

Mr Colin Palmer
SSE Renewables
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Glasgow
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19th March 2014

Dear Mr Palmer,

CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE BEATRICE OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, OUTER MORAY FIRTH, APPROXIMATELY 25 KM SOUTH EAST OF WICK, CAITHNESS.

DECLARATION GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36A OF THE ELECTRICITY ACT 1989 TO EXTINGUISH PUBLIC RIGHTS OF NAVIGATION SO FAR AS THEY PASS THROUGH THOSE PLACES WITHIN THE TERRITORIAL SEA WHERE STRUCTURES FORMING PART OF THE OFFSHORE WIND FARM ARE TO BE LOCATED.

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

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

- i. A consent under section 36 of the Electricity Act 1989 (as amended) ("the Electricity Act") by Beatrice Offshore Windfarm Limited (Company Number SC350248) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ for the Beatrice Offshore Wind Farm in the Outer Moray Firth;
- ii. A declaration under section 36A of the Electricity Act by Beatrice Offshore Windfarm Limited to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area where structures forming part of the Beatrice Offshore Wind Farm and Offshore Transmission Works are to be located;
- iii. A marine licence to be considered under the Marine (Scotland) Act 2010 ("the 2010 Act") by Beatrice Offshore Windfarm Limited to deposit any substance or

object and to construct, alter or improve any works in relation to the Beatrice Offshore Wind Farm; and

- iv. A marine licence to be considered under the 2010 Act and the Marine and Coastal Access Act 2009 (as amended) (“the 2009 Act”) by Beatrice Offshore Windfarm Limited to deposit any substance or object and to construct, alter or improve any works in relation to the Offshore Transmission Works within the Scottish marine area and the Scottish Offshore Region.

THE APPLICATION

I refer to applications at i and ii above made by Beatrice Offshore Windfarm Limited (“the Company”), received on the 23rd April 2012 for consent under section 36 of the Electricity Act and a declaration under section 36A of the Electricity Act, for the construction and operation of Beatrice Offshore Wind Farm in the Outer Moray Firth with a maximum generating capacity of **1000 megawatts (“MW”)** (“the Application”), and to extinguish public rights of navigation so far as they pass through those places within the territorial sea where structures forming part of the Beatrice Offshore Wind Farm are to be located.

The generating capacity has been reduced during the consultation process due to concerns raised by consultees with regards to potential impacts to birds. This consent is now granted for a maximum generating capacity of up to **750 MW**.

In this letter, “the Development” means the proposed Beatrice Offshore Wind Farm electricity generating station as described in **Annex 1** of this letter.

STATUTORY AND REGULATORY FRAMEWORK

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

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

The Electricity Act 1989

Any proposal to construct, extend or operate a generating station situated in the territorial sea (out to 12 nautical miles (“nm”) from the shore), with a generation capacity in excess of 1 MW requires consent under Section 36 of the Electricity Act. A consent under section 36 may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Scottish Ministers to be appropriate. The consent shall continue in force for such period as may be specified in or determined by or under the consent.

Paragraph 3 of Schedule 9 to the Electricity Act places a duty on licence holders or persons authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating “relevant proposals” within the meaning of paragraph 1 of Schedule 9 to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. Such persons are statutorily obliged to do what they reasonably can to mitigate any effect which the proposals would have on these features.

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

Under Section 36A of the Electricity Act, Scottish Ministers have the power to make a declaration, on an application, which extinguishes public rights of navigation which pass through the place where a generating station will be established; or suspend rights of navigation for a specified period of time. The power to extinguish public rights of navigation extends only to generating stations in territorial waters.

A declaration made under section 36A is one declaring that the rights of navigation specified, or described in it, i) are extinguished, ii) are suspended for a period that is specified in the declaration, iii) are suspended until such time as may be determined in accordance with a provision contained within the declaration, or iv) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration. The declaration has effect, from the time at which it comes into force, and, continues in force for such a period as may be specified in the declaration.

Under section 36B of the Electricity Act, the Scottish Ministers may not grant a consent in relation to any particular offshore generating activities if they consider that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities, and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of or danger to navigation which, without

amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this consent, the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already the subject of section 36 consent or activities for which it appears likely that such consents will be granted.

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

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

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

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

The Scottish Ministers are satisfied that they have considered and applied all the necessary tests set out within the Electricity Act when assessing the Application. The Company, at the time of application, was not a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity when formulating "relevant proposals" within the meaning of paragraph 1 of Schedule 9 to the Electricity Act. The Company obtained a generation licence during the period whilst the Scottish Ministers were determining the Application for consent. The Minister and his officials have, from the date of the Application for consent, approached matters on the basis that the same Schedule 9, paragraph 3(1) obligations as applied to licence holders and the specified exemption holders should also be applied to the Company.

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

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

The 2010 Act regulates the territorial sea adjacent to Scotland in terms of marine environment issues. As this Application falls within the Scottish marine area (essentially the territorial sea adjacent to Scotland, which extends out to 12 nm from the shore), it falls to the 2010 Act to regulate marine environmental issues in this area. 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, must act in a way best calculated to mitigate, and adapt to, climate change.

As the application for the transmission infrastructure associated with the wind farm falls partly out with the Scottish Territorial Sea, beyond the 12 nm limit, it falls to the Marine and Coastal Access Act 2009 (“the 2009 Act”) to regulate marine environmental issues in this area. Other than for certain specified matters, the 2009 Act executively devolved marine planning, marine licensing and nature conservation powers in the offshore marine region (12-200 nm) to the Scottish Ministers.

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

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

Climate Change (Scotland) Act 2009

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

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

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

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

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

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

The Scottish Ministers have, in compliance with the 2000 Regulations, obtained the advice of the SEPA on matters relating to the protection of the water environment. This advice was received on 29th May 2012.

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

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

The Habitats Directive and the Wild Birds Directive

The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna in the Member States' European territory, including offshore areas such as the proposed site of the developments. It promotes the maintenance of biodiversity by requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation ("SACs") for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

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

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

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

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

- “6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
- 6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.
- 6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.
7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

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

The 1994 and the 2007 Regulations (“the Habitats Regulations”) clearly implement the obligation in article 6(3) & (4) of the Habitats Directive, which by article 7 applies in place of the obligation found in the first sentence of article 4(4) of the Wild Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an appropriate assessment of the implications for the

site in view of the site's conservation objectives" (hereafter an "AA"). Such authority is also obliged to consult SNH and, for the purpose of regulation 48 of the 1994 Regulations, to have regard to any representations made by SNH. The nature of the decision may be taken for present purposes from the provision in regulation 25(4) & (5) of the 2007 Regulations:

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

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

Stage 1 - Where a project is not connected with or necessary to the site's management and it is likely to have a significant effect thereon (either individually or in combination with other projects), then an AA is required.

Stage 2 - In light of the AA of the project's implications for the site in view of the site's conservation objectives, the competent authority must ascertain to the requisite standard that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

SNH and the JNCC were of the opinion that the Development is likely to have a significant effect on the qualifying interests of certain Special Protected Areas ("SPAs") and SAC sites, therefore an AA was required. The AA which has been undertaken has considered the combined effects of the Development and the Moray Offshore Renewables Limited ("MORL") wind farms. This is because the MORL proposal, the applications for which were submitted to the Scottish Ministers in August 2012, are proposed to be sited immediately adjacent to the Development.

The Scottish Ministers, as a competent authority, have complied with European Union ("EU") obligations under the Habitats Directive and the Wild Birds Directive in relation to the Development. Marine Scotland Licensing Operations Team ("MS-LOT"), on behalf of the Scottish Ministers, undertook an AA. In carrying out the AA, MS-LOT concludes that the Development will not adversely affect site integrity of any of the identified European protected sites assessed to have connectivity with the Development, and have imposed conditions on the grant of this consent ensuring that this is the case. The test in the *Waddenzee* judgement formed the basis for the approach taken (CJEU Case C-127/02 [2004] ECR I-7405), and the Scottish

Ministers are certain that the Development will not adversely affect site integrity of the sites “where no reasonable scientific doubt remains as to the absence of such effects”. The AA will be published and available on the Marine Scotland licensing page of the Scottish Government’s website.

APPLICABLE POLICIES AND GUIDANCE

Marine area

The UK Marine Policy Statement 2011

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

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

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

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

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

Blue Seas-Green Energy: A Sectorial Plan for Offshore Wind Energy in Scottish Territorial Waters

The Scottish Government has used a marine planning approach to develop Blue Seas Green Energy – A Sectorial Marine Plan for Offshore Wind in Scottish Territorial Waters (“the Plan”).

The Plan represents the Scottish Minister’s vision for the delivery of energy from offshore wind resources within Scottish Territorial Waters (0 to 12 nautical miles). The Plan contains proposals for offshore wind development at the regional level up to 2020 and beyond. It seeks to maximise the benefits for Scotland, its communities and people and recognises the need for public acceptability in the development of offshore wind. It aims to strike a balance between economic, social and environmental needs and also recognises that there are national and regional challenges to overcome to facilitate development.

The draft Plan contained 10 short term (up to 2020) and 30 medium term (up to 2030) options including Beatrice as a short term site in the North East region. The sites were selected by developers and The Crown Estate Commissioners (“CEC”) and awarded Exclusivity Agreements. This reduced to 9 as one site developer withdrew.

Scottish Ministers further decided that 3 short term sites in the West and South-West regions were unsuitable for the development of offshore wind and should not be progressed as part of the Plan. These short term sites were considered unsuitable because of the presence of a wide range of constraints on a number of receptors (including communities, shipping, fishing, biodiversity, recreation, defence, economic impact, cultural heritage, seascapes and landscapes). Scottish Ministers decided that 6 short term sites and 25 medium term areas of search should be progressed within this Plan.

The main findings for the North East (Moray Firth) Offshore Wind Plan region was that this region has favourable conditions and significant potential for the development of offshore wind both within Scottish Territorial Waters and beyond into Scottish Offshore Waters (12 to 200 nautical miles). The significant strategic issues to be resolved according to the Plan related to fishing and the environment, with potential adverse effects on bottlenose dolphins presented as a significant issue. Other key issues to be addressed for the region included shipping and navigation, biodiversity, aviation and radar, and defence activities. Evidence at this stage suggested that issues could be addressed through appropriate mitigation measures at the project level.

The Beatrice short term site within Scottish Territorial Waters was seen to be suitable for development by 2020 (as well as a large Round 3 offshore wind development site just outside Scottish Territorial Waters adjacent to Beatrice). The cumulative impacts of these developments were identified as requiring further consideration.

The Plan recommended that the Beatrice short term option should be taken forward to the licensing stage. A key finding was that there is significant potential for this

development in the short term and it appears to be publicly and environmentally acceptable. Another key finding was that the North East region relates closely to areas where there is significant potential for economic investment and employment.

Overall the Plan seeks to deliver Scottish Ministers' policies for green energy, thereby helping to meet carbon reduction targets. The Plan underpins the promotion of economic development and competitiveness for Scotland and has been built using environmental and socio-economic assessments and consultation, both public and sectoral, as marine plan making tools.

The outcomes of Strategic Environmental Assessment ("SEA"), HRA, Socio-economic Assessment and Consultation Analysis informed the final Plan.

Draft National Marine Plan

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

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

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

Offshore Renewable Policy

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

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

Terrestrial area

Existing terrestrial planning regimes generally extend to mean low water spring tides. The marine plan area boundaries extend up to the level of mean high water spring

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

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

Scottish Planning Policy

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

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

National Planning Framework 2

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

National Planning Framework 3

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

also supports development and investment in sites identified in the National Renewables Infrastructure Plan.

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

Highland Renewable Energy Strategy and Planning Guidelines, May 2006

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

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

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

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

The Highland – wide Local Development Plan, April 2012

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

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

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

The Moray Structure Plan, April 2007

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

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

The Moray Local Plan 2008

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

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

Moray Economic Strategy, October 2012

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

CONSULTATION

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

Notifications were sent to Moray Council (as the onshore Planning Authority where the transmission works export cable comes ashore at Portgordon) as well as to Highland Council (as the nearest onshore Planning Authority) as well as to SNH, the JNCC and SEPA.

A two-stage formal consultation process was undertaken by the Scottish Ministers. The first, which related to the application for section 36 consent, the marine licence applications (applications i, iii and iv) and the ES, was commenced on 25th April 2012, and the second which related to the submission of further information in the form of a SEIS began on 4th June 2013.

Representations and objections

A total of forty seven (47) valid representations were received by the Scottish Ministers during the course of the public consultation exercise, mostly from members of the public, with a small number coming from fisheries trusts, and one from a community council. Of these forty five (45) objected to the Development and two (2) were in support of the Development.

Members of the public who objected to the Development stated concerns regarding the visual impact of the turbines, the impacts on marine wildlife, fisheries, navigation, aviation and tourism. Some objections also stated that offshore wind is an unreliable source of energy and the subsidies required to support the industry are too high. There was also a belief that there had been a failure to meet the requirements of the Aarhus Convention, and the Development could be a potential contributor to the blue carbon effect.

Representations which noted support for the Development were of the belief that the Development would offer local benefits such as the creation of jobs, economic opportunities for the area and help fight climate change.

Of the public representations made concerning the Application none were received from elected representatives.

Objections were received from, amongst others, the Royal Society for the Protection of Birds Scotland ("RSPB Scotland"), the Defence Infrastructure Organisation ("DIO") (Ministry of Defence), National Air Traffic Services ("NATS"), MORL, the Association of Salmon Fishery Boards ("ASFB"), the Moray Firth Sea Trout Project ("MFSTP"), and Whale and Dolphin Conservation ("WDC").

Several respondents, including the DIO, NATS, and WDC stated their willingness to withdraw their objections provided certain stated conditions were met. Following further correspondence, the DIO and NATS removed their objections subject to conditions being applied to this consent. The Scottish Ministers consider that conditions applied regarding marine mammals address concerns raised by WDC (**Annex 2**).

Objections from members of the public, the ASFB, RSPB Scotland and the MFSTP are being maintained. In light of these concerns, the Company has reduced their design envelope from 1,000 MW to 750 MW and the Scottish Ministers have applied conditions for monitoring and mitigation to this consent (**Annex 2**).

The ASFB and MFSTP have welcomed the salmon monitoring strategy being developed by Marine Scotland. MORL did not remove their objection regarding the cable route, however this issue will be addressed by the Crown Estate ("TCE").

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

Material Considerations

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

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

Public Local Inquiry

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

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

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

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

- The efficiency of wind energy and high subsidies;
- Visual impacts of the Development;

- Impact upon the tourism industry;
- Impact upon shipping, aviation and DIO;
- Impact upon marine wildlife including birds;
- Impact on salmon and sea trout;
- Impact on commercial fishing;
- Cumulative impacts in the Moray Firth;
- Transmission cable route; and
- Failure to meet the requirements of the Aarhus convention.
- Blue carbon effect

The efficiency of wind energy and high subsidies

A number of respondents to the Application commented on a range of issues relating to the efficiency of wind energy. The Scottish Ministers consider that although the electrical output of wind farms is variable, and cannot be relied on as a constant source of power, the electricity generated by wind is a necessary component of a balanced energy mix which is large enough to match Scotland's demand. Power supplied from wind farms reduces the need for power from other sources and helps reduce fossil fuel consumption.

With regards to high subsidies, 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. 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.

The Scottish Ministers, therefore, consider they have sufficient information regarding the efficiency of wind energy and high subsidies, to reach a conclusion on the matter, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Visual impacts of the Development

Adverse visual impact of the Development in its proposed location was raised in the outstanding objections to the Development. The Company in its ES indicates that the Development would have visual impacts that range from negligible to major depending upon where the viewer is situated. SNH, the Scottish Ministers' statutory nature conservation advisers who advise on, amongst other matters, visual impacts on designated landscape features, advised that key landscape, seascape and visual impacts of the Development together with MORL will occur along a 39 km stretch of the Caithness coast from Noss Head to Dunbeath. Here at its closest the Development is 13.5 km from shore with the MORL proposal being 22 km. The two developments are likely to be perceived as one single wind farm lying offshore, parallel to the coast. They will form a prominent new feature (some 19 km in length)

on the skyline of the open sea. The visual impacts are primarily caused by Beatrice, rather than MORL due to its closer proximity to shore.

SNH advised that where a viewpoint / location has a panoramic and expansive context, the offshore development may well appear 'incidental' on the horizon. However landscape and visual effects will be adverse at specific viewpoints and locations, especially elevated cliff tops and landmarks. This will be the case at key viewpoints such as Wick, Sarclet, Whaligoe Steps, Lybster Harbour, Dunbeath Castle and from stretches of the A9. Due to lighting requirements, the wind farms will change the night-time character of seas and skies in this area where there is currently limited light pollution. SNH advised that impacts on the Moray and Aberdeenshire coastline would be negligible. SNH recommended that the final turbine layout should be agreed with the Scottish Ministers and that visualisations for this final layout should be produced for statutory consultees and public information. The Scottish Ministers agree that visualisations for final wind farm layout and design would be a necessity to inform the public. A condition requiring the submission of a Design Statement forms part of this consent at **Annex 2**.

The Highland Council raised some concerns over the visual impact of the Development as they considered that the turbines had not been represented at the correct scale in the visualisations. These concerns were not sufficient however to cause them to object to the Development.

The Company's ES includes a number of visual photomontages that give an indication of the likely visual impacts. Although these are not definitive, the visualisation material acts as a tool to help inform the decision-making process.

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

Impact upon the tourism industry

Concerns have been raised by respondents to the Application regarding the development's potential impact upon tourism, particularly relating to the dolphin watching in the Moray Firth.

In this respect, the Scottish Ministers 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. 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.

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

Impact on shipping, aviation and DIO

Representation received raised concerns that the Development might present a hazard to vessels navigating in the Moray Firth, and have impacts on aviation and cause problems for national defence. The Scottish Ministers consider that the information provided to them by, amongst others, the Maritime Coastguard Agency (“MCA”), Northern Lighthouse Board (“NLB”), National Air Traffic Service (“NATS”) and DIO provides them with sufficient information on which to take a decision in this matter. NATS and DIO initially raised objections against the proposal on the basis of the Development’s impact upon air traffic services and DIO radar. Following discussions between the Company and these organisations objections were removed subject to conditions being placed on the consent (**Annex 2**).

The Scottish Ministers, therefore, consider that they have sufficient information regarding the hazards of the Development to shipping, aviation and the DIO, 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.

Impact on marine wildlife including birds

The impact on marine mammals, birds, benthic ecology and other marine life, as well as Natura concerns, was raised in the outstanding objections to the Development. The Company in the ES and SEIS assessed the potential impact of the Development on fauna and the Scottish Ministers consulted various nature conservation bodies including SNH, the JNCC, RSPB Scotland and WDC on these documents. Only the RSPB Scotland has maintained their objection. SNH, the JNCC and WDC did not object so long as the consent was made subject to specified conditions. Such conditions have been included in this consent to ensure that impacts on wildlife, including birds are acceptable (**Annex 2**).

The Scottish Ministers recognise that there is an outstanding objection from RSPB Scotland due to the potential impacts on several seabird species (most notably great black-backed gull, herring gull, gannet, kittiwake and puffin). MSS, SNH and the JNCC, however, are in agreement that predicted impacts are within acceptable levels for all species in terms of both the 2000 Regulations and the Habitats Regulations. An AA completed by MS-LOT, concluded that the Development will not adversely affect site integrity of any SAC or SPA considered to have connectivity with the Development. Conditions to mitigate and monitor the effects on marine wildlife form part of this consent (**Annex 2**).

One representation stated that it is an offence to disturb or kill cetaceans. To mitigate this, the Company will be required to apply for a European Protected Species (“EPS”) licence prior to construction.

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

Impact on Atlantic salmon and sea trout

Objections relating to potential effects on Atlantic salmon and sea trout were received through the public consultation exercise, the ASFB and MFSTP also maintained their objections. The Company in the ES and SEIS recognised the uncertainties around the assessments of these species. The ASFB and MFSTP also recognise these uncertainties and believe they can only be overcome through strategic research. A strategy is being developed by Marine Scotland to address monitoring requirements for Atlantic salmon and sea trout at a national level. The Company has engaged with MS-LOT, MSS, the ASFB and the MFSTP to address this issue. A condition to engage at a local level (the Moray Firth) to the strategic salmon and trout monitoring strategy is contained in this consent (**Annex 2**).

The Scottish Ministers, therefore, consider that sufficient steps, including the development of national strategic monitoring, have been taken to address the uncertainties regarding the potential effects of the Development on Atlantic salmon and sea trout from, 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.

Impact on commercial fishing

The Scottish Fisherman's Federation ("SFF") and the Moray Firth Inshore Fishery Group ("MFIFG") had concerns over impacts on fishing and this was also raised by some members of the public in their objections. The Company in the ES and SEIS assessed the loss of fishing grounds as minor with the wind farm area being of relatively low importance compared with other areas in the Moray Firth.

The Company have engaged with the SFF, and in conjunction with neighbouring wind farm developers, has formed the Moray Firth Offshore Wind Developers Group – Commercial Fisheries Working Group ("MFOWDG-CFWG"). The MFOWDG-CFWG has been established to facilitate on-going dialogue throughout the pre-construction, construction and operational phases of the Development. The MFOWDG-CFWG has representation for all commercial fishing interests in the area and provides a forum to discuss any issues and potential mitigation in relation to the wind farm developments in the Moray Firth. Conditions for the Company to continue in the MFOWDG-CFWG and mitigate hazards to fishing are contained in this consent (**Annex 2**). Notices to Mariners and notices placed through the Kingfisher Fortnightly Bulletins, is to be considered as a condition as part of the marine licences, applications for which are to be determined in due course.

The Scottish Ministers, therefore, consider that they have sufficient information regarding the potential impacts of the Development on commercial fisheries, and that a mechanism is now in place to facilitate communication, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Cumulative impacts in the Moray Firth

The cumulative effects of concern were not specified by the objectors within their representations, but for offshore wind farms, the Scottish Ministers have conducted and assessed cumulative impacts on all receptors, (including but not limited to; visual, marine life, birds, commercial fisheries and shipping and navigation) of the Development alone, and in combination with the MORL proposal, which lies

adjacent. These assessments show that the Development in combination with the MORL proposal will not give rise to any unacceptable impacts.

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

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

Transmission cable route

Following the submission of the SEIS and the change to the cable route MORL objected to the Development as the new cable route is even more prejudicial than that which was originally proposed. The Crown Estate (“TCE”) has advised that both parties have been given the opportunity to reach mutual agreement. In the event of failure to agree, there will come a point where TCE will determine a solution to accommodate the requirements. This will be carried out in a balanced and fair process with both parties making written submissions. In these circumstances the decision of TCE will be final and binding.

The Scottish Ministers, therefore, consider that this is a matter for TCE, and do not consider that it is appropriate to cause a public inquiry to be held to further investigate this.

Failure to meet the requirements of the Aarhus Convention

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

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

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

was upheld. The ruling confirmed that Scotland is in compliance with this international obligation.

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

Blue Carbon effect

Some concerns were raised through the public consultation on the blue carbon effect. MSS have advised that sea bed mobilisation has the potential to increase rates of organic matter degradation. It does this by increasing the exposure of organic carbon incorporated into the sediments to dissolved oxygen. Compared to other processes for oxidising organic matter in the marine environment, exposure to dissolved oxygen is the most efficient. Sea bed mobilisation arising from the installation of offshore turbines has to be set in the context of on-going mobilisation events resulting from human activities. There are many activities undertaken in the marine environment that result in sea bed mobilisation including demersal trawling for fish and sea bed dredging to ensure safe navigational access in and out UK ports and harbours. These activities can occur on a much larger spatial scale than the installation of offshore renewable turbines. Also sea bed mobilisation will take place as a result of natural process particularly during storm events.

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

Summary

In addition to the issues raised by the objections, as discussed above, the Scottish Ministers have considered all other material considerations with a view to determining whether a public inquiry should be held with respect to the Application. Those other material considerations are discussed in detail below, as part of the Scottish Ministers' consideration of the Application. The Scottish Ministers are satisfied that they have sufficient information to enable them to take those material considerations into proper account when making their final determination on this Application. The Scottish Ministers have had regard to the detailed information available to them from the Application, the ES, the SEIS and in the consultation responses received from the closest onshore Planning Authorities, SEPA, the JNCC, SNH and other relevant bodies, together with all other objections and representations. The Scottish Ministers do not consider that a public local inquiry is required in order to inform them further in that regard.

DETERMINATION ON WHETHER TO CAUSE A PUBLIC INQUIRY TO BE HELD

In the circumstances, the Scottish Ministers are satisfied that-

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

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

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

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

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

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

When considering an application for section 36 consent under the Electricity Act, which might affect a European protected site, the competent authority must first determine whether a development is directly connected with or necessary for the

beneficial conservation management of the site. If this is not the case, the competent authority must decide whether the development is likely to have a significant effect on the site. Under the Habitats Regulations, if it is considered that the development is likely to have a significant effect on a European protected site, then the competent authority must undertake an AA of its implications for the site in view of the site's conservation objectives.

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

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

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

THE SCOTTISH MINISTERS' CONSIDERATION OF THE APPLICATION

The Scottish Ministers' consideration of the Application and the material considerations 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 any European protected site.

The impacts on fish and shellfish

The consultation responses from the ASFB and the MFSTP confirmed objections to the Development from each. Both organisations raised concerns regarding the

uncertainty over the potential impacts on migratory fish. The key issues included the potential impacts associated with subsea noise during construction and operation, electromagnetic fields (“EMF”), degradation of the benthic environment, impact on prey species, unknown aggregation effects at the turbines and the fact that the landfall was close to the River Spey. Both organisations were concerned at the lack of biological information to make a wholly accurate assessment of possible impacts from the Development and both requested monitoring and mitigation measures be put in place. Responses received through the public consultation exercise from the Beaully District Fishery Board, the Ness and Beaully Fisheries Trust and the Moray and Pentland Firth Salmon Protection Group raised similar concerns. A condition requiring a comprehensive monitoring programme has been included within this consent (**Annex 2**) and MSS are undertaking strategic research on migratory fish which the Company will contribute to at a local level (Moray Firth).

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

SNH, the JNCC and MSS raised some concerns over the potential impacts on cod, herring and sandeels. MSS requested that the Company conduct a post consent/pre construction sandeel survey to ascertain the distribution of sandeels across their site and provide additional baseline information. This would then be used in conjunction with a post construction survey to validate the ES assessments of low impact to sandeels. MSS advised that the Company should carry out a pre-construction cod survey to build an improved knowledge base of spawning sites within the Moray Firth. Post construction cod surveys are also required and are conditioned in this consent (**Annex 2**). The cod and sandeel surveys are due to take place in early 2014. Herring surveys will be required during August to October prior to construction and will help to refine mitigation measures to reduce impacts on the Orkney / Shetland stock. Should the proposed mitigation not be suitable MSS advised that there should be a piling restriction of up to 16 days which should be determined following analysis of the survey data.

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

The impacts on birds

SNH, the JNCC and the RSPB Scotland expressed concerns about the potential impact of the Development, on its own and in combination with the adjacent proposed MORL proposal, on several bird species using the Moray Firth. The species of most concern were great black-backed gull, herring gull, gannet, puffin, razorbill and guillemot. Concerns over great black backed gull and herring gull were mainly in relation to collision risk with the wind turbine generators (“WTGs”) during

operation. Concerns over the auk species (puffin, razorbill and guillemot) were in relation to displacement of these species from the wind farm site. Potential displacement effects are; the loss of feeding grounds and increased energy costs that could lead to breeding failure. Concerns over gannet related to both collision and displacement.

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

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

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

SNH, the JNCC and MSS advised on what the acceptable levels of change were for each affected qualifying species. The methods used for determining this figure varied between SNH, the JNCC and MSS. SNH and the JNCC used a calculation called

Potential Biological Removal ("PBR"), and MSS used both MORL and BOWL's PVA modelling work augmented by the Acceptable Biological Change ("ABC") tool, which was developed by MSS as a means of estimating acceptable levels of biological change.

Following the common currency exercise SNH, the JNCC and MSS agreed in October 2013 that there would be no adverse effect on site integrity at East Caithness Cliffs ("ECC") SPA in respect of herring gull, guillemot and razorbill, and at North Caithness Cliffs ("NCC") SPA in respect of puffin. There was however some disagreement over the acceptable levels of impact on 1.) great black-backed gull from ECC SPA, and 2.) puffin from ECC SPA.

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

The AA, which concluded that there would be no adverse impact on the integrity of great black-backed gull from the ECC SPA, was completed using all advice received from SNH, the JNCC and MSS. In order to be suitably precautionary and recognise the uncertainty around assessment methodologies, the AA identified that the acceptable threshold for great black-backed gull was 11 birds of all ages. This was split between the MORL proposal and the Development, with the Development being allocated 7 birds of all age classes. The cumulative threshold of 11 is below the figure predicted by the ABC tool applied to both the MORL and BOWL PVA models and is well below the threshold advised by SNH and the JNCC of 6 adult breeding birds (MSS have estimated that 6 breeding birds equates to between 19 and 25 birds of all age classes depending on whether the MORL or BOWL population model is used). The AA was based on the BOWL MLS of 140 WTGs, and the estimated collisions from BOWL were 8.62 (which is greater than the BOWL threshold of 7). BOWL, due to its closer proximity to the ECC SPA, will have the greatest impact on great black-backed gull and therefore a condition will be required on this consent to ensure that impacts are within acceptable limits and to ensure no adverse effect on site integrity. This condition restricts the numbers of WTGs to 125, if the Company wish to exceed this number up to a maximum of 140 WTGs then the exact parameters must be agreed with the Scottish Ministers to ensure that the predicted collisions of great black-backed gulls are within the acceptable threshold. This will be

accomplished by running the proposed parameters through an agreed collision risk model prior to authorisation.

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

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

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

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

The table below details the estimated puffin effects with identified thresholds

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

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

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

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

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

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

The impacts on marine mammals

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

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

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

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

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

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

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

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

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

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

The impacts on benthic ecology and habitat interests

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

Benthic surveys for BOWL identified a potential Priority Marine Feature (“PMF”), SNH have advised that this is a deep water version of SS.SCS.ICS.Moe.Ven. As this is a new record of a biotope in deeper waters, records are not available as to the extent of the interest in Scottish waters. Once geotechnical surveys are completed further consideration of this biotope should be given through consideration in the construction method statement of siting of turbines.

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

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

The impacts on commercial fishing activity

Regarding commercial fishing activity the SFF raised concerns on restricted access or total loss of traditional fishing grounds, EMF and barriers caused by cabling to towing gear. The SFF stated that within the design envelope fewer WTGs would be favourable. The Application as submitted was for a development comprising up to 277 WTGs, however during the consultation process, the Company reduced this number down to no more than 140 WTGs. As suggested by MSS and the SFF, the MFOWDG-CFWG has been established to facilitate on-going dialogue throughout all phases of the Development. The MFOWDG-CFWG met for the first time on the 18th April 2013. Mitigation for the construction, operational and decommissioning impacts of this Development, in combination with the MORL proposal, was identified as the key aims. Participation in the MFOWDG-CFWG and the creation of a commercial fisheries mitigation strategy, approved by the Scottish Ministers, are reflected in conditions of this consent (**Annex 2**). The reduction in the number of WTGs and the condition in this consent requiring over trawl surveys will potentially mitigate the impacts of the Development on commercial fisheries.

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

The impacts on shipping and navigational safety

The Chamber of Shipping ("CoS") acknowledged that the proposed wind farm site is in an area with relatively low levels of commercial shipping activity and that the main concentrations of traffic on the Pentland Firth route are some 4-5 nm from the site boundary. The CoS agreed that the impacts on commercial shipping are likely to be relatively low, however raised some concerns over the cumulative impacts of the BOWL development and MORL proposal on navigation. The CoS advised that the Company should work closely with MORL to ensure as much uniformity of the layout as possible between the wind farms. They also raised concerns about the possibility of the anchor interaction with both cable route options, particularly in the Spey Bay area and requested that navigational stakeholders should be consulted on the planned Burial Protection Index ("BPI") assessment. The CoS also stated that a full rationale for the possible application for 50m operational safety zones should have been provided in the ES. Any safety zones will need to be applied for through the Department of Energy and Climate Change ("DECC").

The Company responded to the CoS on the points raised above, giving a commitment to working collaboratively with MORL to support the effective management of cumulative impacts to navigational safety. The Company also advised that further assessment of operational safety zones would be carried out. If

safety zones are not justified the Navigational Risk Assessment (“NRA”) will be updated to assess any changes in risk as a result of their removal.

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

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

The impacts on aviation

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

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

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

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

The impacts on recreation and tourism

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

Concerns were also raised by Surfers Against Sewage (“SAS”) that the Development could impact surfing locations around the Moray coast. Discussions between the Company and SAS satisfied these concerns. The Scottish Ministers are satisfied that the wave climate will not be altered by the Development to such an extent as to impact on surfing.

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

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

Visual impacts of the Development

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

No Consultees, Statutory or otherwise, have objected to the Development on landscape and visual impacts.

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

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

Impact on telecommunications

The Highland Council raised a concern that the Development could cause an impact upon television reception in the area. The Scottish Ministers have therefore included a condition within the consent which sets out the mitigation measures that would be taken to investigate and rectify any complaint made (**Annex 2**).

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

The efficiency of wind energy

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

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

The development of renewable energy

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

This 750 MW Development has the potential to annually generate renewable electricity equivalent to the demand from approximately 477,610 homes. This increase in the amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020. Scotland requires a mix of energy infrastructure in order to achieve energy security at the same time as moving towards a low carbon economy. Due to the intermittent nature of renewables generation, a balanced electricity mix is required to support the security of supply

requirements. This does not mean an energy mix where Scotland will be 100% reliable on renewables generation by 2020; but it supports Scotland's plan to remain a net exporter of electricity.

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

Proposed location of the Development

The Scottish Ministers consider that the Company has carefully considered the location of the Development and selected the outer Moray Firth due to its many advantages. In February 2009 The Crown Estate ("TCE") announced an Exclusivity Agreement with the Company. The suitability of the site was further affirmed in May 2010 with the Scottish Government's publication of the Strategic Environmental Assessment ("SEA") in the Draft Plan for Offshore Wind Energy in Scotland which confirmed that all ten Scottish Territorial Waters 2009 lease round sites could be developed between 2010 and 2020 if "appropriate mitigation is implemented to avoid, minimise and offset significant environmental impacts".

The Marine Renewable Energy and the Natural Heritage: an Overview and Policy Statement (SNH, 2004) and Matching Renewable Electricity Generation and Demand (Scottish Government, 2006) indicated the Moray Firth Area was favoured for development of large scale offshore wind farms. In 2008 the Company identified the wind farm site as a suitable site for offshore wind farm development; there are a number of reasons for the site being suitable:

- Existing development, construction and operational experience on the Smith Bank in deep water;
- A favourable wind regime, as identified from five years of wind data from meteorological masts at the Durrans Mains onshore wind farm and two years of LIDAR wind data from the Beatrice A platform;
- An existing 1,000 MW Grid Connection Agreement held since 2006;
- Perceived low seascape, landscape and visual sensitivity – based on findings of the SNH (2006) assessment of sensitivity and capacity of the Scottish seascape in relation to wind farms (low to medium sensitivity, moderate to high capacity for development); and
- Perceived low environmental constraints – due to the lack of designated sites and rare or protected species recorded in close proximity to the Wind Farm Site.

In March 2011 Blue Seas – Green Energy, A Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters was published by Marine Scotland. The Final Plan in this document included 6 of the 10 sites initially put forward by TCE. Kintyre; Forth Array; Bell Rock and Solway Firth were not included in the Final Plan. BOWL was included in the Final Plan as a short-term site.

The Scottish Ministers consider that, having taken account of the information provided by the Company, the responses of the consultative bodies and members of

the public, there are no outstanding concerns with regards to the proposed location of the Development that would require consent to be withheld.

Cumulative impacts of the Development

The close proximity of the Development to the proposed adjacent MORL proposal has meant that cumulative impacts have raised significant concerns. The issue of potential cumulative impact on landscape and visual amenity was considered by SNH and the JNCC with no significant concerns raised regarding cumulative visual impact with other onshore and offshore developments.

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

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

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

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

Economic Benefits

The Company estimate the total gross cost of the wind farm construction to be £3 billion excluding VAT and Operational Expenditure ("OPEX"), and £200 million excluding VAT and OPEX for the transmission infrastructure. In Scotland the expenditure made by the proposed Development could generate Gross Value Added ("GVA") of between £620 million and £1,003 million over its lifetime, including benefits generated through the supply chain. Between £176 million and £356 million of this total GVA could be in Moray, Highland, Aberdeen and Aberdeenshire ("the Study Area").

The Company estimate that the Development could support between 9,300 and 15,300 job-years' worth of employment in Scotland across the whole lifetime of the

Project. The Development could support 1,294 – 2,187 jobs in Scotland at its peak during construction; during the operations phase this would fall to 141 – 252 jobs. Between 2,900 and 6,100 of the total job-years created could be in the Study Area.

The above estimates are based on 2 scenarios:

1. Low case - where the total value of contracts that have been delivered, or are expected to be delivered, from within each geography, assumes the current supply chain
2. High case - the total value of contracts that could be secured by firms based in Scotland (and the Study Area) with a stronger supply chain.

The proportions of expenditure, particularly under the high case, are subject to a high degree of uncertainty. However, the Company have assessed the low case and the high case as the realistic parameters within which the value of contracts will fall. The overall proportion of the budget the Company anticipates spending in Scotland is 30% under the low case and 50% under the high case, with variation across the different project phases.

It should be recognised however that at this stage, many development and procurement decisions are still to be made. Changes in the anticipated expenditure or procurement patterns from those anticipated during the assessment will change the associated estimates of employment and GVA. The effect on employment through the supply chain depends critically on the design, construction and operation decisions that are yet to be taken, and on the extent to which Scottish companies are able to secure contracts. The figures also assume that the full proposal of 750 MW is developed.

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

Summary

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

- The Company has provided adequate environmental information for the Scottish Ministers to judge the impacts of the Development;
- The Company's ES, SEIS and the consultation process has identified what can be done to mitigate the potential impacts of the Development;
- The matters specified in regulation 4(1) of the 2000 Regulations have been adequately addressed by means of the submission of the Company's ES and SEIS, and the Scottish Ministers have judged that the likely environmental impacts of the Development, subject to the conditions included in this consent (**Annex 2**), are acceptable;

- The Scottish Ministers are satisfied that the Development can be satisfactorily decommissioned and will take steps to ensure that where any decommissioning programme is required under the Energy Act 2004, such programme is prepared in a timely fashion by imposing a condition requiring its submission to the Secretary of State before the Commencement of the Development (**Annex 2**);
- The Scottish Ministers have considered material details of how the Development can contribute to local or national economic development priorities and the Scottish Government's renewable energy policies;
- The Scottish Ministers have considered fully and carefully the Application and accompanying documents, the SEIS, all relevant responses from consultees and the forty-seven (47) public representations received; and
- 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 MORL proposal, 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.

Regarding the Company's application for a declaration under section 36A of the Electricity Act to extinguish public rights of navigation in so far as they pass through places in territorial waters adjacent to Scotland where the structures of the Development are to be located, there were no objections received by the Scottish Ministers during the consultation to the making of such a declaration. The Scottish Ministers, therefore, consider that there are no reasons as to why a declaration under section 36A should not be made.

THE SCOTTISH MINISTERS' DETERMINATION

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT CONSENT** under section 36 of the Electricity Act for the construction and operation of the Development, with a permitted capacity of up to **750 MW** (as described in **ANNEX 1**).

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

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

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

The Scottish Ministers **MAKE A DECLARATION** under Section 36A of the Electricity Act to extinguish public rights of navigation in so far as they pass through places within territorial waters where the structures forming part of the Development are located (**Annex H**).

In accordance with section 36A(6)(b) of the Electricity Act, the Scottish Ministers request that the Company publicise the declaration, as soon as reasonably practicable, to bring it to the attention of persons likely to be affected by it.

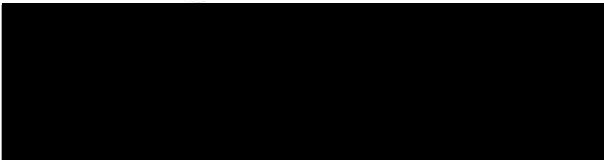
Copies of this letter, consent, and declaration, have been sent to The Highland Council as the nearest onshore Planning Authority and Moray Council. This letter and declaration have also been published on the Marine Scotland licensing page of the Scottish Government's website.

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

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

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

Yours sincerely,



JAMES McKIE

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

19th March 2014

Annex 1

DESCRIPTION OF THE DEVELOPMENT

An offshore wind turbine generating station, located as shown in Figure 1 below, with a gross electrical output capacity of up to 750 MW comprising:

1. not more than 140 three-bladed horizontal axis wind turbines each with a maximum blade tip height of up to 198.4 metres and a maximum rated capacity of up to 8MW;
2. for each wind turbine generator, a substructure (either a monotower or a tubular jacket structure) and foundations (either pin piles, suction piles or gravity bases);
3. for each wind turbine generator, a transition piece (including access ladders / fences and landing platforms), turbine tower, blades and nacelle; and
4. inter array cabling,

and, except to the extent modified by the foregoing, all as specified in the application letter and the project description contained in the accompanying Environmental Statement (section 7 of the ES as supplemented by section 4 of the SEIS) but subject always to the conditions specified in **Annex 2** of this consent.

A condition has been attached to the consent (condition 5) at **Annex 2**, which restricts the number and parameters of the WTGs. This is to provide that the Development may only be constructed in excess of specified parameters subject to the approval of the Scottish Ministers where the Company has demonstrated to the satisfaction of the Scottish Ministers that the predicted impact of the Development would not exceed a certain level.

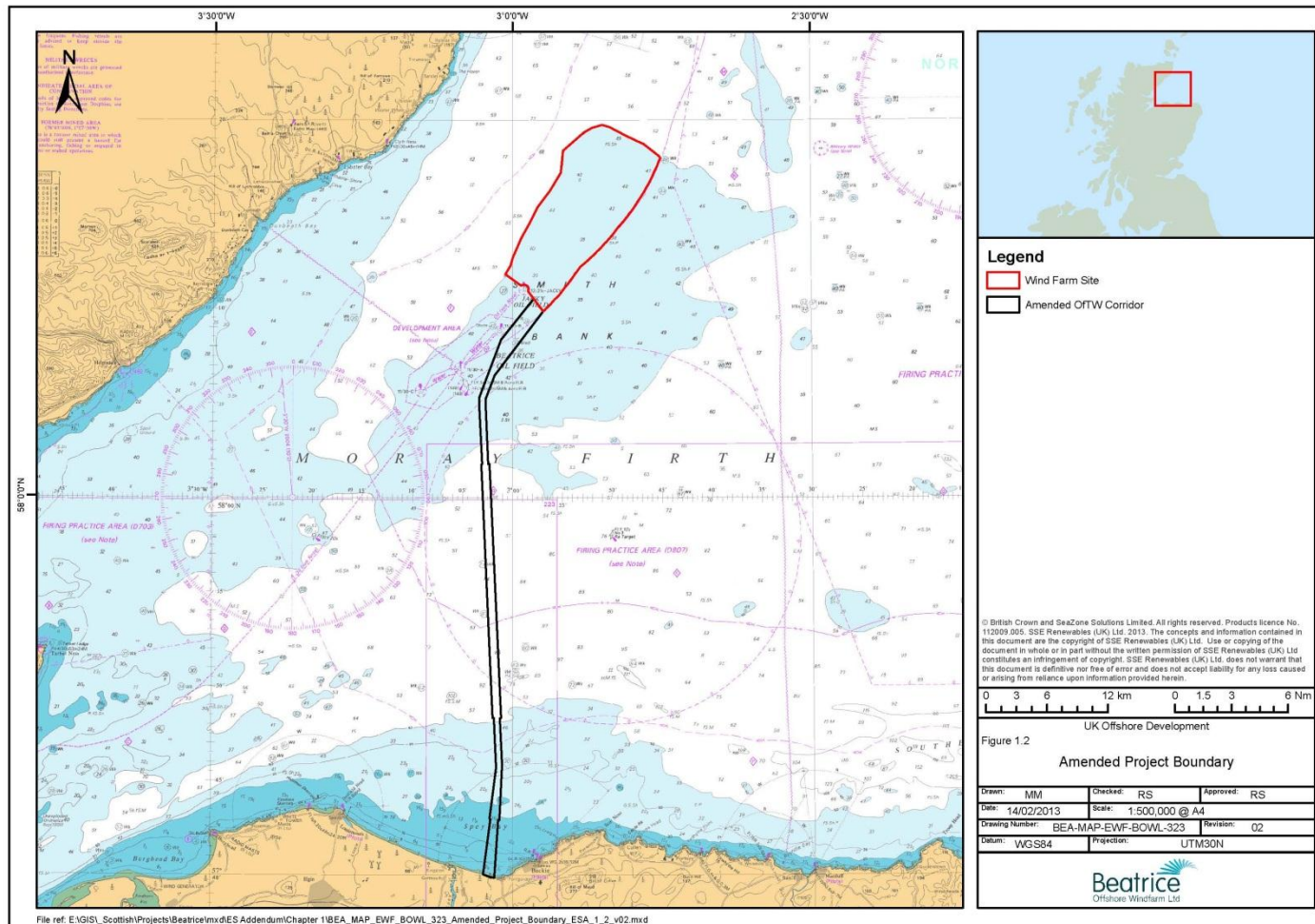


Figure 1. Development Location

ANNEX 2

CONDITIONS OF THE SECTION 36 CONSENT

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

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

Reason: To define the duration of the consent.

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

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

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

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

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

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

5. The Development must be constructed in accordance with the following wind turbine parameters except to the extent approved, in writing, by the Scottish Ministers under the second part of this condition:
- a. up to a total of 125 turbines;
 - b. a hub height of between 104.64 metres and 115.9 metres (measured from LAT);
 - c. a rotor diameter of up to 154 metres;
 - d. a blade speed of up to 11 revolutions per minute;
 - e. a blade width of up to 5 metres; and
 - f. a maximum blade pitch of 20 degrees.

Should the turbine parameters exceed any of those listed in a. to f. above, but remain within the limits of Annex 1, then the Development must only be constructed following approval by the Scottish Ministers, in writing. The Company must demonstrate, to the satisfaction of the Scottish Ministers, that any proposed alterations to parameters a. to f. above would not, taken together, increase the predicted annual collision mortality rate of the East Caithness Cliffs SPA great black-backed gull population attributable to the Development above a predicted 7 per annum, calculated using the agreed Collision Risk Model using the data gathered to prepare the Application.

Reason: To ensure there is no adverse effect on the integrity of the East Caithness Cliffs SPA in relation to great black-backed gulls.

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

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

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

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

8. The Development must be constructed and operated in accordance with the terms of the Application and related documents, including the accompanying ES, the Supplementary Environmental Information Statement ("SEIS") and Annex 1 of this letter, except in so far as amended by the terms of this section 36 consent.

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

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

Reason: To ensure access to the Site for the purpose of inspection.

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

The CoP must set out:

- a. The proposed date for Commencement of Development;
- b. The proposed timings for mobilisation of plant and delivery of materials, including details of onshore lay-down areas;
- c. The proposed timings and sequencing of construction work for all elements of the Development infrastructure;
- d. Contingency planning for poor weather or other unforeseen delays; and
- e. The scheduled date for Final Commissioning of the Development.

Reason: To confirm the timing and programming of construction.

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

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

Reason: To ensure the appropriate construction management of the Development, taking into account mitigation measures to protect the environment and other users of the marine area.

12. In the event that pile foundations are to be used, the Company must, no later than 6 months prior to the Commencement of the Development, submit a Piling Strategy (“PS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved PS (as updated and amended from time to time by the Company). Updates or amendments to the PS must be approved, in writing, by the Scottish Ministers. Any updates or amendments made to the PS by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The PS must include:

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

The PS must be in accordance with the ES and reflect any surveys carried out after submission of the Application. The PS must demonstrate how the exposure to and / or the effects of underwater noise have been mitigated in respect of the following species: bottlenose dolphin; harbour seal; Atlantic salmon; cod; and herring.

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

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

13. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Development Specification and Layout Plan ("DSLPL"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MCA, NLB, CoS, the JNCC, SNH, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed in accordance with the approved DSLPL (as updated and amended from time to time by the Company). Any updates or amendments made to the DSLPL by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

- a. A plan showing the proposed location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification / numbering, location of the substation platforms, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the Site;
- b. A list of latitude and longitude co-ordinates accurate to three decimal places of minutes for each WTG, this should also be provided as a GIS shape file using WGS84 format;
- c. A table or diagram of each WTG dimensions including - height to blade tip (measured above HAT), height to hub (measured above HAT to the centreline of the generator shaft), rotor diameter and rotation speed;
- d. The generating capacity of each WTG used on the Site and a confirmed generating capacity for the Site overall;
- e. The finishes for each WTG (see condition 20 on WTG lighting and marking); and
- f. The length and proposed arrangements on the seabed of all inter-array cables.

Reason: To confirm the final Development specification and layout.

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

signed off by at least one qualified landscape architect, instructed by the Company prior to submission to the Scottish Ministers.

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

15. The Company must, no later than 6 months prior to the Commencement of the Development, submit an Environmental Management Plan (“EMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved EMP (as updated and amended from time to time by the Company). Any updates or amendments made to the EMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

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

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

- a. Mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the ES and pre-consent and pre-construction surveys, and include the relevant parts of the CMS (refer to condition 11);
- b. Pollution prevention measures and contingency plans;
- c. Management measures to prevent the introduction of invasive non-native marine species;
- d. Measures to minimise, recycle, reuse and dispose of waste streams; and
- e. The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, the JNCC, SNH, SEPA, RSPB Scotland, MCA and NLB) with regular

updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development, submit an updated EMP, in writing, to cover the operation and maintenance activities for the Development to the Scottish Ministers for their written approval. Such approval may be given only following consultation with the JNCC, SNH, SEPA, RSPB Scotland and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The EMP must be regularly reviewed by the Company and the MFRAG (referred to in condition 28) over the lifespan of the Development, and be kept up to date (in relation to the likes of construction methods and operations of the Development in terms of up to date working practices) by the Company in consultation with the MFRAG.

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

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

- 16.** The Company must, no later than 6 months prior to the Commencement of the Development, submit a Vessel Management Plan ("VMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The Development must, at all times, be constructed and operated in accordance with the approved VMP (as updated and amended from time to time by the Company). Any updates or amendments made to the VMP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval

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

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

The confirmed individual vessel details must be notified to the Scottish Ministers in writing no later than 14 days prior to the Commencement of the Development, and thereafter, any changes to the details supplied must be notified, as soon as practicable, to the Scottish Ministers prior to any such change being implemented in the construction or operation of the Development.

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

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

17. The Company must, no later than 3 months prior to the Commissioning of the first WTG, submit an Operation and Maintenance Programme (“OMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH, SEPA, MCA, NLB, RSPB Scotland, the Planning Authority and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OMP must set out the procedures and good working practices for 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.

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

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

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

18. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Navigational Safety Plan (“NSP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with MCA, NLB and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers. The NSP must include, but not be limited to, the following issues:
- a. Navigational safety measures;
 - b. Construction exclusion zones;
 - c. Notice(s) to Mariners and Radio Navigation Warnings;
 - d. Anchoring areas;
 - e. Temporary construction lighting and marking;
 - f. Emergency response and coordination arrangements for the construction, operation and decommissioning phases of the Development; and
 - g. Buoyage.

The Company must confirm within the NSP that they have taken into account and adequately addressed all of the recommendations of the MCA in the current Marine Guidance Note 371, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance. The Development must, at all times, be constructed and operated in accordance with the approved NSP (as updated and amended from time to time by the Company). Any updates or amendments made to the NSP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

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

19. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Cable Plan (“CaP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH, MCA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The CaP must be in accordance with the ES. The Development must, at all times, be constructed and operated in accordance with the approved CaP (as updated and amended from time to time by the Company). Any updates or amendments made to the CaP by the Company must be submitted, in writing, by the Company to the Scottish Ministers for their written approval.

The CaP must include the following:

- a. Details of the location and cable laying techniques for the inter array cables;
- b. The results of survey work (including geophysical, geotechnical and benthic surveys) which will help inform cable routing;
- c. Technical specification of inter array cables, including a desk based assessment of attenuation of electro-magnetic field strengths and shielding;
- d. A burial risk assessment to ascertain if burial depths can be achieved. In locations where this is not possible then suitable protection measures must be provided;
- e. Methodologies for over trawl surveys of the inter array cables through the operational life of the wind farm where mechanical protection of cables laid on the sea bed is deployed; and
- f. Measures to address exposure of inter array cables.

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

20. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Lighting and Marking Plan (“LMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with MCA, NLB, CAA

and DIO and any such other advisors as may be required at the discretion of the Scottish Ministers. The LMP must provide that the Development be lit and marked in accordance with the current CAA and DIO aviation lighting policy and guidance that is in place as at the date of the Scottish Ministers approval of the LMP, or any such other documents that may supersede said guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in IALA Recommendation O-139 or any other documents that may supersede said guidance prior to approval of the LMP.

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

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

21. The Company must, prior to the erection of any WTGs on the Site, submit an Air Traffic Control Radar Mitigation Scheme ("ATC Scheme"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the DIO. No WTGs shall become operational until:

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

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

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

22. No turbine shall be erected until the Developer has agreed a Primary Radar Mitigation Scheme with the Operator which has been submitted to and agreed in writing by the Scottish Ministers in order to mitigate the impact of the development on the Primary Radar Installation at Allanshill.

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

23. No turbine shall be erected unless and until the approved Primary Radar Mitigation Scheme has been implemented and the development shall

thereafter be operated fully in accordance with such approved Scheme.

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

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

From Commencement of the Development until the date occurring 12 months after the Final Commissioning of the Development, any reasonable claim by any individual person regarding television picture loss or interference at their house, business premises or other building, which they claim is attributable to the Development and which is notified to the Company, must be investigated by a qualified engineer approved by the Scottish Ministers in consultation with the Highland Council. The Company is liable for any costs incurred by any such investigation. The results of any investigation must be submitted by the Company to the Scottish Ministers and the Highland Council within 2 months of completion of the investigation. Any impairment to the television signal shall be remedied by the Company, at its own expense, as soon as practicable to provide that the standard of reception at any affected property is equivalent to the baseline television and radio reception as existing at that property before the operation of the Development.

Reason: For the protection of the local amenity.

25. The Company must, prior to the Commencement of the Development, and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition 13), provide the positions and maximum heights of the WTGs and construction equipment to the UKHO for aviation and nautical charting purposes. The Company must, within 1 month of the Final Commissioning of the Development, provide the "as-built" positions and maximum heights of the WTGs to the UKHO for aviation and nautical charting purposes.

Reason: For aviation and navigational safety.

26. The Company must, no later than 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan ("TTP") in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Transport Scotland and any such other advisors as may be required at the discretion of

the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must, at all times, be constructed and operated in accordance with the approved TTP (as updated and amended from time to time, following written approval by the Scottish Ministers).

Reason: To maintain the free flow and safety of the Trunk Road network.

27. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Project Environmental Monitoring Programme (“PEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the JNCC, SNH, RSPB Scotland, WDC, ASFB and any other ecological advisors as required at the discretion of the Scottish Ministers. The PEMP must be in accordance with the ES as it relates to environmental monitoring.

The PEMP must set out measures by which the Company must monitor the environmental impacts of the Development. Monitoring is required throughout the lifespan of the Development where this is deemed necessary by the Scottish Ministers. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

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

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

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

- a. Pre-construction, construction (if considered appropriate by the Scottish Ministers) and post-construction monitoring surveys as relevant in terms of the ES and any subsequent surveys for:
 1. Birds;
 2. Cod;
 3. Herring;
 4. Sandeels;
 5. Diadromous fish;
 6. Benthic communities; and
 7. Seabed scour and local sediment deposition.
- b. The participation by the Company in surveys to be carried out in relation to marine mammals as set out in the MMMP; and

- c. The participation by the Company in surveys to be carried out in relation to regional and strategic bird monitoring;

All the initial methodologies for the above monitoring must be approved, in writing, by the Scottish Ministers and, where appropriate, in consultation with the MFRAG referred to in condition 28 of this consent. Any pre-consent surveys carried out by the Company to address any of the above species may be used in part to discharge this condition.

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

The Company must submit written reports of such monitoring surveys to the Scottish Ministers at timescales to be determined by the Scottish Ministers in consultation with the MFRAG. Subject to any legal restrictions regarding the treatment of the information, the results are to be made publicly available by the Scottish Ministers, or by such other party appointed at their discretion.

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

28. The Company must participate in any Moray Firth Regional Advisory Group ("MFRAG") established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish. Should a SSMEG be established (refer to condition 29), the responsibilities and obligations being delivered by the MFRAG will be subsumed by the SSMEG at a timescale to be determined by the Scottish Ministers.

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

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

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

30. Prior to the Commencement of the Development, the Company must at its own expense, and with the approval of the Scottish Ministers in consultation with the JNCC and SNH, appoint an Ecological Clerk of Works (“ECoW”). The term of appointment for the ECoW shall be from no later than 9 months post consent until the Final Commissioning of the Development.

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

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

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

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

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

32. The Company must continue its membership in the Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group (“MFOWDG-CFWG”), or any successor group formed to facilitate commercial fisheries dialogue to define and finalise a Commercial Fisheries Mitigation Strategy. As part of any finalised Commercial Fisheries Mitigation Strategy (“CFMS”), the Company must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development. Should it be deemed necessary by the MFOWDG-CFWG, investigations into alternative gear for the scallop fishing industry in the Moray Firth must form part of the CFMS. The CFMS to be implemented must be approved in writing by the Scottish Ministers. The Company must implement all mitigation measures committed to be carried out

by the Company within the CFMS so far as is applicable to the Development. Any contractors, or sub-contractors working for the Company, must co-operate with the fishing industry to ensure the effective implementation of said CFMS.

Reason: To mitigate the impact on commercial fishermen.

33. Prior to the Commencement of the Development, a Fisheries Liaison Officer ("FLO"), approved by Scottish Ministers, must be appointed by the Company for the period from Commencement of the Development until the Final Commissioning of the Development. The Company must notify the Scottish Ministers of the identity and credentials of the FLO before Commencement of the Development by including such details in the EMP (referred to in condition 15). The FLO must establish and maintain effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

The responsibilities of the FLO include, but not 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 overall project and any amendments to the CMS and site environmental procedures;
- b. Provision of information relating to the safe operation of fishing activity on the site of the Development; and
- c. Ensuring that information is made available and circulated in a timely manner to minimise interference with fishing operations and other users of the sea.

Reason: To mitigate the impact on commercial fishermen.

34. In the event that pile foundations are to be used, the Company must undertake herring surveys every year during the months of August and September commencing the first August and September following the date of this consent, up until, and including, the last August and September prior to Commencement of the Development, unless otherwise agreed in writing by the Scottish Ministers. The methodology of the herring surveys must be agreed, in writing, by the Scottish Ministers, following consultation with Marine Scotland Science, prior to the surveys commencing. The results of the herring surveys will be used to better inform the knowledge of spawning behaviour / characteristics of the Orkney / Shetland herring stock, thus allowing the Company to devise mitigation options to minimise noise impacts from piling activity on all life stages of herring and to inform the Company's PS (if a PS is required).

Following the results of the herring surveys undertaken in the last August and September prior to the Commencement of the Development, the Company

must submit, in writing, its mitigation strategy to minimise the noise impacts on herring from piling activity, to the Scottish Ministers for their written approval. Once the Scottish Ministers have provided their written approval, the mitigation must be deployed during the annual herring spawning period (August and September) in any year of construction involving piling. Failing any agreement on mitigation, a piling restriction not exceeding sixteen (16) days within the months of August and September will take place across the whole Development in any year of construction involving piling. The sixteen (16) days are not necessarily to be consecutive. The relevant sixteen (16) days of piling restrictions will be notified to the Company by the Scottish Ministers, in writing, at least 90 days prior to the first day of piling restriction.

Reason: To mitigate the risk to herring numbers in the Orkney/Shetland stock.

35. Any baseline cod survey undertaken between February and March in any given year prior to Commencement of the Development will remain valid as a pre-construction baseline cod survey provided the Commencement of the Development occurs no later than 5 years from completion of said baseline cod survey. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of the baseline cod survey for approval, in writing, by the Scottish Ministers.

If Commencement of the Development occurs later than 5 years after the initial baseline cod survey was carried out, the Company must undertake a further baseline cod survey between the months of February and March prior to the Commencement of the Development, in a survey area to be agreed with the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of any further baseline cod survey for approval, in writing, by the Scottish Ministers. Surveys must be carried out, as agreed by the Scottish Ministers, unless prior written approval is sought and obtained from the Scottish Ministers.

The Company must undertake a post-construction cod survey in the first February and March, occurring no earlier than 12 months, following the Final Commissioning of the Development. This cod survey must be undertaken in an area, to be agreed with the Scottish Ministers, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of any post-construction cod survey for approval, in writing, by the Scottish Ministers.

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

36. Any baseline sandeel survey undertaken between February and March in any given year prior to Commencement of the Development will remain valid as a pre-construction baseline sandeel survey provided the Commencement of the Development occurs no later than 5 years from completion of said baseline

sandeel survey. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of the baseline sandeel survey for approval, in writing, by the Scottish Ministers.

If Commencement of the Development occurs later than 5 years after the initial baseline sandeel survey was carried out, the Company must undertake a further baseline sandeel survey between the months of February and March prior to the Commencement of the Development, in a survey area to be agreed with the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of any further baseline sandeel survey for approval, in writing, by the Scottish Ministers. Surveys must be carried out, as agreed by the Scottish Ministers, unless prior written approval is sought and obtained from the Scottish Ministers.

The Company must undertake a post-construction sandeel survey in the first February and March, occurring no earlier than 12 months, following the Final Commissioning of the Development. This sandeel survey must be undertaken in an area, to be agreed with the Scottish Ministers, unless prior written approval is sought and obtained from the Scottish Ministers. A full survey report and data set must be submitted, in writing, to the Scottish Ministers within 3 months following completion of any post-construction sandeel survey for approval, in writing, by the Scottish Ministers.

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

37. The Company must, no later than 6 months prior to the Commencement of the Development, submit a Reporting Protocol which sets out what the Company must do on discovering any marine archaeology during the construction, operation, maintenance and monitoring of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may be given only following consultation by the Scottish Ministers with any such advisors as may be required at the discretion of the Scottish Ministers. The Reporting Protocol must be implemented in full, at all times, by the Company.

Reason: To ensure any discovery of archaeological interest is properly and correctly reported.

38. The Company must ensure no WTGs, offshore substation platforms or meteorological masts are erected within 2.5km of Beatrice Alpha, Bravo, Charlie or Jacky Platforms.

Reason: To ensure minimal impact on the use of helicopters for safe evacuation of offshore personnel in the Greater Beatrice Area.

Annex 3

DEFINITIONS AND GLOSSARY OF TERMS

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment.

“ABC” means the Acceptable Biological Change tool.

“the Application” means the Application letters and Environmental Statement submitted to the Scottish Ministers by the Company on 23 April 2012 and Supplementary Environmental Information Statement submitted to the Scottish Ministers by the Company on 29 May 2013.

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

“CFMS” means Commercial Fisheries Mitigation Strategy

“Collision Risk Model” means (i) application of the Band 2012 collision risk model (Using a collision risk model to assess bird collision risks for offshore windfarms, Report to The Crown Estate, SUSS-02, Band 2012), using the flight height distribution adjustment (option 3) to identify the total number of predicted great black-backed gull collisions; and (ii) multiplication of the output from (i) above by the total adjustment value of 0.07889.

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

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

“the Company” means Beatrice Offshore Windfarm Limited, 1 Waterloo Street, Glasgow, G2 6AY. Registration Number: SC350248

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

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

“the Development” means the Beatrice Offshore Wind Farm in the outer Moray Firth

“ECC” means East Caithness Cliffs Special Protection Area.

“ECoW” means Ecological Clerk of Works.

“EIA” means Environmental Impact Assessment.

“EMF” means electromagnetic fields.

“EPS” means European Protected Species.

“ES” means the Environmental Statement submitted to the Scottish Ministers by the Company on 23 April 2012 as part of the Application as defined above.

“EU” means European Union.

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

“FLO” means a Fisheries Liaison Officer.

“GIS” means Geographic Information System.

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

“GW” means gigawatt.

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

“HRA” means Habitats Regulations Appraisal.

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

“LIDAR” means Light Detection And Ranging

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

“MFOWDG-CFW” means Moray Firth Offshore Wind Developers Group - Commercial Fisheries Working Group. A group formed, and set up, to develop the Commercial Fisheries Mitigation Strategy, and as forum to facilitate on-going dialogue with the commercial fishing industry.

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

“MW” means megawatt.

“NCC” means North Caithness Cliffs Special Protection Area.

“nm” means nautical miles.

“NRA” means Navigational Risk Assessment.

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

“OPEX” means Operational Expenditure.

“PBR” means Potential Biological Removal.

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

“the Planning Authority” means Moray Council.

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

“PVA” means Population Viability Analysis

“SAC” means Special Area of Conservation.

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

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

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

“SEA” means Strategic Environmental Assessment.

“SEIS” means the Supplementary Environmental Information Statement submitted to the Scottish Ministers by the Company on 29 May 2013 as part of the Application as defined above.

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

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

“SPA” means Special Protection Area.

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

“SSSI” means Site of Special Scientific Interest.

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

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

“WGS84” means the World Geodetic System 1984.

“WTG” means wind turbine generator.

Organisations and companies

“ASFB” means The Association of Salmon Fishery Boards.

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

“CAA” means The Civil Aviation Authority.

“CoS” means The Chamber of Shipping.

“DECC” means Department of Energy and Climate Change.

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

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

“JNCC” means The Joint Nature Conservation Committee.

“MCA” means The Maritime and Coastguard Agency.

“MFSTP” means Moray Firth Sea Trout Project.

“MMO” means Marine Management Organisation.

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

“MPFSPG” means Moray and Pentland Firth Salmon Protection Group.

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

“MSS” means Marine Scotland Science.

“NATS” means National Air Traffic Service.

“NLB” means The Northern Lighthouse Board.

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

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

“RYA Scotland” means Royal Yachting Association Scotland.

“SAS” means Surfers Against Sewage.

“SCA” means – Scottish Canoe Association

“SEPA” means The Scottish Environment Protection Agency.

“SFF” means The Scottish Fisherman’s Federation.

“SMRU” means Sea Mammal Research Unit.

“SNH” means Scottish Natural Heritage.

“TCE” means The Crown Estate.

“UNECE” means United Nations Economic Commission for Europe.

“UKHO” means United Kingdom Hydrographic Office.

“WDC” means Whale and Dolphin Conservation.

Plans, Programmes and Statements

“CaP” means Cable Plan.

“CFMS” means Commercial Fisheries Mitigation Strategy.

“CMS” means Construction Method Statement.

“CoP” means Construction Programme.

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

“DS” means Design Statement.

“DSLPP” means Development Specification and Layout Plan.

“EMP” means Environmental Management Plan.

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

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

“LMP” means Lighting and Marking Plan.

“MES” means Moray Economic Strategy, October 2012.

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

“MMMP” means Marine Mammal Monitoring Programme.

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

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

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

“NSP” means Navigational Safety Plan.

“OMP” means Operation and Maintenance Programme.

“PEMP” means Project Environmental Monitoring Programme.

“PS” means Piling Strategy.

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

“TRRMP” means Television and Radio Reception Mitigation Plan.

“TTP” means Traffic and Transportation Plan

“VMP” means Vessel Management Plan.

Legislation

“Wild Birds Directive” means Council Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds, as amended and as codified by Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009.

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

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

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

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

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

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

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

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

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