fife ('the original s.36 consent').

1.2 Priority

- 1.2.1 Routine

1.3 Nature of the Variation Sought

- 1.3.1 The Variation Application seeks to amend, Annex 1 and Annex 3 of the original s.36 consent to allow the following variation:
- to allow the maximum installed consented capacity to increase from 18 Megawatts ('MW') to a maximum of 29.9MW.

The text for the application for the original s.36 consent can be found on the [Marine Scotland Website](#). The proposed variations are shown in Annex D.

1.4 Environmental Impacts

- 1.4.1 The changes proposed by the Company concern increasing the total maximum generating capacity of the generating station, without changing the size or the maximum number of turbines or changing any other parameter in the consented project. These changes will not influence the Environmental Impact Assessment (“EIA”), the Environmental Statement, the Habitats Regulation Appraisal, the associated Habitats Regulations Appraisal addendum and the Appropriate Assessment (“AA”) previously completed for the original s.36 consent application. It is considered that the proposed changes are not likely to have a significant effect on any European offshore marine site nor on any European site. On this basis an AA is not required under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”).
- 1.4.2 For the reasons listed above in paragraph 1.4.1, in accordance with The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”), the Company was not required to submit a new EIA.

1.5 Publication of Application

- 1.5.1 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 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. These requirements have been met.
- 1.5.2 The Variation Regulations also require copies of the variation application to be served on the planning authority. This requirement has been met. The planning authorities that received copies of the original s.36 consent application were also served copies of the Variation Application namely City of Edinburgh Council, East Lothian Council and Fife Council.

1.6 Consultation

- 1.6.1 Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Company’s section 36C (“s.36C”) Variation Application including: City of Edinburgh Council, East Lothian Council, Fife Council, Scottish Natural Heritage, Scottish Environmental Protection Agency, the Maritime and Coastguard Agency, the Northern Lighthouse Board, and Historic Environment Scotland.

- 1.6.2 Scottish Ministers received one representation from a member of the public in relation to this variation application. None of the statutory consultees objected to the variation.
- 1.6.3 The results of the consultation exercise, the supporting information submitted as part of the application and the key considerations in relation to the determination of this proposal are set out in Annex B.
- 1.6.4 In order for the determination process to be fully open and transparent, MS-LOT recommends that the Variation Application and any key documentation relating to this is published on the Marine Scotland Licensing page of the Scottish Government [website](#).

1.7 Recommendation

Having taken into account the statutory and non-statutory consultation responses, the public representation 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 and Annex 3 of the Forthwind Offshore Wind Demonstration Project section 36 consent, in terms of section 36C of the Electricity Act 1989 and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 .

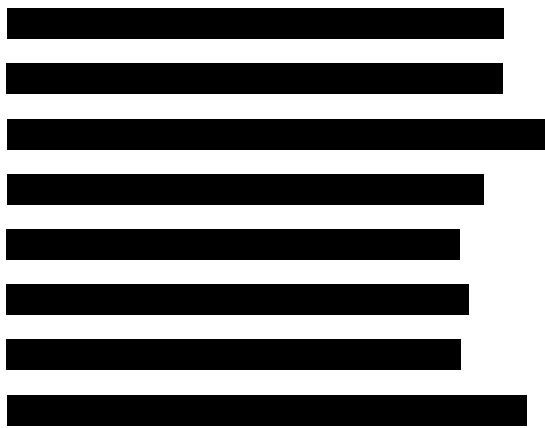
A draft decision letter is attached at Annex C.

If consent is granted for this variation application, the Scottish Ministers will exercise their discretion to vary the marine licence granted on 21 December 2016 varied on 20 January 2017 and again on 12 September 2017 (licence numbers 05632/15/0, 05632/17/1 and 05632/17/2) in respect of the Development, in accordance with section 30(3)(d) of the Marine (Scotland) Act 2010 to ensure that the marine licence and consent granted under section 36 of the Electricity Act 1989 in relation to the Development are consistent.

1.8. List of Annexes

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Copy List:	For Action	For Comment	For Information		
			Portfolio Interest	Consist Interest	General Awareness
Minister for Energy, Connectivity and the Islands	X	X			
Cabinet Secretary for Transport, Infrastructure and Connectivity			X		
Cabinet Secretary for the Rural Economy			X		
Cabinet Secretary for Environment, Climate Change and Land Reform			X		
Minister for Rural Affairs and the Natural Environment			X		
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Communications, Economy

2. ANNEX A - Legislative Requirements

2.1 Legislative Background

- 2.1.1 Section 36C (“s.36C”) of the Electricity Act 1989 (“the Electricity Act”) has, since 1 December 2013, enabled persons who are entitled to the benefit of a section 36 (“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 (“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 a 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 s.36C(4) of the Electricity Act the Scottish Ministers may make variations to consents as appear to them to be appropriate, having regard in particular to the company’s reasons for seeking the variation, the variation proposed, the consultation process and any objections made to the proposed variation, the views of consultees and the outcome of any public inquiry.

2.2 Environmental Impact Assessment

- 2.2.1 The process to vary s.36 consents is primarily governed by the Variation Regulations. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 amend the Variation Regulations and provide that an Environmental Impact Assessment (“EIA”) is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.
- 2.2.2 Officials consider that the proposed changes will not have any significant effect on the environment and therefore no EIA report is required in support of the Variation Application. This decision is based on the fact that no change is proposed to the maximum number of turbines or to the physical characteristics and operational parameters of the turbines and will not influence the EIA, the Environmental Statement (“ES”), the Habitats Regulation Appraisal Report, the associated Habitats Regulations Appraisal addendum supporting the original s.36 consent application or the Appropriate Assessment (“AA”).

ANNEX A – Legislative Requirements

- 2.2.3 All the significant effects resulting from the Development were included in the ES submitted in support of the s.36 consent application in 2016 and were fully considered prior to the s.36 consent being granted by Scottish Ministers on 21 December 2016.

2.3 Appropriate Assessment

- 2.3.1 Regulation 48(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”) requires that *“(1) A competent authority before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which, (a) is likely to have a significant effect on a European site or European Offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.*
- 2.3.2 Officials considered that an AA was not required under the 1994 Habitats Regulations or the 2017 Habitats Regulations on the basis that the variations would not result in any likely significant effects on any European offshore marine site nor any European site.

2.4 Marine Licence Variation

- 2.4.1 Should the consent be granted for this variation application, the Scottish Ministers will exercise their discretion to vary the marine licence granted on 21 December 2016 varied on 20 January 2017 and again on 12 September 2017 (licence numbers 05632/15/0, 05632/17/1 and 05632/17/2) in respect of the Development, in accordance with section 30(3)(d) of the Marine (Scotland) Act 2010 to ensure that the marine licence and consent granted under section 36 of the Electricity Act 1989 in relation to the Development are consistent.

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 determining the s.36 consent variation.

3. ANNEX B Background, Consultation and Advice to Ministers

3.1 Background information

- 3.1.1 On 21 December 2016, consent was granted under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) by the Scottish Ministers to construct and operate the offshore generating station known as the Forthwind Offshore Wind Demonstration Project (“the Development”) located approximately 1.5km off the coast of Methil, Fife, with a maximum generating capacity of 18 Megawatts (“MW”) (collectively “the original s.36 consent”).
- 3.1.2 On 20 December 2018, Forthwind Limited (“the Company”), submitted a variation application to the Scottish Ministers under section 36C(1) of the Electricity Act 1989 in accordance with The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), to vary the original s.36 consent (“the Variation Application”) by seeking to increase the permitted maximum generating capacity from 18MW to 29.9MW. The Company does not seek to change any of the physical or operational parameters specified in the Environmental Statement (“ES”) submitted with the original s.36 consent application.

3.2 Application - Supporting Information

- 3.2.1 The Company submitted the Variation Application on 20 December 2018, describing the consented development, the proposed changes and the reasons for requiring a variation of the original s.36 consent.
- 3.2.2 Full details of the consultation undertaken as part of the process are set out below.

3.3 Notification and Consultation

- 3.3.1 City of Edinburgh Council, East Lothian Council and Fife Council were served a copy of the Variation Application. Notifications were made in accordance with the Variation Regulations with the advertisement of 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 Fife Courier, the Edinburgh Gazette and Lloyd’s List for two weeks and for one week in each of the Fishing News and the Herald. A copy of the Variation Application was published on the [Company’s website](#), along with a link to the original s.36 consent, the ES and the associated Habitats Regulations Appraisal addendum of supplementary environmental information.
- 3.3.2 The original s.36 consent decision letter was previously placed on the Marine Scotland website, the Variation Application has also been placed on the [Forthwind Offshore Development section of the Scottish Government Webpage](#). Marine Scotland Licensing Operations Team (“MS-LOT”) consulted a range of relevant organisations on the Variation Application including the City of Edinburgh Council, East Lothian Council, Fife Council, Scottish Natural

Heritage (“SNH”), the Scottish Environmental Protection Agency (“SEPA”), the Maritime and Coastguard Agency (“MCA”), Historic Environment Scotland (“HES”), and the Northern Lighthouse Board (“NLB”).

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

3.4 Summary of the consultation exercise

- 3.4.1 Full details of the consultation undertaken as part of the process are set out below. Most of the consultees had no comments to make or did not forward any comments in response to the consultation invitation. In the case of no response, MS-LOT notified the participants that a “nil response” would be assumed. Statutory consultees and local authorities did not raise any objections, however, comments were submitted. HES highlighted that the Variation Application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance. MCA reiterated that the development needs to continue to be conducted in accordance with Marine Guidance Note 543 and its annexes (“MGN 543”). In section 3.5 and 3.6 of this submission a summary of comments from statutory consultees, local authorities and how the Company has addressed these is presented. The responses and concerns raised by non-statutory consultees are summarised in section 3.7 of this submission, including the actions undertaken by the Company to resolve the issues. In section 3.8 of this submission all non-statutory consultees who did not respond to the consultation are detailed.

- 3.4.2 Scottish Ministers received one representation from a member of the public in relation to the Variation Application.

- 3.4.3 All consultation responses are available to view on the Forthwind Offshore Development Phase 1 section of the Scottish Government Webpage: <http://marine.gov.scot/ml/forthwind-offshore-development-phase-1>.

3.5 Summary of responses from statutory consultees

- 3.5.1 Statutory consultees had no objections to the Variation Application.
- 3.5.2 **HES** advised that the proposed changes in the Variation Application would not have any additional significant impacts on sites within its remit and it had no further comments to make on the proposals. Nevertheless, HES indicated that its decision not to provide comments should not be taken as a support for the proposal and emphasised that the Variation Application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.
- 3.5.3 **NLB** had no objection to the Variation Application.
- 3.5.4 **MCA** had no objection to the Variation Application. MCA highlighted that the development needs to continue to be conducted in accordance with MGN 543.

3.5.5 **SEPA** had no objection to the Variation Application.

3.5.6 **SNH** confirmed that the advice provided on the currently consented application remains unchanged and they had no substantive comments to make on the current variation.

3.6 Summary of responses from local authorities

3.6.1 Local Authorities had no objections to the Variation Application.

3.6.2 **City of Edinburgh Council** did not wish to submit representations to the Variation Application since the variation makes no change to the physical parameters of the project.

3.6.3 **East Lothian Council** had no objection to the Variation Application.

3.6.4 **Fife Council** had no objection to the Variation Application.

3.7 Summary of responses from non-statutory consultees

3.7.1 **Forth Ports** had no issues with the Variation Application.

3.7.2 **Ministry of Defence (“MOD”)** had no objection to the Variation Application however, it requested to be consulted and notified of the progression of planning applications and submissions relating to this proposal. MOD requested to be advised prior to commencement of construction on:

- the date construction starts and ends;
- the maximum height of construction equipment;
- the latitude and longitude of the turbines.

3.7.2.1 The Company responded to the MOD and confirmed that the MOD would be advised through the arrangements as described in the approved revised construction plan that would be submitted to Marine Scotland prior to commencement of the works.

3.7.3 **National Air Traffic Services** had no safeguarding objection to the Variation Application.

3.7.4 **ORE Catapult (“OREC”)** commented on the Variation Application indicating that the Company did not provide enough detail on the type, configuration or associated noise level of the uprated turbines. OREC suggested that the Company provide noise levels and confirmation that the uprated turbines could operate within the existing noise consent. If the Company could not provide this, then OREC suggested that the condition which ties OREC to a noise sharing protocol with the Company should be removed and the burden of meeting the existing noise condition should reside solely with the Company.

3.7.4.1 The Company replied to OREC’s comments confirming that it did not have any influence on OREC’s consent. The Variation Application seeks only to

increase the generating capacity limit and will not change any other parameter in the consented project envelope of the original s.36 consent (including the noise conditions and the physical dimensions of the turbines). OREC subsequently acknowledged that the variation should not impact existing arrangements and the noise assessments and protocol arrangements previously agreed would remain valid.

- 3.7.5 **Royal Yachting Association** had no comments to make on the Variation Application.
- 3.7.6 **Scottish Fisherman Federation (“SFF”)** stated that the Variation Application does not change the continued objection to the general project.
 - 3.7.6.1 The outstanding objection from SFF is based on the scoping request in 2016. SFF stated that the Company’s desire to expand is contrary to the Scottish Planning Policy Principles and it has not taken into consideration the fishing activity in the area. SFF suggested a scoping opinion to occur to include a real analysis of the probable impact of the array extension on commercial fishers and highlighted the necessity this analysis to address the cumulative impacts including the first two consented turbines, the consented Firth of Forth and Tay windfarms, any applicable export cables from those and the loss of grounds to oil rig anchorage adjacent to the proposed array.
 - 3.7.6.2 The Company replied to SFF mentioning that the above comments pertain to a different proposal that the Company is not progressing anymore therefore the comments are not applicable to the Variation Application.
 - 3.7.6.3 The Company contacted the SFF and requested further clarification on the position regarding the Variation Application. SFF confirmed on the 18 February 2019 that whilst it has other concerns/objections that relate to the original s.36 consent, as the Variation Application proposes no other change to the original s.36 consent apart from varying of the maximum generating capacity limit from 18MW to 29.9MW, it does not object to the Variation Application.
- 3.7.7 **UK Chamber of Shipping** confirmed nil return.
- 3.7.8 **Visit Scotland** initially raised comments on generic issues, highlighting the importance of the scenery and the natural environment for Scotland’s touristic industry and suggested that a tourism impact statement should be considered in full during the decision making process for the turbine height and number.
 - 3.7.8.1 The Company contacted Visit Scotland on 11 February 2019 to highlight that socio-economic impacts on tourism were considered in the Environmental Impact Assessment which supported the project application.
 - 3.7.8.2 Visit Scotland confirmed that it does not object to the Variation Application.

3.7.8 Public Representation

- 3.7.8.1 One public representation received by MS-LOT raised issues concerning the lack of contact with the owners of licenced vessels berthed at Methil Boat Club or Buckhaven Boat Club. The representation also highlighted concerns regarding whether the fisherman will be allowed to fish within the boundaries of the 1.214km² that the Development is to cover given that it is an important area for crab, lobster, velvetfish and whelks and is utilised for years.
- 3.7.8.2 The Company responded to the public representation on the 8 February 2019 and stated that they have engaged with a number of fishing organisations, including the SFF, the Inshore Fisheries Alliance and the North and East Coast Inshore Fisheries Group (formerly the East Coast IFG) on the Development and will continue to do so in the future. The Company confirmed that they had also spoken with a fisheries representative (Chair of ECIFG) who has a boat based out of Methil and sent copies of the Variation Application and supporting ES to Methil Boat Club. The Company stated that the Anstruther fisheries office cannot legally provide a list of vessel owners details to it.
- 3.7.8.3 Regarding the exclusion of ground for fishing activity, the Company declared that will not seek to exclude fishing activities in the long term and this commitment will be reflected in a future agreed Fisheries Management and Mitigation Strategy. The Company recognised that there will be a relatively short period during construction, where for safety reasons, boats will need to be excluded from the site but highlighted these aspects will be discussed by the Fisheries Liaison Officer with the Fisheries Industry Representative (in communication with the local fishing community) to minimise the disruption and identify potential mitigation solutions, where possible. Finally, the Company declared that the issues raised by the public representation did not specifically relate to the Variation Application but mostly related to the original s.36 consent. .
- 3.7.9.3 A response has not been received from the public representation on the Company's response.

3.8 Summary of other consultees responses

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

Fisheries Management Scotland, British Telecom, Civil Aviation Authority, Crown Estate Scotland, Joint Radio Company, Marine Safety Forum, Royal Society for the Protection of Birds Scotland, Scottish Canoe Association, Scottish Fishermen's Organisation, Scottish Surfing Federation, Scottish Wildlife Trust, Sports Scotland, Surfers Against Sewage, Whale & Dolphin Conservation, Transport Scotland Ports & Harbours, Transport Scotland, Marine Scotland Compliance, Marine Scotland Planning, Edinburgh Airport, Anstruther Harbour Marina, Cockenzie & Port Seton Fishermen's Association, Dysart Sailing Club, East Lothian Yacht Club, Elie & Earlsferry Sailing Club, Largo Bay Sailing Club, Methil Creel Fishermen, Inshore Fishermen's

Alliance, Forth District Salmon Fishery Board, 10 metre and under Association, Fife Fishermen's Mutual Association (Pittenweem) Limited, Scallop Association, Scottish Wild Salmon Company, Salmon Net Fishing Association of Scotland, Scottish Pelagic Fishermen's Association and Scottish Creel Fishermen's Federation.

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 station (or proposed generating station) 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 the granting of the original s.36 consent, the increase of the maximum generating capacity limits from 18MW to 29.9MW is of paramount importance for the Company. None of the physical dimensions nor the operational parameters in the original s.36 consent would change and there would be no implications for the environmental effects of the Development. The variation proposed does not fundamentally alter the character and scale of the Development. In addition there will be no change to the red line boundary of the Development. Officials therefore advise Scottish Ministers that the variation is appropriate and should be granted.

3.10 Conclusion

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

3.11 Recommendation

3.11.1 Having taken into account the statutory and non-statutory consultation responses, and the public representation, and being satisfied that all legislative requirements have been met, MS-LOT recommends that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary Annex 1 and Annex 3 of the Company's s.36 consent, in terms of section 36C of the Electricity Act and the Variation Regulations. A draft decision letter is attached at Annex C.

4. ANNEX C Draft Decision Notice and Proposed Variation

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Forthwind Ltd
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KY3 0TZ

DD Month 2019

Dear [REDACTED]

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 21 DECEMBER 2016 FOR THE CONSTRUCTION AND OPERATION OF THE FORTHWIND OFFSHORE WIND DEMONSTRATION PROJECT, LOCATED APPROXIMATELY 1.5KM OFF THE COAST OF METHIL, FIFE.

I refer to the application to vary the consent for the Forthwind Offshore Wind Demonstration Project (“the Development”). This application (“the Variation Application”) was made by Forthwind Limited (“the Company”) on 20 December 2018 for:

1. a variation under section 36C of the Electricity Act 1989 (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act on 21 December 2016 (“the original s.36 consent”) for the construction and operation of the Development, located approximately 1.5km off the coast of Methil, Fife.

This letter contains the Scottish Ministers’ decision to grant the application and to vary the original s.36 consent.

1 Nature of the Variation Sought

- 1.1 The Variation Application seeks to amend Annex 1 and Annex 3 of the s.36 consent granted on the 21 December 2016 to allow the following variation:
- the maximum installed capacity to increase from 18 Megawatts (“MW”) to a maximum of 29.9MW.

2 Environmental Impacts

- 2.1 The Scottish Ministers are satisfied with the supporting information provided. The proposed variation, which increases the consented maximum generating capacity from 18MW to 29.9MW, will not result in any physical or operational changes to the Development. Scottish Ministers have considered regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”), the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”).
- 2.2 The Scottish Ministers consider that the proposed changes are not likely to have a significant effect on the environment and in accordance with the 2017 EW Regulations the Company is not required to submit a new Environmental Impact Assessment Report in support of the Variation 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.

3 Consultation

- 3.1 Regulation 4 of the Variation Regulations provides that an applicant must publish a variation application relating to an offshore generating station on a website, serve a copy of the variation application on the planning authority, and also advertise by public notices in specified publications. These requirements have been met. Public Notices were placed in the Fife Courier, the Edinburgh Gazette and Lloyd's List for two weeks and for one week in each of the Fishing News and the Herald. The same planning authorities were served copies of the Variation Application as those who were served copies of the original s.36 consent application, in this case, City of Edinburgh Council, East Lothian Council and Fife Council.
- 3.2 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: City of Edinburgh Council, East Lothian Council, Fife Council, Scottish Natural Heritage, Scottish Environmental Protection Agency, the Maritime and Coastguard Agency, the Northern Lighthouse Board, and Historic Environment Scotland .

4 Public Representations

4.1 There was one public representation made from a member of the public in relation to the Variation Application.

5 The Scottish Ministers Determination

5.1 The Scottish Ministers have considered the application documentation and all responses from consultees and the public representation. The Scottish Ministers have considered the reasons for consenting the original s.36 application on the 21 December 2016 and are satisfied that the Variation Application does not fundamentally alter the character or scale of the Development.

5.2 The Scottish Ministers support the Variation Application on the basis that this will allow the Company the opportunity to utilise the most up to date, commercially available technology.

5.3 The Scottish Ministers consider that the Variation Application is both reasonable and enforceable.

5.4 Accordingly, the Scottish Ministers **hereby vary the original s.36 consent as set out in the table below.**

Annex	Amendment
Annex D	<p>In Application substitute the first paragraph with:</p> <p>I refer to the applications at i and iii above made by the Company, submitted on the 6 July 2015, for consent under section 36 (“s.36”) of the Electricity Act for the construction and operation of the Development in the Firth of Forth (“the Application”) with the maximum generation capacity of 48 29.9 Megawatts (“MW”) and for a direction under section 57(2) of the 1997 Act that planning permission for the ancillary onshore development be deemed to be granted.</p>
Annex D	<p>In Scottish Ministers’ Determination substitute the first paragraph with:</p> <p>Subject to the conditions set out in the Annex 2 (with the exception of Part 2 of that Annex) to this Decision, to Scottish Ministers GRANT CONSENT under section 36 of the Electricity Act 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to 48 29.9MW (as described in Annex 1).</p>
Annex D, Annex 1	<p>In Project Description substitute the first paragraph with:</p> <p>The Development, located as shown in the Figure 1, 2.& 3 below, shall have a permitted generating capacity not exceeding 48 29.9MW and shall comprise two wind-powered</p>

	lattice structure electricity generation station off the coast of Methil, Fife, including:
Annex D, Annex 3	<p>In Definitions and Glossary substitute the definition of “the Application” with:</p> <p>“the Application” means the Application letters and the Environmental Statement submitted to the Scottish Ministers, by the Company on 6 July 2015 and the HRA Addendum submitted to the Scottish Ministers by the Company on 30 March 2016 for consent under section 36 of the Electricity Act for the construction and operation of the Forthwind Offshore Demonstration Project Development and the section 36 consent variation submitted to the Scottish Ministers by the Company under section 36C of the Electricity Act on 20 December 2018.</p>

- 5.5 For illustrative purposes a consolidated version of the original s.36 consent is attached with the variation shown in tracked changes for ease of reference.
- 5.6 Copies of this letter have been sent to the nearest onshore planning authorities: City of Edinburgh Council, East Lothian Council and Fife Council. The letter has also been published on the MS-LOT website: <http://marine.gov.scot/ml/forthwind-offshore-development-phase-1>.
- 5.7 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.
- 5.8 Your local Citizens’ Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,



Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Government

DEFINITIONS AND GLOSSARY OF TERMS

In the decision letter attached at Annex C

“the 1994 Habitats Regulations” means the Conservation of Habitats and Species Regulations 1994;

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

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

“AA” means Appropriate Assessment;

“the Company” means Forthwind Ltd (Company Number SC470580) and having its registered office at The Boathouse, Silversands, Hawcraig Road, Aberdour, Fife, KY3 0TZ

“the Development” means the Forthwind Offshore Wind Demonstration Project located in the Firth of Forth, approximately 1.5 km from the coast of Methil, Fife;

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

“EIA” means Environmental Impact Assessment;

“HES” means Historic Environment Scotland;

“HRA” means Habitats Regulations Appraisal;

“MCA” means the Maritime and Coastguard Agency;

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

“MoD” means the Ministry of Defence;

“MW” means Megawatts;

“NLB ” means Northern Lighthouse Board;

“OREC” means ORE Catapult;

“SEPA” means The Scottish Environment Protection Agency;

“SFF” means the Scottish Fishermen’s Federation;

“SNH” means Scottish Natural Heritage;

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

“the Variation Application” means the application that the Scottish Ministers received from the Company to vary its existing s.36 consent on 20 December 2018; and

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

ANNEX D COPY OF THE DECISION LETTER ISSUED ON 21 DECEMBER 2016, WITH TRACKED CHANGES SHOWING CONSOLIDATED VERSION OF THE LETTER – WITH VARIATION TO THE CONSENT IN TRACK CHANGES

MS.MarineRenewables@gov.scot



[REDACTED]
Forthwind Ltd
The Boathouse
Siversands, Hawkraig Road,
Aberdour, Fife,
KY3 0TZ

21 December 2016

Dear [REDACTED]

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF AN OFFSHORE GENERATING STATION, THE FORTHWIND OFFSHORE WIND DEMONSTRATION PROJECT, APPROXIMATELY 1.5 km OFFSHORE FROM METHIL, FIRTH OF FORTH.

A DIRECTION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) THAT PLANNING PERMISSION FOR THE ANCILLARY ONSHORE DEVELOPMENT BE DEEMED TO BE GRANTED.

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

The following applications have been made to the Scottish Ministers by Forthwind Ltd (Company Number SC470580) and having its registered office at The Boathouse, Siversands, Hawkraig Road, Aberdour, Fife, KY3 0TZ ("the Company") for:

- a consent under section 36 and 36A of the Electricity Act 1989 (as amended) ("the Electricity Act") for the construction and operation of the Forthwind Offshore Wind Demonstration Project, in the Firth of Forth, approximately 1.5 km from the coast of Methil, Fife ("the Development");
- a marine licence under the Marine (Scotland) Act 2010 ("the 2010 Act") to deposit any substance or object and to construct, alter or improve any works in relation to the Forthwind Offshore Wind Demonstration Project; and
- a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) ("the 1997 Act") that planning permission for the ancillary onshore development (the substation) be deemed to be granted.

ANNEX D – Forthwind Offshore Wind Demonstration Project Consent with Track Changes

The Company applied for a declaration under section 36A of the Electricity Act 1989 to extinguish public rights of navigation, so far as they pass through those places within the Scottish marine area (essentially the territorial sea adjacent to Scotland) where structures (but not, for the avoidance of doubt the areas of the sea between those structures) forming part of the Development are located. The Company made this application in error and confirmed in an email of 12th February 2016 that a declaration under section 36A of the Electricity Act was not being applied for.

THE APPLICATION

I refer to the applications at i and iii above made by the Company, submitted on the 6 July 2015, for consent under section 36 (“s.36”) of the Electricity Act for the construction and operation of the Development in the Firth of Forth (“the Application”) with a maximum generation capacity of ~~18~~ 29.9 Megawatts (“MW”) and for a direction under section 57(2) of the 1997 Act that planning permission for the ancillary onshore development be deemed to be granted.

The Application received consisted of an application letter, Environmental Statement (“ES”), a Habitats Regulations Appraisal Addendum (“HRA Addendum”) and a supporting marine licence application. The Application is to construct and operate two offshore demonstration wind turbine generators (“WTGs”) each with an installed capacity of up to 9 megawatts (“MW”). The ES proposed drilled pin-piled or gravity-based foundations as options for the necessary foundations. Subsequently the Company have confirmed the use of drilled pin-piled foundations. Cables will be laid in trenches to connect the turbines to the onshore elements of the Development.

The onshore elements consist of, underground cabling and turbine transformers comprising medium and low voltage container units, to be located within the Fife Energy Park. In response to consultation comments from Scottish Natural Heritage (“SNH”), given as part of the consultation exercise, and particularly regarding ornithology, an HRA Addendum to the Application was submitted by the Company on 30th March 2016 and issued for consultation on 4th April 2016.

The HRA Addendum contained information on revised density and mean of peak population data for key bird species, and revised reference populations for the Special Protection Areas (“SPA”) and draft SPAs (“dSPAs”). It also contained information, on the application of SNH’s matrix method for displacement assessment and the revised collision risk modelling incorporating the two-bladed turbine design and a smaller rotor diameter than had been considered in the original ES and Habitats Regulations Appraisal (“HRA”) submitted in July 2015.

STATUTORY AND REGULATORY FRAMEWORK

LEGISLATION

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 1989 (as amended) (“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 internal waters or the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 megawatt (“MW”) requires consent under section 36 (“s.36”) of the Electricity Act¹. A consent under s.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 that 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

¹ s.36(2) modified by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002.

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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 station 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 issue 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 subject to s.36 consent or are 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 (as amended) (“the 1990 Regulations”), notice of applications for s.36 consent must be published by the applicant in one or more local newspapers, in one or more national 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 s.36 consent and where they do not withdraw their objection, then the Scottish Ministers must cause a Public Local 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 Local Inquiry (“PLI”).

An application for deemed planning permission was made for the ancillary onshore elements of the Development. Section 21 of the Growth and Infrastructure Act 2013 amended Section 57(2) (“s.57(2)”) of the Town and Country Planning (Scotland) Act 1997 to allow Scottish Ministers to direct that planning permission is deemed to be granted for the ancillary onshore components and related onshore infrastructure for a marine based electricity generating station consented under s.36 of the Electricity Act.

Where an s.36 application contains an onshore element of the generating station, then a planning authority objection will trigger a PLI, which will be confined to the onshore element. Paragraph 7A(7) of Schedule 8 to the Electricity Act gives the Scottish Ministers powers of direction in relation to the scope of any PLI.

Marine Scotland Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, consulted with the relevant planning authority, which in this instance was Fife Council (“FC”). Fife Council did not object to the Application but suggested conditions in relation to the removal of unused turbines and associated infrastructure,

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a decommissioning bond or financial guarantee, the publication of underwater cabling and infrastructure locations for the benefit of local fishermen, and noise.

As FC did not object, Scottish Ministers are not obliged to hold a PLI.

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 PLI 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 PLI 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, and all procedural requirements have been complied with. The Company does not currently hold a generation licence, however they intend to apply for one should they receive 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 apply to licence holders and the specified exemption holders should also be applied to the Company.

Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) and The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

The Environmental Impact Assessment Directive (85/337/EEC) is targeted at projects which are likely to have significant effects on the environment and identifies projects which require an Environmental Impact Assessment (“EIA”) to be undertaken. The Company identified the proposed Development as one requiring an ES in terms of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) (“the 2000 Regulations”) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (“the 2007 Regulations”).

The proposal for the Development has been publicised, to include making the ES and the HRA addendum available to the public, in terms of the 2000 and 2007 Regulations. The Scottish Ministers are satisfied that an ES and HRA addendum has been produced and the applicable procedures regarding publicity and consultation all as laid down in the 2000 and the 2007 Regulations have been followed.

In compliance with the 2000 Regulations and the 2007 Regulations, consultation has taken place with Scottish Natural Heritage (“SNH”), the Scottish Environmental Protection Agency (“SEPA”), the relevant planning authority, and such other persons likely to be concerned by the proposed Development by reason of their specific environmental responsibilities on the terms of the ES, the HRA Addendum and additional information in the form of statutory consultation responses.

The Scottish Ministers have also consulted a wide range of relevant organisations, including colleagues within the Scottish Government (“SG”) on the Application, on the ES and, as a result of the issues raised during the initial consultation, on the required HRA Addendum in accordance with regulatory requirements.

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The Scottish Ministers are satisfied that the regulatory requirements have been met and have taken into consideration the environmental information, including the ES, the HRA Addendum, the responses received from the statutory consultative bodies and the representations and the objection received.

The Habitats Directive and the Birds Directive

Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and wild fauna and flora (as amended) (“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 Development. 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 (“SAC”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

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 an Appropriate Assessment (“AA”) 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.”

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Council Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds (as amended and codified) (“the 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 Development 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 reestablish 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 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.”

The Habitats Directive and the Birds Directive have, in relation to the marine environment, been transposed into Scots law by the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) (“the 1994 Regulations”), the Conservation of Habitats and Species Regulations 2010 (“the 2010 Regulations”) for reserved matters and section 36 consents, and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”) for developments out with 12 nm. As the Development is to be sited in internal waters adjacent to Scotland the 2010 Regulations are applicable in respect of the Application.

The 1994, the 2007 and the 2010 Regulations (“the Habitats Regulations”) clearly implement the obligation in art. 6(3) & (4) of the Habitats Directive, which by art. 7 applies in place of the obligation found in the first sentence of art. 4(4) of the Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an AA of the implications for the site in view of the site’s conservation objectives”. Such authority is also obliged to consult SNH and, for the purpose of regulation 61 of the 2010 Regulations, to have regard to any

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representations made by SNH. Regulation 61(5) and (6) of the 2010 Regulations is as follows:

- “(4) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or European offshore marine site (as the case may be).
- (5) In considering whether a plan or project will adversely affect the integrity of a site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose 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 an Habitats Regulations Appraisal (“HRA”). The appraisal involves two stages:

- 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.

In Scotland Scottish Ministers are currently in the process of identifying a suite of new marine SPAs. In 2014 advice was received from the statutory nature conservation bodies (“SNCBs”) on the sites most suitable for designation and at this stage they became draft SPAs (“dSPAs”). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA (“pSPA”) and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPAs is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45). The Outer Firth of Forth and St. Andrew’s Bay Complex pSPA is currently at consultation and, therefore, is included in the AA.

It is not a legal requirement under the Habitats Directive or relevant domestic regulations for the AA to assess the implications of the proposal on the pSPAs. The AA includes an assessment of implications upon those sites in accordance with domestic policy. Scottish Ministers are also required to consider article 4(4) of Council Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”) in respect of the pSPAs. The considerations under article 4(4) of the Birds Directive are separate and distinct to the considerations which must be assessed under this Habitats Directive assessment but they are, nevertheless, set out within the AA.

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In accordance with regulation 63 of the 2010 Regulations the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPAs, review their decisions authorising the proposal. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated (as they are currently pSPAs their conservation objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

In relation to the Habitats Directive and the Birds Directive, as the Development may have the potential to have an impact on number of SPAs, SNH and Royal Society for the Protection of Birds, Scotland (“RSPB Scotland”) flagged some issues. In SNH’s view the Development is likely to have a significant effect on the qualifying interests of the Firth of Forth SPA, and the Outer Firth of Forth and St Andrews bay Complex pSPA. RSPB Scotland had concerns in relation to the cumulative and in-combination impacts on SPAs particularly with regard to the four commercial scale offshore wind farms in the outer Firth of Forth that were granted consent in 2014 (Inch Cape, Seagreen Alpha and Bravo and Neart na Gaoithe). However, following the submission of an HRA Addendum which provided further information on the impact on SPAs, the RSPB Scotland removed their objection. The AA has taken into account the in-combination effects detailed in the HRA Addendum. No Likely Significant Effect (“LSE”) was identified on the Firth of Forth SPA from these four commercial scale wind farms. Therefore no in-combination assessment with these was required. The qualifying features of the proposed (“pSPA”) likely to be impacted by the commercial wind farms are different to the inshore qualifying features impacted by the Development. Therefore no in-combination assessment is required with commercial scale wind farms.

In line with advice from SNH, and to ensure compliance with European Union (“EU”) obligations under the Habitats Directive and the Birds Directive, MS-LOT, on behalf of the Scottish Ministers, undertook an AA. The species where LSE was identified for the Firth of Forth SPA were also qualifying interests of the Outer Firth of Forth and St Andrews Bay Complex pSPA. LSE was also identified for this site and was taken into consideration for in-combination assessment, which included the Fife Energy Park Offshore Demonstration Wind Turbine (“FEPODWT”). This is a 7MW single test wind turbine, situated approximately 35 metres offshore from Mean High Water Springs (MHWS) at Fife Energy Park in Methil, Fife. This test turbine was originally consented for Samsung Heavy Industries to construct and operate, with the consent duration given of five years. Recently this has been assigned from Samsung Heavy Industries to ORE Catapult. The in-combination effects of the FEPODWT and other projects holding a Marine Licence where LSE was identified on the qualifying interests of the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex pSPA were considered in the AA. In carrying out the AA, MS-LOT concludes that the Development will not, on its own, or in-combination with the single FEPODWT and other projects currently holding a Marine Licence, adversely affect the integrity of the Firth of Forth SPA or the Outer Firth of Forth and St Andrews Bay Complex pSPA. Conditions can also be imposed on any grant of consent ensuring that the sites are protected from damage.

The Scottish Ministers, as a competent authority, have complied with EU obligations under the Habitats Directive and the Birds Directive in relation to the Development.

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MS-LOT, on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concluded 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.”

SNH was consulted on the AA and agreed with all of the conclusions that have been reached. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

Marine (Scotland) Act 2010

The Marine (Scotland) Act 2010 (“the 2010 Act”) regulates activities in 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.

Under Part 2 of the 2010 Act the Scottish Ministers have general duties to carry out their functions in a way best calculated to achieve the sustainable development, including the protection and where appropriate, the enhancement of the health of the area. The Scottish Ministers when exercising any function that affects the Scottish marine area under the 2010 Act, or any other enactment, must act in a way best calculated to mitigate, and adapt to climate change.

The Scottish Ministers are satisfied that, in assessing the Application, they have acted in accordance with their general duties.

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.

Due to the nature of the demonstration facility, and the unknown performance data for the new turbine designs, it is not possible to predict the energy that will be produced by the Development over its lifespan and therefore a calculation of the displacement of CO₂ cannot be made. It can however be stated that any energy generated from the site will result in the displacement of CO₂ generated from non-renewable sources and that the aim of the project, to further the development of the UK offshore wind industry, will contribute to the reduction of CO₂ emissions from UK power generation in the long term.

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

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compliance with the requirements of the Climate Change (Scotland) Act 2009 (as amended).

Town and Country Planning (Scotland) Act 1997 (as amended)

The Scottish Ministers have powers under section 57(2) of the Town and Country Planning (Scotland) Act 1997, as amended by section 21 of the Growth and Infrastructure Act 2013, on granting or varying a consent under s.36 of the Electricity Act, to give a direction for such planning permission to be deemed to be granted for the ancillary onshore development, subject to such conditions (if any) as may be specified in the direction, for:

- a) so much of the operation or change of use to which the consent relates as constitutes development;
- b) any development ancillary to the operation or change of use to which the consent relates.

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

APPLICABLE POLICIES AND GUIDANCE

MARINE POLICY

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 Marine and Coastal Access Act 2009 (“the 2009 Act”) requires that, when Scottish Ministers take authorisation decisions that affect or might affect the marine area, they must do so in accordance with the Statement.

The Statement, 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: 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, wave, tidal stream and tidal range 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 3.3.5, 3.3.16 to 3.3.19, 3.3.22 to 3.3.24 and 3.3.26, and 3.3.29 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.

The Statement introduced the framework for preparing Marine Plans and taking decisions affecting the marine environment. It clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. Existing terrestrial planning regimes generally extend to Mean Low Water Spring tides

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(“MLWS”). The Marine Plan area boundaries extend up to the level of mean high water spring tides (“MHWS”). 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. MS-LOT has, 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, accordingly, had regard to the Statement and consider the development to accord with it. The Scottish Ministers have also had regard to relevant terrestrial planning policy documents and Plans when assessing the Application for the purpose of ensuring consistency in approach.

Scotland’s National Marine Plan

The National Marine Plan (“NMP”), developed in accordance with the 2010 Act and the 2009 Act, provides a comprehensive statutory planning framework for all activities out to 200 nm. The NMP was formally adopted on 25th March 2015. Scottish Ministers must take authorisation and enforcement decisions, which affect the marine environment, in accordance with the Plan.

The NMP sets an objective to promote the sustainable development of offshore wind, wave and tidal renewable energy in the most suitable locations. In doing so it sets out a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of the Plan. It also contains specific policies relating to the mitigation of impacts on habitats and species, and in relation to treatment of cables.

Of particular relevance to this proposal are:

- a) Chapter 4 policies ‘GEN 1-21’, which guide all development proposals,
- b) Chapter 6 Sea Fisheries, policies ‘FISHERIES 1-3’,
- c) Chapter 8 Wild Salmon and Diadromous fish, policy ‘WILD FISH 1’,
- d) Chapter 11 Offshore Wind and Marine Renewable Energy, Policies, ‘RENEWABLES 3-10’,
- e) Chapter 14 Submarine Cables, policies ‘CABLES 1-4’.

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

TERRESTRIAL POLICY

The Scottish Ministers have had regard to the terms of relevant terrestrial planning policy documents and Plans, particularly in assessing the Application for deemed planning permission.

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 (“SPP”) published in 2014 sets out the Scottish Government’s planning policy on renewable energy development. Terrestrial and marine planning facilitate development of renewable energy technologies, link generation with consumers and guide new infrastructure to appropriate locations. Efficient supply of low carbon and low cost heat and generation of heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions and can create significant opportunities for communities. Renewable energy also presents a significant opportunity for associated development, investment and growth of the supply chain, particularly for ports and harbours identified in the National Renewables Infrastructure Plan. Communities can also gain new opportunities from increased local ownership and associated benefits.

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, HRA Addendum and within the responses received to the consultations by the closest planning authority, SEPA, SNH, and other relevant bodies.

National Planning Framework 3

Scotland’s National Planning Framework 3 (“NPF3”) adopted in June 2014 is the national spatial plan for delivering the Scottish Government’s Economic Strategy. It provides a framework for the spatial development of Scotland as a whole, setting out the Scottish Government’s development priorities over the next 20-30 years.

NPF3 sets out the ambition for Scotland to move towards a low carbon country, placing emphasis on the development of onshore and offshore renewable energy. It recognises the significant wind resource available in Scotland, and reflects targets to meet at least 30% of overall energy demand from renewable sources by 2020 including generating the equivalent of at least 100% of gross electricity consumption from renewables with an interim target of 50% by 2015. It also identifies targets to source 11% of heat demand and 10% of transport fuels from renewable sources by 2020.

NPF3 aims for Scotland to be a world leader in offshore renewable energy and expects that, in time, the pace of onshore wind development will be overtaken by the development of marine energy including wind, wave and tidal.

Chapter 3 of NPF3 is of particular relevance to the Application.

Mid Fife Local Plan

Relevant to the consideration of this application, and in particular the aspects of it which constitute deemed planning permission, are the Mid Fife Local Plan adopted in 2012 and its associated supplementary guidance.

The Mid Fife Local Plan, as part of its development strategy, aims to support renewable energy initiatives where appropriate and specifically supports the development of Energy Park Fife on the former Kvaerner Yard at Methil.

However, FC, in its consideration of the Application, considers that there is insufficient verifiable detail in the submitted ES to determine that there will be no adverse impact on the integrity of the Forth Islands SPA and, for this reason; the proposal would not comply with the Development Plan policy framework. This being the case, FC recommends that Marine Scotland (“MS”) take the considered advice of SNH in relation to confirming that there will be no adverse effect on the integrity of the Forth Islands Special Protection Area or any other European designated site or Site of Special Scientific Interest. SNH have confirmed this and the full Appropriate Assessment is set out at Annex E.

Wind Energy Planning Supplementary Guidance 2013

Wind Energy Planning Supplementary Guidance June 2013 highlights the role of demonstrator wind turbines in developing the offshore wind industry. FC recognise that locating demonstrator sites in Fife would help to promote the offshore wind industry in the area. It would allow Fife to develop strong relationships with turbine manufacturers and help attract future investment. FC support offshore renewable energy development provided that it does not have a significant adverse effect on local maritime activities, including shipping, fishing, leisure sailing, diving, on the natural environment including marine habitats and birds, on pipelines, on research activities and on the historic marine environment.

Summary

The Scottish Ministers consider the policies as outlined above are broadly supportive of the Development.

CONSULTATION EXERCISE

Under Schedule 8 to the Electricity Act and Regulations made under that Act, Ministers are required to consult any relevant Planning Authority. In addition, to comply with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (the EIA Regulations), there is a requirement to consult SNH and SEPA and any other person likely to be concerned by the Development, by reason of their specific environmental responsibilities.

In complying with the EIA Regulations, the Company identified the proposed Development as an EIA development and hence one which would require an ES. This ES should describe the environmental impacts and the proposed mitigation measures associated with the Development.

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The formal consultation process undertaken by the Scottish Ministers, which related to the Application for section 36 consent, the marine licence application (application ii) and the ES, commenced on 9th July 2015.

Due to further work being required to inform impact assessments (including HRA), further information was requested from the Company (HRA Addendum). This was received by MS-LOT on 30th March 2016 and public notices were placed in the press and Edinburgh Gazette to notify any interested parties. MS-LOT also consulted on the HRA Addendum with all organisations invited to comment on the original Application and ES. Both documents were made publicly available.

MS-LOT consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application, the ES and the HRA Addendum. In accordance with the statutory requirements, as part of the overall consultation, MS-LOT sought the advice of SNH, SEPA and FC.

Public Representations

A total of three (3) valid public representations were received by Marine Scotland from members of the public during the course of the public consultation exercises. Of these, all three representations objected to the Development. These representations were made to FC, and were passed to Marine Scotland as part of FC's formal consultation response.

The three (3) representations received raised concerns including, but not limited to, visual impacts, impacts on tourism, the inefficiency of the technology, the belief that no useable electricity will be produced and the number of actual jobs which would be created. The concerns detailed the use of public money to 'fund the construction and operation of wind farms'. It was felt that public money should be used on the 'recommissioning of nuclear power'. Other points raised were excessive noise levels generated and the possible health impacts from the noise. Objections were raised about the cumulative impacts inshore and offshore, and the impacts on ecosystems / the marine environment including marine mammals, as well as birds.

None of the three objections were from Levenmouth addresses, and two of the three were from addresses not in Fife.

MS-LOT have recorded, reviewed, and taken into consideration these representations when determining this Application.

Objections

Objections were received from members of the public and RSPB Scotland. RSPB Scotland withdrew their objection to the Development on 18 May 2016 after consideration of further information contained in the HRA Addendum.

Objections from members of the public are being maintained.

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

Material Considerations

In light of all the representations, including the withdrawn objection received by the Scottish Ministers in connection with the Application, the Scottish Ministers have carefully considered the material concerns. This has been done 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 are content that the material concerns have been addressed in the Application and within the responses received to the consultations by the relevant planning authority, SEPA, SNH, and other relevant bodies.

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

Public Local Inquiry (“PLI”)

In terms of paragraph 2(2) of Schedule 8 to the Electricity Act, if the relevant planning authority made a valid objection and did not withdraw it, you must convene a PLI, which must be confined to so much of the application as it relates to land within the area of the authority whom the objection was made (except in so far as you direct otherwise) before you may determine the application, the objection and the report of the inquiry.

Where a s.36 application contains an onshore element of an offshore generating station, then a planning authority objection will trigger a PLI which will be confined to the onshore element. Paragraph 7A(7) of Schedule 8 to the Electricity Act 1989 gives the Scottish Ministers powers of direction in relation to the scope of any PLI.

The relevant planning authority consulted, Fife Council, did not raise any objection to the Development, therefore a PLI is not automatically triggered in this instance.

In addition, paragraph 3(2) of Schedule 8 to the Electricity Act provides that where objections, or copies of objections, have been sent to the Scottish Ministers in pursuance of the Electricity (Applications for Consent) Regulations 1990 in those cases where a PLI must not be convened by them in terms of paragraph 2(2) of Schedule 8 (i.e. those cases where the planning authority either has not objected, or objected and withdrawn their objection or where the “relevant planning authority” is the Scottish Ministers on account of the fact that all of the development being located at sea), then the Scottish Ministers “shall consider those objections together with all other material considerations” with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

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

- a. The efficiency of wind energy;
- b. The cost of wind energy to the consumer;
- c. Visual impacts of the Development;

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- d. Impact upon the tourism industry;
- e. The risk of low frequency noise on residents;
- f. Impact on marine wildlife, including birds;
- g. The formulation of jobs in the area; and
- h. Impact on fisheries.

The efficiency of wind energy.

Public representations commented on a range of issues relating to the efficiency of wind energy.

The respondents commented that turbines were useless structures, unreliable, not environmentally friendly and that the proposed site was not representative of genuine offshore operating conditions.

In response to these objections the Company replied that as stated in Section 1.3.2 of the ES, *"Due to the hostile nature of the offshore environment, it is advantageous to demonstrate the new turbine designs in a location where they are easily serviceable and accessible. This is also critical in expediting the testing timescales. The Development site will provide a more straight forward access, being located in a near shore environment (approximately 1.5 km seaward of the MHWS), compared to the open ocean. This will allow the turbines to be monitored for certification, and for any improvements to be made in turbine design and reliability. This will, in turn, provide increased certainty in the delivery of the energy generated from these turbines when they are installed offshore. In addition, locating the demonstration turbines in the near shore environment seaward of the MHWS provides a close approximation of the required marine conditions to demonstrate the machines."*

It is, therefore, the opinion of the Company that the proposed location is ideal for testing demonstration offshore wind technology.

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 fuel used in a conventional thermal power station is transformed into useful electricity. Much ends up as ash, or air pollution harmful to health, as well as carbon dioxide. Unlike conventional electricity generating stations the fuel for a wind farm does not need to be mined, refined or shipped and transported from other 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, it 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.

MS-LOT considers that they have sufficient information regarding the efficiency of wind energy, to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

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The cost of wind energy to the consumer.

Concerns were raised regarding the costs of this form of technology.

Support schemes play an important role in the development of renewable electricity schemes, particularly for more immature technologies. Increased deployment of offshore wind turbines is anticipated to result in declining costs, as the industry learns more about the technical issues that arise in challenging conditions. Alongside this, a number of other factors will also impact the future costs, including steel prices, exchange rates, labour and vessel costs.

The challenge laid down to industry as part of the Offshore Wind Cost Reduction Task Force is to reduce the levelised cost of offshore wind to £100 per megawatt hour by 2020. This is clearly ambitious and will require developers to work in collaboration and consider innovative technology and working practices. Test and demonstration facilities will also continue to be crucial to the development of the industry and in particular in pursuing the cost reduction agenda.

MS-LOT consider they have sufficient information regarding the cost of wind energy and any subsidies, to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

Visual impacts of the Development

Adverse visual impact of the Development in its proposed location was raised in one public representation.

SNH, the Scottish Ministers' statutory nature conservation advisers who advise on, amongst other matters, visual impacts on designated landscape features, advised widespread and significant landscape, seascape, and visual impacts of the Development. SNH, however, did not make a formal objection on landscape and visual grounds.

The Company stated that they, and the independent environmental consultants (Arcus), who undertook the ES were confident that the Seascape, Landscape and Visual Impact Assessment ("SLVIA") was technically robust and met the requirements of the SNH Guidance. As stated in the ES, "while the Development will result in significant effects on landscape and visual resources within a limited area, such effects are not unacceptable due to the heavily modified context of the receiving environment and the reversibility of effects."

FC advised that the Development raises no major concerns in landscape/visual impact terms. FC detailed that from coastal points the turbines represented new focal points, however from a greater distance across land they were seen as part of an array of turbines. This cumulative impact is relevant and the proposed use of a lattice tower helps to reduce the visual impact of the turbines.

Conditions requiring the submission of a Design Specification and Layout Plan, ("DSLPL"), Design Statement ("DS"), and a Lighting and Marking Plan ("LMP") have been included at, **Annex 2**.

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MS-LOT, therefore, consider they have sufficient information regarding the visual impact of this Development, to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

Impact upon the tourism industry.

Concerns have been raised by members of the public to the Development's potential impact on the tourism industry. However, the objection was referring to another wind farm.

MS-LOT note that attitudes of tourists towards wind farms have been assessed in many studies. The results of stated preference studies have found that generally the majority of tourists were positive towards wind farms. Omnibus Research, commissioned by Visit Scotland in 2011 found that 80% of the survey respondents stated that a wind farm would not affect their decision to visit an area. Omnibus Research, commissioned by Visit Scotland in 2012, found that 83% of the survey's Scotland respondents stated their decision to holiday in the UK would not be affected by the presence of a wind farm. The attitudes of recreational users have been researched to a lesser extent. Landry, Allen, Cherry & Whitehead's 2012 study into the impact of wind farms on coastal recreational demand found that offshore wind farms overall had little impact on recreational visits by residents. However, there are individual differences within the data which, averaged out, show an overall limited impact. Whilst some residents said they would take fewer trips to the beach if there was a wind farm within view, others indicated that they would actually take more trips.

MS-LOT consider they have sufficient information regarding the potential impacts of the Development upon the tourism industry, to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this.

The risk of low frequency noise on residents.

The public representations were concerned with the perceived high risk to health of the low frequency noise generated by the turbines on those people living in close proximity to the turbines. In addition, respondents stated that the ETSU noise level would be unacceptable.

The Company stated that in section 14.4.1.6 of the ES, there is no evidence of health effects arising from infrasound or low frequency noise. The ES also quoted scientific evidence that infrasound levels near wind farms were comparable with levels away from wind farms in both urban and rural locations. The scientific study also produced evidence to show that 'there was no change in infrasound level irrespective of whether a wind farm was operational or shut down leading to the conclusion that there is no robust evidence that low frequency noise (including infrasound) or ground-borne vibration from wind farms generally has adverse effects on wind farm neighbours.

Regarding ETSU standards, the Company highlight information in the ES, which acknowledges there is the potential for the ETSU limits to be breached in certain conditions, when considered cumulatively with the FEPODWT. There will be a period of overlap in operations between the FEPODWT and the Development which is

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anticipated to be about [one and a half] years. With mitigation measures implemented, the potential cumulative noise impact is considered to be not significant in terms of the EIA regulations - the Development can operate within the limits defined by ETSU-R-97.

Conditions requiring a Noise Measurement and Mitigation Scheme and for operational noise have been included in this consent at **Annex 2**.

MS-LOT considers that they have sufficient information regarding cumulative noise apportionment relating to this Development and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this nor consent to be withheld on this basis.

Impact on marine wildlife, including birds.

The impact on marine mammals, birds and other marine life, was raised by the respondents. The Company, in its ES and HRA Addendum considered the cumulative impacts on ecosystem's and ornithology (including connectivity). The ES, concluded, on the basis of current scientific evidence and available information, that there was no significant adverse impact on ornithology or ecosystem assets.

Having considered the HRA Addendum, SNH considered that the Development can be implemented without serious adverse effects on International or National natural heritage interests.

Having also considered the information contained in the HRA Addendum, RSPB Scotland withdrew their objection but advised environmental monitoring measures should form conditions of any consent.

The AA concludes that the Development will not, on its own or in-combination with the FEPODWT at Methil, and other projects currently holding a marine licence, adversely affect the integrity of the Firth of Forth SPA.

Conditions have been included in this consent to ensure that impacts on wildlife are acceptable at **Annex 2**.

A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in the AA.

MS-LOT consider that they have sufficient information regarding the potential impacts of the Development on marine wildlife 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.

The formulation of jobs in the area.

One member of the public stated that the current project exaggerated green jobs and the total number of jobs which would potentially be produced by this Development.

The Company stated that as detailed in the ES, the Development would directly create job opportunities for 10 local staff (currently it supports 5 Full Time Equivalent local staff). It is estimated that up to 60 local workers during the 6 months construction period would be employed.

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In addition the Company stated that based on a study undertaken by an independent economic consultancy funded by a 3rd party, there would be no exaggerated claims/statements of numbers of people employed beyond the projection of potential opportunities for the local supply chain.

MS-LOT consider that they have sufficient information regarding the potential number of jobs created relating to this Development to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this nor consent to be withheld on this basis.

Impact on Fisheries.

The East Coast Inshore Fisheries Group (“EC IFG”) and the Inshore Fishermen’s Alliance (“IFA”) have concerns regarding the impact of the Development on fisheries in the area.

Marine Scotland Science (“MSS”) advised that given the small scale, the location and the work involved, the Development was unlikely to have significant unmitigated effects on commercial fisheries. MSS welcomed the proposal to establish a working group and advised that the developers should seek to join the existing “Forth & Tay Offshore Wind Developers Group - Commercial Fisheries Working group (“FTOWDG-CFWG”)” to ensure coordination of issues (e.g. around concurrent construction timing with the developments in the vicinity) and avoid duplication of effort and resources.

EC IFG confirmed that, following an initial approach by the Company, they had outlined some of the fisheries which take place in the area. They suggested that the ES was disproportionately weighted to fishing information regarding the activities of vessels of over 15 metres. The EC IFG advised that vessels normally operating in the area were predominately under 10 metres.

The EC IFG also stated that the Company had not demonstrated or reflected upon the economic impact on these smaller vessels in their Application, which they thought may have been as a result of an absence of direct (electronic) information available for such vessel activities in the area. They detailed that these smaller size vessels completely dominate fishing activity in the area and suggested that the Company needed to reflect further and gather more information about them before they were allowed to proceed.

The Scottish Fishermen’s Federation (“SFF”) stated that they would expect that the developers had heard from the EC IFG as part of the consultation exercise. The SFF supported the need for the Development to take into account all the fishing information that they had and seek to mitigate those impacts. The SFF advised the Company at the FTOWDG-CFWG meeting on 27th October 2015 that the best way forward was to engage directly with the EC IFG on detailed agreements.

The IFA stated that trawlers working out of Port Seton, Dunbar and Eyemouth fish in the area from time to time, and would therefore suffer financial loss if displaced. The IFA could not quantify this at that stage but were planning to capture all their members plotter data for the last three years or more so that they could extract and quantify the effect such plans would have. The IFA were working with Marine Scotland Marine Planning and Policy (“MS-MPP”) on this project. The IFA detailed that MS were fully

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aware that ScotMap is out of date, incomplete and inaccurate and stated that it should not be used as the basis of assessing economic impact for any licence applications, let alone this one.

The Company agreed to seek to join the FTOWDG-CFWG following the determination of the s.36 and Marine Licence applications, if granted, and the giving of planning consent. In addition, the Company will consider the Fishing Liaison with Offshore Wind and Wet Renewables Group ("FLOWW") best practice guidance, "Fisheries Disruption Settlements and Community Funds" which provides best practice guidance on developing a claims process for lost and/or damaged gear.

Conditions requiring the appointment of a Fisheries Liaison Officer ("FLO"), submission of a Cable Plan ("CaP"), Project Environmental Monitoring Programme ("PEMP"), and developer participation in a Fisheries Group with the aim of producing a Fisheries Management and Mitigation Strategy ("FMMS") have been included at **Annex 2**.

MS-LOT consider that they have sufficient information regarding the impact on fisheries relating to this Development to reach a conclusion on the matter, and therefore advise the Scottish Ministers that it is appropriate not to cause a public inquiry to be held to further investigate this nor consent to be withheld on this basis.

Consultation on the HRA Addendum

No additional representations were received from members of the public.

Summary

In addition to the issues raised by the objection, 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 HRA Addendum, the AA and in the consultation responses received from the relevant planning authority, FC, SEPA, SNH and other relevant bodies, together with all other representations and the objection. 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:

- a. they possess sufficient information upon which to determine the Application;
- b. 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;

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- c. they have had regard to the various material considerations relevant to the Application, including issues raised by the objection; and
- d. the objectors have been afforded every opportunity to provide information and to make representations.

Accordingly, the Scottish Ministers have had regard to all material considerations and having drawn upon the information contained within:

- a. the Environmental Statement;
- b. the HRA Addendum;
- c. the representations from the Company;
- d. the representations from consultees;
- e. the representations made from members of the public; and
- f. the Appropriate Assessment.

in this Application, 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 the ES and HRA addendum has been produced in accordance with the 2000 Regulations and the 2007 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 and 2007 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES and the HRA Addendum, and the representations received from the consultative bodies, including SNH, SEPA, FC 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 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.

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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 regard to the Development, SNH advised that the Development is likely to have a significant effect upon the wintering birds qualifying interests of the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex pSPA. As the recognised competent authority under European legislation, the Scottish Ministers, through MS-LOT, have considered the relevant information and undertaken an AA.

Having carried out the AA (considering all the advice received from SNH, MSS and other relevant consultees) it can be stated with confidence that the Development, subject to appropriate conditions being included within the consent, will not adversely affect site integrity of any the identified pSPAs, SPAs and SACs assessed to have connectivity with the Development.

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 are 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 the

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Forth Islands SPA, the Outer Firth of Forth and St Andrews Bay Complex pSPA or any other European protected site.

Landscape and Visual Impacts

SNH, in their advice on landscape and visual grounds stated that the landscape, seascape, visual and cumulative assessment did not accord with current good practice. SNH detailed that the ES underestimates the magnitude of the change represented by the development.

SNH stated that the coastline curving eastwards from Kinghorn to Earlsferry would be significantly affected. The coastal component of the Lowland Dens and Coastal Hills, Coastal Terraces and Coastal Flats comprising the landscape, extending at least 10-12 km from the Development in Fife and in addition the Lothians landscape at a distance of 20 km would also be significantly affected.

SNH considered that the choice of WTG proposed did not take due cognisance of the capacity of the coastal landscape to accommodate the Development.

SNH also advised that along the south Fife coast, landscape types with a coastal location and character are assessed in the Wind Energy Strategy as having Medium/High landscape and visual sensitivity and value. SNH considered that the introduction of two large scale ‘novel’ turbines into the immediate seascape, which forms part of the setting of these sensitive coastal character types would have a significant impact on this assessment of capacity contained in this Strategy.

SNH however, confirmed, by email to the Company on 27th January 2016, that they would not make a material objection to the Development on landscape and visual grounds. FC considered the turbines acted as new focal points when viewed from coastal points. However, from a greater distance across land they were seen as part of an array of turbines. This cumulative impact is relevant and the proposed use of a lattice tower helps to reduce the visual impact of the turbines.

Conditions requiring the submission of a Design Specification and Layout Plan (“DSLPL”), Design Statement (“DS”), and a Lighting and Marking Plan (“LMP”) have been included at **Annex 2**.

The Scottish Ministers consider, 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, that there are no outstanding concerns in relation to the Development’s impact on landscape and visuals that would require consent to be withheld.

Marine Mammal Impacts

Whale and Dolphin Conservation (“WDC”) did not consider that the Development would have a significant impact on marine mammals in the area as long as monitoring plans are conducted as planned.

SNH, in their initial response advised that it was difficult to provide detailed comments on the ES, as it contained little information about preferred foundation options, and specific construction methods, duration, timing, noisy activities and mitigation. This

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made it challenging to advise on what the potential impacts might be or to suggest appropriate mitigation measures. In some cases, it was unclear what was planned in terms of activities and / or mitigation in relation to marine mammals.

However, taking into account the scale of the project, and the information provided, SNH broadly agreed with the general conclusions of the ES, that the impacts on marine mammals and benthic features were likely to be small or negligible. However, in some cases, there was insufficient justification to support those conclusions.

In their response to the HRA Addendum, SNH stated that a licence to Disturb European Protected Species (“EPS”) would not be required and that, as the Development was sufficiently far from the nearest harbour and grey seal haul-outs, that disturbance of seals at these sites was unlikely.

A MMO will be used during the construction of the turbine foundations.

A condition requiring the appointment of a MMO has been included in the consent at **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 marine mammals that would require consent to be withheld.

Ornithological Impacts

SNH, in their initial advice, noted that the Company had addressed some of their advice on ornithology methodology and assessment given at gatecheck stage, prior to formal submission of the Application. However, errors had continued into the submitted ES and as a result SNH were unable to draw conclusions on the potential impacts and magnitude predicted in the ES due to the quality of the assessments.

SNH raised concerns that vantage point surveys covered a much smaller area than the proposed Development site. The collision risk assessment made use of the onshore collision risk modelling approach, due to issues with survey methodology and then used several corrections, adapted from the offshore model to allow for methodological issues, such as the difference between the flight height bands recorded and the actual collision risk height defined by the turbines. SNH did not advocate this approach but acknowledged, due to a lack of alternatives, it may have been a reasonable correction to make.

Regarding displacement assessment, a major concern to SNH was the estimated use of the Development site. The Applicant has presented monthly mean and maximum numbers of birds and then used peak recorded density (which SNH presumed was for all months) to extrapolate to a wider 1 km buffer around the Development. As mentioned above, the survey area is much smaller than the proposed Development site (0.32 km²) and consequently the Applicant has extrapolated from the survey area. This might have been appropriate if the survey area was sufficiently representative of the wider area, but, as is likely the case here, if the survey area is insufficient and/or

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not representative, any extrapolation may have led to over/under estimates of the numbers of birds present.

Further, the displacement assessment did not follow the matrix approach SNH have generally adopted for considering displacement effects. Instead, a more qualitative approach had been used. This has predicted high magnitude effects for all key species vulnerable to displacement (namely seaducks and divers) but the ES considers this is not significant due to habituation. In many cases, no evidence is cited and no species specific rationale provided as to why this would be an appropriate conclusion. In some examples literature has been cited that is contrary to the more widely agreed findings of the studies. Given the densities predicted, SNH had concerns about the conclusions of the assessment and concerns over the predicted densities used.

No assessment had been made for cable laying works on the intertidal habitats that underpin the Firth of Forth SPA and how this may affect birds using this part of the SPA. Cable laying works within the intertidal zone should be appropriately timed to avoid sensitive periods for relevant bird species.

In their second consultation response where comments on the HRA Addendum were given, RSPB Scotland advised that their concerns had been addressed in relation to the adequacy of assessment, though concerns over potential in-combination impacts on seabird populations have not changed since their formal response to the original Application. RSPB Scotland, however, withdrew their objection as the small scale of the Development, inshore location and lower connectivity to some sensitive receptor populations means that adverse effects would not be caused on the site integrity of relevant SPAs. RSPB Scotland however wished an environmental monitoring strategy to be included as a condition of any consent.

SNH recommend a cable laying method statement and an indication of timing of the works should be provided as a condition of any consent. SNH consider that, providing works can be timed to avoid sensitive periods for relevant bird species, and given the temporary nature and small scale of the works, it is likely that there will be no significant impacts on qualifying interests of the SPA.

In light of these concerns, the Company submitted, on 30th March 2016 an HRA Addendum including new information and analysis of key bird interactions to the Company's ES. The HRA Addendum was issued for consultation on 4th April 2016.

SNH comments on the HRA Addendum were that, in light of the further information provided by the Company, which presented new details, analyses and clarifications regarding ornithological data in support of the Application, it is likely the Development can be implemented without serious adverse effects on International or National natural heritage interests.

RSPB Scotland initially objected to the Development on the grounds that it could not be determined that cumulative and in combination impacts will not cause an adverse effect on the integrity of SPAs, including, but not limited to, the Forth Islands SPA and the Forth and Tay Bay complex dSPA (now the Outer Firth of Forth and St Andrews Bay Complex pSPA). RSPB Scotland had objected to the four commercial scale offshore Windfarms in the Forth and Tay and considered that additional impacts from the Company's Development will have cumulative and in combination impacts.

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Following consultation on the HRA Addendum, RSPB Scotland withdrew their objection, advising that their concerns had been addressed in relation to the adequacy of assessment, although they still had concerns over potential incombination impacts on seabird populations. However, the small scale of the Development, its inshore location and lower connectivity to some sensitive receptor populations meant that adverse effects would not be caused on the site integrity of relevant SPAs. RSPB Scotland however wished an environmental monitoring strategy to be included as a condition of any consent.

Conditions requiring the submission of an Offshore Construction Method Statement (“OffCMS”), a PEMP, a CaP, an Environmental Management Plan (“EMP”), and appointment of an Ecological Clerk of Works (“ECoW”) have been attached to the consent at **Annex 2**.

The Scottish Ministers consider, 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, that there are no outstanding concerns in relation to the Development’s impact on ornithology that would require consent to be withheld.

Fisheries Impacts

Marine Scotland Science (“MSS”) advised that given the small scale, the location and the work involved, the Development was unlikely to have significant unmitigated effects on commercial fisheries. MSS welcomed the proposal to establish a working group and advised that the developers should seek to join the existing “Forth & Tay Offshore Wind Developers Group - Commercial Fisheries Working group (“FTOWDG-CFWG”)” to ensure coordination of issues (e.g. around concurrent construction timing with the developments in the vicinity) and avoid duplication of effort and resources.

The East Coast Inshore Fisheries Group (“EC IFG”) confirmed that, following an initial approach by the Company, they had outlined some of the fisheries which take place in the area. They suggested that the ES was disproportionately weighted to fishing information regarding the activities of vessels of over 15 metres. The EC IFG advised that vessels normally operating in the area were predominately under 15 metres.

The EC IFG also stated that the Company had not demonstrated or reflected upon the economic impact on these smaller vessels in their Application, which they thought may have been as a result of an absence of direct (electronic) information available for such vessel activities in the area. They detailed that these smaller size vessels completely dominate fishing activity in the area and suggested that the Company needed to reflect further and gather more information about them before they were allowed to proceed.

The Scottish Fishermen’s Federation (“SFF”) stated that they would expect that the developers had heard from the EC IFG as part of the consultation exercise. The SFF supported the need for the Development to take into account all the fishing information that they had and seek to mitigate those impacts. The SFF advised the Company at the FTOWDG-CFWG meeting on 27th October 2015 that the best way forward was to engage directly with the EC IFG on detailed agreements.

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The Inshore Fishermen's Alliance ("IFA") stated that trawlers working out of Port Seton, Dunbar and Eyemouth fish in the area from time to time, and would therefore suffer financial loss if displaced. The IFA could not quantify this at that stage but were planning to capture all their members' plotter data for the last three years or more so that they could extract and quantify the effect such plans would have. The IFA were working with Marine Scotland Planning and Policy on this project. The IFA detailed that Marine Scotland were fully aware that ScotMap is out of date, incomplete and inaccurate and stated that it should not be used as the basis of assessing economic impact for any licence applications, let alone this one.

The Company agreed to seek to join the FTOWDG-CFWG following the determination of the s.36 and Marine Licence applications, if granted, and the giving of planning consent. In addition, the Company will consider the Fishing Liaison with Offshore Wind and Wet Renewables Group ("FLOWW") best practice guidance, "Fisheries Disruption Settlements and Community Funds" which provides best practice guidance on developing a claims process for lost and/or damaged gear.

Conditions requiring the appointment of a Fisheries Liaison Officer ("FLO"), submission of a CaP, PEMP, developer participation in a regional advisory group and developer participation in a Fisheries Group with the aim of producing a FMMS have been attached to the consent at **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 fish species that would require consent to be withheld.

Noise Impacts

The ES assessed the potential noise effects, through operational, construction and decommissioning stages of the Development, in combination with Fife Energy Park Offshore Demonstration Wind Turbine ("FEPODWT") in accordance with Energy Technology Support Unit ("ETSU"), ETSU-R-97 "The Assessment and Rating of Noise from Wind Farms". An apportioned set of noise limits were provided. However, the results of the assessment confirmed that cumulative noise effects during a number of occasions would exceed noise limits.

FEPODWT current consent expires five years after the date of final commissioning of the turbine (final commissioning occurred on 31st March 2014), the Company has assumed that once FEPODWT is decommissioned, the full noise limit would transfer to the Development alone. Until this time an acceptable solution must be found to establish a means whereby the two companies can share the noise limits.

At the time of original consultation on the Application, the Public and Environmental Protection team of FC indicated that the Development should be able to meet the previously derived ETSU limits in isolation. However, at certain wind speeds there would be little 'headroom' (the difference between the turbine noise and the ETSU limit) when the Development would be audible at some homes. In addition, there would potentially be a cumulative impact with the existing FEPODWT. Whilst FC expected that a representative background noise level would be used to set a reasonable ETSU

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limit, it concluded that, at that time, there were too many unknowns for FC to comment further on potential noise impacts.

The Company agreed that, having undertaken a cumulative noise assessment, a breach of the acceptable operational noise levels when all three turbines were in operation would occur in certain wind speeds and directions. The Company stated that both developments could operate together in accordance with the revised variable noise limits at all wind speeds, direction and time of day, and suggested that the possibility of sharing/apportioning the noise limit available could ensure FEPODWT and the Company could both continue. A meeting was held between MS-LOT, The Company, Samsung, OREC, Arcus and FC on 28th July 2015 to discuss this issue. Both OREC and The Company agreed to work together on noise monitoring surveys with a view to coming to protocol agreement on fair noise limits apportionment.

Correspondence from Fife Council, received on 31st August 2016 confirms that it is content that issues regarding noise from the Development and the in combination noise impacts associated with the FEPODWT turbine can be mitigated through the use of appropriately worded conditions.

Conditions requiring a Noise Measurement and Mitigation Scheme and a condition for operational noise has been included in the consent at **Annex 2**.

The Scottish Ministers consider, 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, that there are no outstanding concerns in relation to the Development's impact on cumulative noise 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:

- i. The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development.
- ii. The Company's ES, HRA Addendum and the consultation process have identified what can be done to mitigate the potential impacts of the Development.
- iii. The matters specified in regulation 4(1) of the 2000 Regulations and regulation 22 of the 2007 Regulations have been adequately addressed by means of the submission of the Company's ES and HRA Addendum, 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.
- iv. 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

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the Secretary of State before the Commencement of the Development (**Annex 2**).

- v. The Scottish Ministers have considered material details of how the Development can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies.
- vi. The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the HRA Addendum, all relevant responses from consultees and the three (3) public representations received.
- vii. On the basis of the AA, the Scottish Ministers have ascertained, to the appropriate level of scientific certainty, that the Development (in combination with the other potential Forth and Tay proposals, 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** (with the exception of Part 2 of that Annex) to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to ~~18MW~~ 29.9MW (as described in **Annex 1**).

Subject to the conditions set out in **Annex 2** (with the exception of Part 1 of that Annex) of this decision, the Scottish Ministers **GIVE A DIRECTION** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) for planning permission to be deemed to be granted for the ancillary onshore part of the Development, (as described in **Annex 1**).

In accordance with the 2000 Regulations and the 2007 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. The Company must provide copies of the public notices to the Scottish Ministers.

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 described in **Annex 1**.

Copies of this letter and consent have been sent to FC. This letter has also been published on the Marine Scotland licensing page of the Scottish Government's website: <http://www.scotland.gov.uk/Topics/marine/Licensing/marine/scoping>

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply by statutory appeal to the Inner House of the Court of Session. The statutory appeal mechanism is provided by sections 36D and 36E of the Electricity Act 1989 in relation to the section 36 consent, and by sections 63A and 63B of the Marine (Scotland) Act 2010 in relation to the marine licence.

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

Yours sincerely,

[REDACTED]

[REDACTED] Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

21 December 2016

ANNEX 1

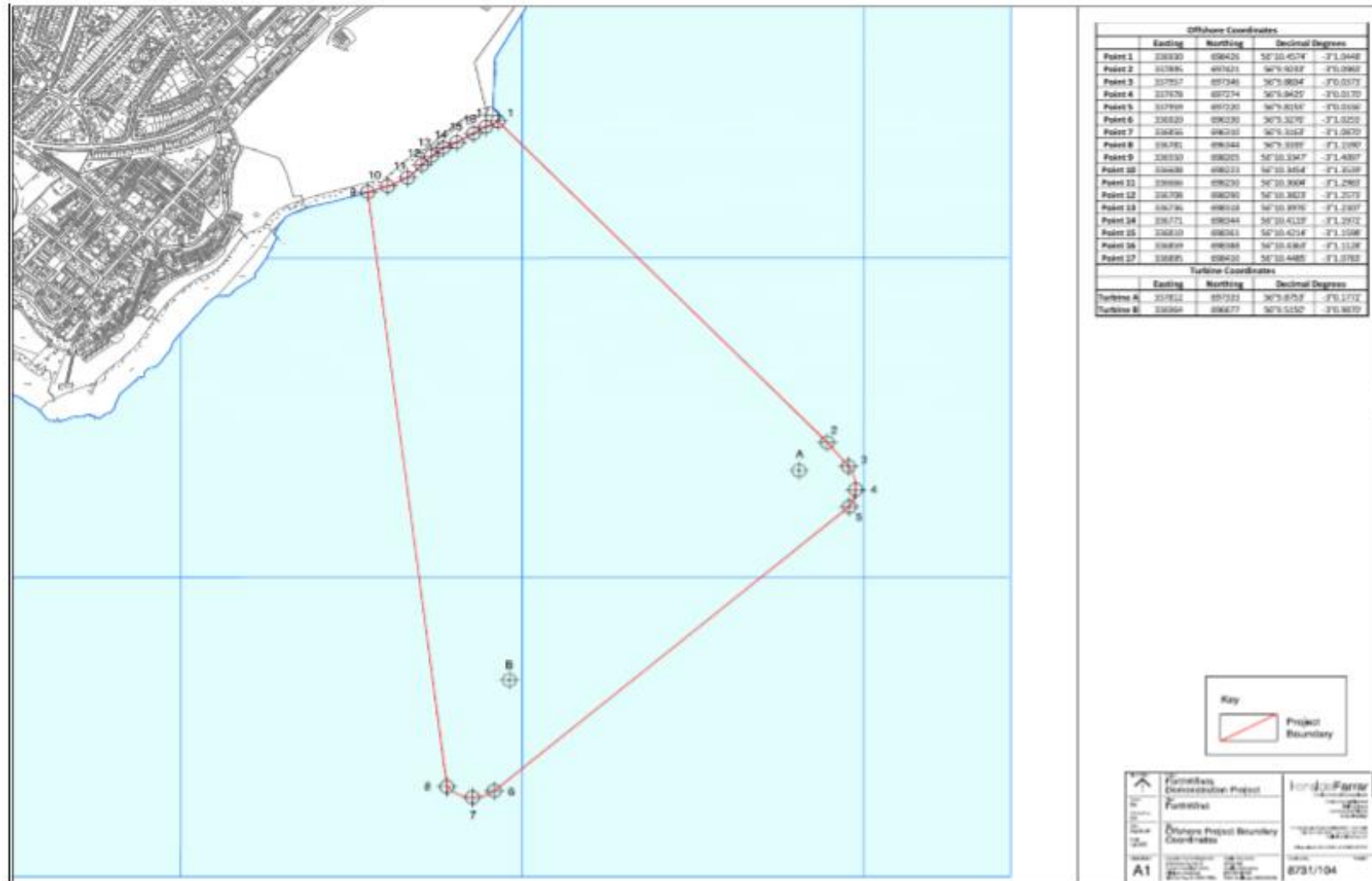
Project Description

The Development, located as shown in Figures 1, 2 & 3 below, shall have a permitted generating capacity not exceeding ~~18MW~~ 29.9MW and shall comprise two wind powered lattice structure electricity generating stations off the coast of Methil, Fife, including:

- a. Not more than 2 two-bladed lattice structure WTG each with:
 - a. a maximum blade tip height of 198.5 metres (measured from LAT);
 - b. a maximum rotor diameter of 155 metres;
 - c. a maximum hub height of 121 metres (measured from LAT);
- b. 3 pin pile foundations per turbine;
- c. Grid infrastructure including the construction of two subsea cables which will connect the demonstration turbines to the shore; and
- d. Onshore elements, comprising underground cabling and turbine transformers, comprising medium and low voltage container units to be located within the Fife Energy Park.

The Development shall be constructed in accordance with that specified in the Application, the HRA Addendum and by the conditions imposed by the Scottish Ministers.

Figure 1 Forthwind Offshore Wind Demonstration Project Location showing Offshore Project Boundary and Phase 1 turbine deployment. locations.



Not to scale

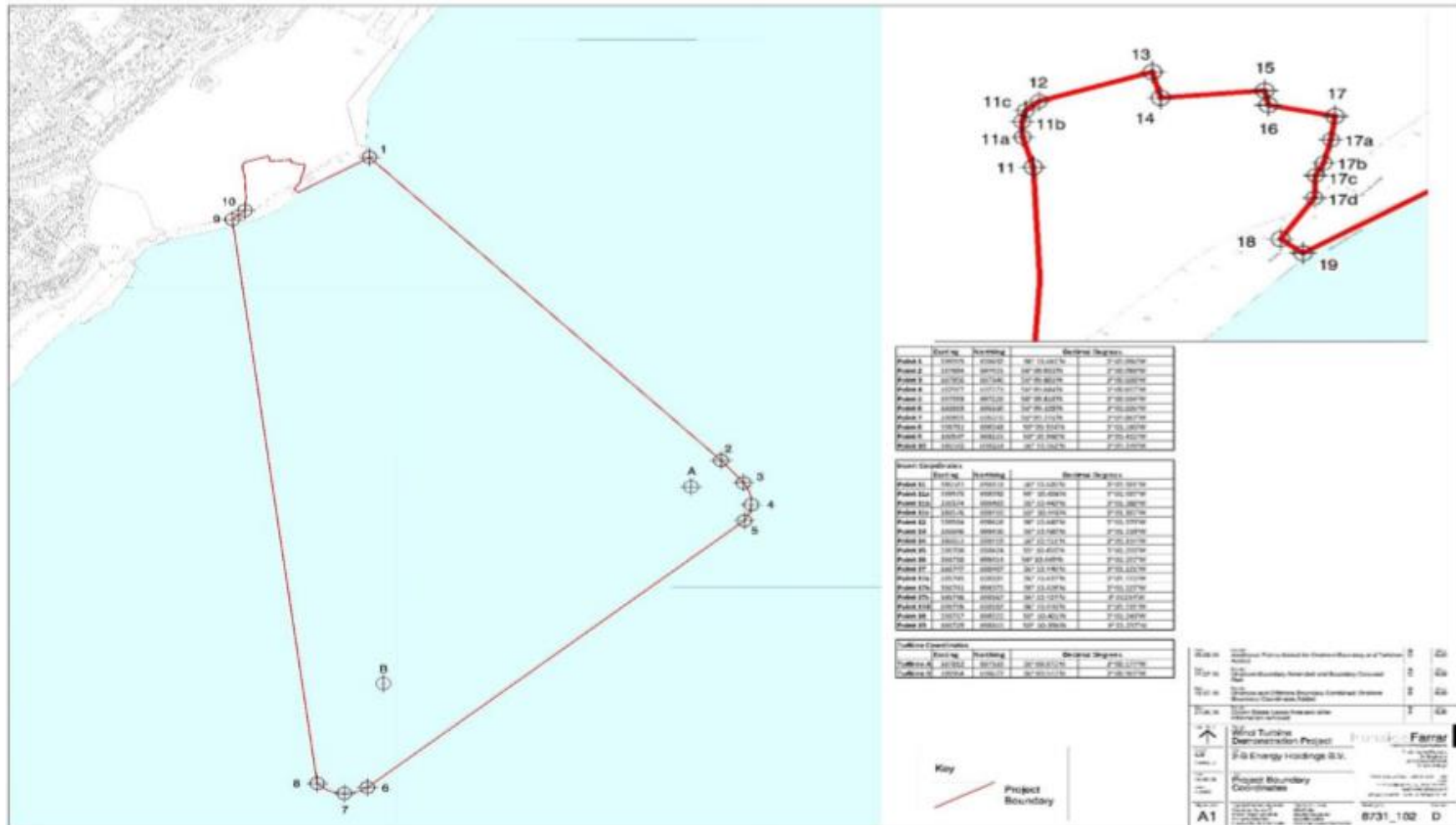
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Figure 2 Forthwind Offshore Wind Demonstration Project Location showing Onshore Project Boundary.



Not to scale

Figure 3 Forthwind Offshore Wind Demonstration Project Location showing total Onshore and Offshore Project Boundary and Phase 1 turbine deployment locations.



Not to scale

ANNEX 2

The consent granted under Section 36 of the Electricity Act 1989 and direction that planning permission be deemed to be granted under section 57 of the Town and Country Planning (Scotland) Act 1997 are subject to the following conditions:

The Company must submit the requested plans and programmes 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 and programmes, as updated or amended.

Any updates or amendments proposed to made to the approved plans and programmes 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 and planning permission. All contractors and sub-contractors instructed to perform any work in the Development must abide by the conditions set out in this consent and planning permission.

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

PART 1 – CONDITIONS ATTACHED TO SECTION 36 CONSENT

1. Duration of the Consent

The consent is for a period of 20 years from the date of Final Commissioning of the first Wind Turbine Generator (“WTG”).

Written confirmation of the date of the Commissioning of the first WTG must be provided by the Company to the Scottish Ministers, Fife Council and Scottish Natural Heritage no later than one calendar month after the first commissioning of the first WTG.

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 (“WTG”) 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, Fife Council and SNH no later than one calendar month after that date on which the Scottish Ministers deem the Development to be complete

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

2. Commencement of Development

The Commencement of the Development must be no later than 5 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 Development must be provided to Fife Council and Scottish Ministers no later than one calendar month before that date.

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

3. Decommissioning

Where the Company has been given notice requiring them to submit to the appropriate authority a Decommissioning Programme (“DP”), 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 appropriate authority a DP in compliance with that notice.

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. 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 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 DP, within the period of 12 months from the date of the deeming decision by the Scottish Ministers.

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

5. Non-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 Fife Council in writing of the name of the assignee, 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.*

6. Serious 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 and its associated deemed planning permission, the Development must be undertaken in accordance with the Application, the environmental statement (as supplemented by the further environmental information submitted by the Company on 30th March 2016) and any other documentation lodged in support of the Application.

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

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 or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the offshore works, 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 Ministry of Defence (“MoD”), SNH, the Civil Aviation Authority (“CAA”), SEPA, the Maritime and Coastal Agency (“MCA”), the Northern Lighthouse Board (“NLB”), Forth Ports (“FP”), Fife Council (“FC”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The CoP must include, but not be limited to:

- 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.

The Licensee must, prior to the Commencement of the offshore Works, 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. Construction Method Statement

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore Works 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 MoD, SNH, SEPA, MCA, NLB, FP, FC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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The OffCMS must include, but not be limited to:

- i. the construction procedures and good working practices for installing the Development;
- ii. details of the roles and responsibilities, chain of command and contact details of company personnel, any contractors or sub-contractors involved during the construction of the Development;
- iii. details of how the construction related mitigation steps proposed in the ES and in the HRA Addendum are to be delivered; and
- iv. a waste management plan for the construction phase of Development.
- v. demonstration of seasonal avoidance to minimize impacts on key sensitive bird interests (The main wintering (non-breeding period) during which construction should be avoided is between September and March)

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

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. Marine Mammal Observer

Prior to the Commencement of the Offshore works, the Company must confirm the appointment of a Marine Mammal Observer (“MMO”). When appointed, the MMO must, as a minimum, maintain a record of any sightings of marine mammals and maintain a record of the action taken to avoid any disturbance being caused to marine mammals during pre-construction and geophysical surveys and construction activities.

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

12. Piling Strategy

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore works, submit a Piling Strategy (“PS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH and any such other advisors as may be required at the discretion of the Scottish Ministers.

The PS must include, but not be limited to:

- i. details of expected noise levels from pile-drilling in order to inform c;

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- ii. full details of the proposed method and anticipated duration of piling to be carried out at all locations;
- iii. details of any mitigation and monitoring to be employed during pile-drilling, as agreed by the Scottish Ministers; and
- iv. details of the role and the responsibilities of the MMO during construction activities.

The PS must be in accordance with the Application and must also reflect any monitoring or data collection carried out after submission of the Application. The PS must demonstrate how the exposure to and/or the effects of underwater noise have been mitigated in respect to cetaceans and seals.

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

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

13. Development Specification and Layout Plan

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore works, submit a Design 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 SNH, MoD, MCA, NLB, CAA, FC, FP, National Air Traffic Services (“NATS”), Joint Radio Company (“JRC”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a. a plan showing the location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the Site;
- b. a list of latitude and longitude co-ordinates accurate to three decimal places of minutes of ,arc for each WTG. This should also be provided as a Geographic Information System (“GIS”) shape file using 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 (Annex 1, Figure 1) and a confirmed generating capacity for the Site overall;
- e. the finishes for each WTG (see condition 20 on WTG lighting and marking); and
- f. the length and proposed laying arrangements on the seabed of all interarray cables.

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

14. Design Statement

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers prior to the Commencement of the Offshore works, 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 agreed with the Scottish Ministers, based upon the final DSLP as approved by the Scottish Ministers as updated or amended. The Company must provide the DS, for information only, to FC and SNH 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.*

15. Environmental Management Plan

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

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

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

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

- a. mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the ES and HRA addendum, pre-consent and pre-construction monitoring or data collection, and include the relevant parts of the OffCMS;

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- b. a pollution prevention and control method statement, including contingency plans;
- c. management measures to prevent the introduction of invasive nonnative marine species;
- d. a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged;
- e. the reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, SNH, SEPA, 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 Offshore works, 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 by the Scottish Ministers with SNH, SEPA 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 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 EMP must be informed, so far as is reasonably practicable, by the baseline monitoring or data collection undertaken as part of the Application and the PEMP.

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

16. Vessel Management Plan

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

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

- the number, types and specification of vessels which are required;
- how vessel management will be coordinated, particularly during construction but also during operation; and

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- 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 Offshore Works 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 EMP, the PEMP, the NSP, and the LMP.

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

17. Operation and Maintenance Programme

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, 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 SNH, SEPA, MCA, NLB, FP, FC, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OMP must set out the procedures and good working practices for operations and the maintenance of the WTG’s, substructures, and inter-array cable network of the Development. Environmental sensitivities which may affect the timing of the operation and maintenance activities must be considered in the OMP.

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

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

18. Cable Plan

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore works, submit a Cable Plan (“CaP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, SFF, EC IFG, IFA, FC 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 and HRA addendum.

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

- a. the location and cable laying techniques for the cables;
- b. the results of monitoring or data collection work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing;
- c. technical specification of cables;

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- d. a burial risk assessment to ascertain burial depths and, where necessary, alternative suitable protection measures;
- e. methodologies for surveys (e.g. over trawl) of the cables through the operational life of the wind farm where mechanical protection of cables laid on the sea bed is deployed;
- f. methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables; and
- g. demonstration of avoidance of sensitive periods for relevant bird species during the Cable laying works within the intertidal zone.

Any consented cable protection works must ensure existing and future safe navigation is not compromised. A maximum of 5% reduction in surrounding depth referenced to Chart Datum is allowable.

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

19. Navigational Safety Plan

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore works, 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, FP 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 coordination arrangements (ERCoP) for the construction, operation and decommissioning phases of the Development and to be in accordance with condition 3.2.1.4 of the marine licence; 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 it’s annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance prior to the approval of the NSP.

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

20. Lighting and Marking Plan

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

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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, FP, CAA, MoD and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The LMP must provide that the Development must be lit and marked in accordance with the current CAA and MoD aviation lighting policy and guidance that is in place as at the date of the Scottish Ministers approval of the LMP, or any such other documents that may supersede 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, for information, to FC, SNH, DGC and any other bodies as may be required at the discretion of the Scottish Ministers.

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

21. Charting requirements

The Company must, prior to the Commencement of the Offshore works and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition 13), provide details of the positions and maximum heights of the WTGs and construction equipment above 91.4 m measured above LAT to the United Kingdom Hydrographic Office (“UKHO”) for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the coordinates accurate to three decimal places of minutes of arc for each WTG position and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: *For aviation and navigational safety.*

22. Project Environmental Monitoring Programme

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore works, submit a Project Environmental Monitoring Programme (“PEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, RSPB Scotland, ASFB, WDC, MSS 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 HRA Addendum insofar 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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The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing.

Monitoring must be done in such a way 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 HRA Addendum. In the event that further potential adverse environmental effects are identified, for which no predictions were made in the Application, the Scottish Ministers may require the Company to undertake additional monitoring.

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

- a. pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring or data collection as relevant in terms of the ES and any subsequent monitoring or data collection for:
 1. birds; and
 2. diadromous fish;
- b. the participation by the Company to record and report noise levels from pile drilling and construction to be carried out in relation to marine mammals; and
- c. the participation by the Company to contribute to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers, and to include but not be necessarily limited to:
 - i. the avoidance behaviour of seabirds around turbines;
 - ii. flight height distributions of seabirds at wind farm sites; and
 - iii. effects on survival and productivity at relevant breeding colonies.

The PEMP is a live document and must be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with the RAG, require the Company to amend the PEMP and submit it, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, RSPB Scotland, ASFB, WDC, MSS and any other ecological, or such other advisors 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 are to be made publicly available by the Scottish Ministers, or by such other party appointed at their discretion.

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

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

23. Regional Advisory Group

The Company must participate in any Regional Advisory Group, or any successor group, 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, marine mammals, and diadromous fish. The extent and nature of the Company's participation is to be agreed by the Scottish Ministers.

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

24. Environmental Clerk of Works

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

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

- a. quality assurance of final draft versions of all plans and programmes required under this consent;
- 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 OffCMS, the EMP, the PEMP, the PS, the CaP 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 and HRA addendum and complies with the regulations and legislation; and
- g. reviewing and reporting incidents/near misses and reporting any changes in procedures as a result
- 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.*

25. 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 'SpORRAn' (Scottish Offshore

Renewables Research Framework) for Diadromous Fish’. The extent and nature of the Company’s participation is to be agreed by the Scottish Ministers.

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

26. Fisheries Management and Mitigation Strategy

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Offshore Works, submit a Fisheries Management and Mitigation Strategy (“FMMS”), in writing, to the Scottish Ministers. The Company must also engage with the membership of the Forth and Tay Offshore Wind Developers Group - Commercial Fisheries Working Group (“FTOWDG-CFWG”), or any successor group formed to facilitate commercial fisheries dialogue, or any other advisors or organisations as may be required at the discretion of the Scottish Ministers to define and finalise the FMMS.

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

- i. the impacts on the adjacent coastline;
- ii. the effects on local fishermen; and
- iii. 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 will be adversely affected by the Development. The FMMS 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 FMMS so far as is applicable to the Development. Any contractors, or sub-contractors instructed by the Company in connection with the Development, must co-operate with the fishing industry to ensure the effective implementation of said FMMS.

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

27. 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 in consultation with the membership of FTOWDG-CFWG or any other advisors or organisations as may be required at the discretion of Scottish Ministers. The FLO must be appointed for the period from Commencement of the Development until the Final Commissioning of the Development. The identity and credentials of the FLO must be included in the EMP (referred to in condition 15). The FLO must establish and maintain effective communications between the Company, any contractors or subcontractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

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

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

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

28. Noise Measurement and Mitigation Scheme

The turbines must be of a design to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria.

The Company must ensure that the turbines are not operational (in that they must not turn) before a Noise Measurement and Mitigation Scheme has been submitted to and approved, in writing, by the Scottish Ministers following consultation with Fife Council

The scheme must include, but not be limited to:

- a. the noise limits to which the noise measurement and mitigation scheme must adhere;
- b. a framework for the measurement and calculation of noise levels to be undertaken in accordance with ETSU-R-97 and its associated Good Practice Guide and supplementary guidance notes, and the circumstances in which such monitoring will be required;
- c. the identification of measurement location(s) where measurements for compliance checking shall be undertaken;
- d. the identification of all dwellings lawfully existing or which have planning permission as at the date of this consent which may be affected by the Development;
- e. a list of independent consultants who may undertake compliance measurements under this condition and condition 29. Amendments to this list may only be made with the prior written approval of the Scottish Ministers;
- f. a timetable for the on-going monitoring of noise following the date when the first turbine turns to include all test periods prior to the formal date of First Commissioning of the Development;
- g. details of the mitigation measures to be implemented, along with timetable/s for implementation, in the event that the monitoring undertaken shows that the agreed noise limits are being exceeded;
- h. details of reporting mechanisms to the Scottish Ministers on the monitoring and mitigation measures detailed within the scheme; and
- i. an agreed and operational protocol agreement between the Company and FEPOWDT regarding the apportionment and control of noise which

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ensures that noise impacts from the combined developments do not exceed the allowable environmental limits.

The Noise Measurement and Mitigation Scheme must be implemented, as approved, unless otherwise agreed in writing with the Scottish Ministers, following consultation with FC.

Reason: *To ensure that noise levels can be measured to assess whether or not agreed noise limits have been breached and where such noise limits have been breached, suitable mitigation is undertaken.*

29. Noise – operational

The operational noise of the WTGs forming this Development must not, alone or in combination with the Fife Energy Park Offshore Demonstration Wind Turbine (FEPODWT), exceed the agreed noise limits.

The Company must, on a continuous basis, log power production, wind speed and wind direction. This data must be retained by the Company for a period of not less than 24 months. The Company must provide this information to the Scottish Ministers on a monthly basis, or within 14 days of the receipt of a written request to do so.

The Company must also supply to the Scottish Ministers noise levels monitored as required by condition 28.

If the monitoring of noise levels undertaken in accordance with the Noise Measurement and Mitigation Scheme show that the noise of the Development, either alone or in combination with FEPODWT, exceeds the agreed noise limits the operation of the WTGs comprising this Development must cease immediately. The operation of the WTGs must remain ceased until such time as the Company has satisfied the Scottish Ministers, in consultation with FC, that appropriate mitigation measures, as specified in the Noise Measurement and Mitigation Scheme or any other such measures as defined by Scottish Ministers, have been put in place.

Following any complaint to the Scottish Ministers or FC from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company must, within 21 days of their receipt of a written request from the Scottish Ministers, employ, at its expense, a consultant approved by the Scottish Ministers and FC to assess the level of noise emissions from the Development at the complainant's property. The written request from the Scottish Ministers must set out, at least, the date, time and location to which the complaint relates and any identified atmospheric conditions, including wind speed and direction as at the time of the complaint, and include a statement as to whether, in the opinion of the Scottish Ministers, the noise giving rise to the complaint contains or is likely to contain a tonal component.

Reason: *To ensure that noise levels can be measured to assess whether or not agreed noise limits have been breached and where such noise limits have been breached, suitable mitigation is undertaken. To protect nearby residents*

from undue noise and disturbance and to enable prompt investigation of complaints.

PART 2 – CONDITIONS OF THE DIRECTION FOR THE GRANT OF DEEMED PLANNING PERMISSION

The direction given in accordance with section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) is subject to the following conditions:

30. Commencement of Development

The Commencement of the Development must be no later than 5 years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of Commencement of Development must be provided to Fife Council and Scottish Ministers no later than one calendar month before that date.

Reason: *In accordance with s.58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.*

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

Except as otherwise required under this consent and deemed planning permission, the Development must be undertaken in accordance with the Application, the Environmental Statement, (as supplemented by the further environmental information submitted by the Company on 30th March 2016), and other documentation lodged in support of the application.

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

32. Design of sub-station and ancillary development

There must be no Commencement of the Onshore Works unless final details of associated onshore infrastructure, including, underground cabling and turbine transformers comprising medium and low voltage container units, to be located within the Fife Energy Park. have been submitted to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Fife Council. All onshore Development must be constructed in accordance with the approved details.

Reason: *To ensure that the environmental impacts of the sub-station forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.*

33. Construction Environmental Management Plan

The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Onshore Works, submit a Construction Environmental Management Plan (“CEMP”), in writing,

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to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with FC, SEPA, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers.

The CEMP shall include, but shall not be limited to:

- a. a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged;
- b. mitigation measures to include, but not be limited to, the use of flood resistant and resilient materials to be incorporated during construction and finished floor levels elevated above the 1:200 year SEPA still water coastal flood level with sufficient freeboard to take into consideration wave action;
- c. acknowledgement that the Company have registered with SEPA to receive flood alerts for the Fife area;
- d. environmental management - identification of mechanisms to ensure subcontractors will be well controlled and be aware of relevant environmental issues. This should include details of on-going monitoring and emergency procedures / pollution response plans and the provision of spillage kits;
- e. a pollution prevention and control method statement, including arrangements for the storage and management of oil, fuel and chemicals on the site which must comply with the Water Environment (Oil Storage) (Scotland) Regulations 2006;
- f. a drainage management strategy, demonstrating the use of sustainable drainage systems (SUDs) in line with Scottish Planning Policy for all surface water runoff or details of the means whereby surface water will discharge directly to coastal waters;
- g. sewage disposal and treatment in the event of permanent toilet facilities or kitchen which are connected to the public sewer;
- h. temporary site illumination; and
- i. timing of works.

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

34. Construction Hours

Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays. Out with these specified hours, development on the site must be limited to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the Scottish Ministers.

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HGV movements to and from the site (excluding abnormal loads) must be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays.

Reason: *In the interests of local amenity.*

ANNEX 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment;

“the Application” means the Application letters and Environmental Statement submitted to the Scottish Ministers, by the Company on 6 July 2015 and the HRA Addendum submitted to the Scottish Ministers by the Company on 30 March 2016 for consent under section 36 of the Electricity Act for the construction and operation of the ~~Forthwind Offshore Wind Demonstration Project Development~~ ~~approximately 1.5 km off the coast of Methil, Firth of Forth with a maximum generating capacity of up to 18 MW~~ and the section 36 consent variation submitted to the Scottish Ministers by the Company under section 36C of the Electricity Act on 20 December 2018.

“BEIS” means Department for Business, Energy and Industrial Strategy

“Commencement of the Development” means—

in the case of the section 36 consent the date on which the first vessel arrives on Site to begin construction; or

in the case of the deemed planning permission the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997;

“Commencement of the Offshore Works” means the date on which Construction begins on the Offshore Works;

“Commencement of the Onshore Works” means the date on which Construction begins on the Onshore Works;

“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;

“the Company” means Forthwind Ltd (Company Number SC470580) and having its registered office at The Boathouse, Silversands, Hawcraig Road, Aberdour, Fife, KY3 0TZ for the construction and operation of the Forthwind Offshore Wind Demonstration Project, in the Firth of Forth, approximately 1.5 km from the coast of Methil, Fife;

“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;

“the Development” means Forthwind Offshore Wind Demonstration Project, in the Firth of Forth, approximately 1.5 km from the coast of Methil, Fife, as described in Annex 1 of this letter authorised by this consent and deemed planning permission;

“dSPA” means draft Special Protection Area;

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“DECC” means Department of Energy and Climate Change;

“ECoW” means Environmental Clerk of Works;

“EIA” means Environmental Impact Assessment;

“EPS” means European Protected Species;

“ERCoP” means Emergency Response & Cooperation Plan;

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Company on 6 July 2015 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;

“FLO” means Fisheries Liaison Officer;

“GIS” means Geographic Information System;

“HRA” means Habitats Regulations Appraisal;

“HRA Addendum” means the Habitats Regulations Appraisal Addendum submitted to the Scottish Ministers by the Company on 30 March 2016 as part of the Application as defined above;

“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;

“LAT” means Lowest Astronomical Tide;

“LSE” means Likely Significant Effect;

“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 Springs;

“MLWS” means Mean Low Water Springs;

“MMO” means Marine Mammal Observer;

“MW” means megawatt;

“nm” means nautical miles;

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

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

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“Planning Authority” means Fife Council;

“PLI” means Public Local Inquiry;

“pSPA” means proposed Special Protection Area;

“SAC” means Special Area of Conservation;

“Scottish marine area” has the meaning given in Section 1(1) of the 2010 Act;

“SPA” means Special Protection Area;

“SPP” means Scottish Planning Policy;

“the Site” means the area outlined in red in Figure 1, 2 &3, attached to this consent at Annex 1;

“WGS84” means the World Geodetic System 1984; and

“WTG” means wind turbine generator.

Organisations and Companies

“ASFB” means Atlantic Salmon Fishery Board;

“BEIS” means Department for Business, Energy and Industrial Strategy;

“CAA” means The Civil Aviation Authority;

“DECC” means Department of Energy and Climate Change;

“ECIFG” means East Coast Inshore Fisheries Group;

“EU” means the European Union;

“FC” means Fife Council, the nearest onshore Planning Authority;

“FEPODWT” means the Fife Energy Park Offshore Demonstration Wind Turbine;

“FLOWW” means the Fishing Liaison with Offshore Wind and Wet Renewables Group;

“FTOWDG-CFWG” means Forth and Tay Offshore Wind Developers Group – Commercial Fisheries Working Group. A group formed, and set up, to develop the Commercial Fisheries Mitigation Strategy, and as a forum to facilitate on-going dialogue with the commercial fishing industry;

“FP” means Forth Ports;

“IFA” means the Inshore Fishermens Alliance;

“JRC” means Joint Radio Company;

“MCA” means The Maritime and Coastguard Agency;

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“MOD” means Ministry of Defence;

“MS” means Marine Scotland;

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

“MS-MPP” means Marine Scotland Marine Planning and Policy;

“MSS” means Marine Scotland Science;

“NATS” means National Air Traffic Service;

“NLB” means The Northern Lighthouse Board;

“OREC” means ORE Catapult;

“RAG” means the Regional Advisory Group., responsible for overseeing monitoring and mitigation on a regional scale, set up by the Scottish Ministers;

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

“Samsung” means Samsung Heavy Industries UK;

“SEPA” means The Scottish Environment Protection Agency;

“SFF” means The Scottish Fishermen’s Federation;

“SG” means The Scottish Government;

“SNH” means Scottish Natural Heritage;

“UKHO” means United Kingdom Hydrographic Office; and

“WDC” means Whale and Dolphin Conservation.

Plans and Programmes

“CaP” means Cable Plan;

“CEMP” means Construction Environmental Management Plan;

“CoP” means Construction Programme;

“DP” means Decommissioning Programme;

“DS” means Design Statement;

“DSL P” means Design Specification and Layout Plan;

“EMP” means Environmental Management Plan;

“FMMS” means Fisheries Management and Mitigation Strategy;

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“LMP” means Lighting and Marking Plan;

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

“NSP” means Navigational Safety Plan;

“OffCMS” means Offshore Construction Method Statement;

“OMP” means Operation and Maintenance Programme;

“PEMP” means Project Environmental Monitoring Programme;

“PS” means Piling Strategy;

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

“VMP” means Vessel Management Plan.

Legislation and Statutory Documents

“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);

“NMP” means the National Marine Plan;

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

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

“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 1997 Act” means the Town And Country Planning (Scotland) Act 1997 (as amended);

“the 1999 Order” means The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999;

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

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“the 2007 Regulations” means the “The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended);

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2010 Regulations” means The Conservation of Habitats and Species Regulations 2010; and

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