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Mr Marcus Thor  
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16<sup>th</sup> March 2017

Dear Mr Thor,

**CONSENT GRANTED BY THE SCOTTISH MINISTERS UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF AN OFFSHORE GENERATING STATION, THE DOUNREAY TRÌ FLOATING WIND DEMONSTRATION PROJECT, APPROXIMATELY 6 km OFFSHORE FROM DOUNREAY, CAITHNESS**

**DECLARATION ISSUED 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**

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

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

The following applications have been made by Dounreay Trì Ltd (Company Number SC515140) having its registered office at Ostgotagatan 100, SE-166 64, Stockholm, Sweden (“the Company”), to the Scottish Ministers for:

- i. a consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of the Dounreay Trì Floating Wind Demonstration Project, approximately 6 km offshore from Dounreay, Caithness (“the Development”);
- ii. a declaration under section 36A of the Electricity Act 1989 to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area (in the main the territorial sea adjacent to Scotland)

where structures (but not, for the avoidance of doubt, the areas of sea between the structure) forming part of the Dounreay Trì Floating Wind Demonstration Project and offshore transmission works are to be located;

- iii. two marine licences under the Marine (Scotland) Act 2010 (“the 2010 Act”) for the deposit of any substance or object, and for the construction, alteration or improvement of any works in relation to the Dounreay Trì Floating Wind Demonstration Project; and
- iv. a Direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) (“the 1997 Act”) that planning permission for the ancillary onshore development be deemed to be granted.

## **THE APPLICATION**

Referring the application at i) and iv) above made by the Company, submitted on the 19<sup>th</sup> October 2016, for consent under section 36 (“s.36”) of the Electricity Act for the construction and operation of the Development approximately 6 km offshore from the coast of Dounreay, Caithness (“the Application”) with a maximum generation capacity of 12 Megawatts (“MW”), and for a Direction under section 57(2) of the 1997 Act that planning permission for the ancillary shore development be deemed to be granted. (Figures 1,2 and 3 of **Annex 1**)

At this time, the Company (“Dounreay Trì Ltd”) also applied for a declaration under section 36A of the Electricity Act, application ii, to extinguish public rights of navigation so far as they pass through those places within the Scottish marine area (in the main the territorial sea adjacent to Scotland) where structures (but not, for the avoidance of doubt, the areas of sea between those structures) forming part of the offshore wind farm and offshore transmission works are to be located.

In this letter, “the Development” means the proposed Dounreay Trì Floating Wind Demonstration Project electricity generating station as described in **Annex 1** and shown in the Figures within that Annex of this letter.

The Application consisted of an application letter, Environmental Statement (“ES”), and two supporting marine licence application forms. The Application is to construct and operate one single floating, semi-submersible, column-stabilised platform supporting two offshore demonstration WTGs each with an installed capacity of up to 6 MW. A subsea cable will be laid to connect the turbines to the onshore elements of the Development.

The total onshore elements consisting of a cable joint transition bay and a substation or switchgear, and underground cabling to be located at or near to the existing Dounreay 132/33/11kV substation.

The elements of the Development which relate to the Direction under Section 57 (2) of the 1997 Act and for which deemed planning has been requested be deemed to be granted are the cable joint transition bay and a substation or switchgear and underground cabling.

In tandem with the consultation on the applications i and iv, MS-LOT has consulted on two marine licence applications, application iii, also submitted on 19<sup>th</sup> October 2016.

## **STATUTORY AND REGULATORY FRAMEWORK**

### **LEGISLATION**

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

The generation, transmission, distribution and supply of electricity are reserved matters under Schedule 5, Part II, section D1 of the Scotland Act 1998. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (“the 1999 Order”) executively devolved section 36 consent functions under the Electricity Act 1989 (as amended) (“the Electricity Act”) (with related Schedules) to the Scottish Ministers. The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 revoked the transfer of section 36 consent functions as provided under the 1999 Order and then, one day later, re-transferred those functions, as amended by the Energy Act 2004, to the Scottish Ministers in respect of Scotland and the territorial waters adjacent to Scotland and extended those consent functions to a defined part of the Renewable Energy Zone beyond Scottish territorial waters (as set out in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005).

#### **The Electricity Act 1989**

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

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

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<sup>1</sup> S.36(2) modified by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations)(Scotland) Order 2002

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 application by an applicant when making an application for consent under section 36 of the Electricity Act, 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; or restrict rights of navigation or make them subject to conditions. The power to extinguish public rights of navigation extends only to renewable generating stations situated in territorial waters.

Under section 36B of the Electricity Act the Scottish Ministers may not grant a consent in relation to any particular offshore generating station activities if they consider that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of, or danger to, navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on. In determining this issue the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already subject to s.36 consent or are activities for which it appears likely that such consents will be granted.

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

Paragraph 2(2) of Schedule 8 to the Electricity Act provides that where a relevant planning authority notifies the Scottish Ministers that they object to an application for s.36 consent and where they do not withdraw their objection, then the Scottish Ministers must cause a Public Local Inquiry (“PLI”) 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 PLI.

An application for deemed planning permission was made for the ancillary onshore elements of the Development. Section 21 of the Growth and Infrastructure Act 2013

amended Section 57(2) of the the 1997 Act to allow Scottish Ministers to direct that planning permission is deemed to be granted for the ancillary onshore components and related onshore infrastructure for a marine based electricity generating station consented under s.36 of the Electricity Act.

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

MS-LOT, on behalf of the Scottish Ministers consult with the planning authorities most local to the Development, which in this instance were The Highland Council (“THC”) and Orkney Islands Council (“OIC”). The Councils did not object to the Applications but suggested conditions in relation to onshore construction environment management documents, the removal of unused turbines and associated infrastructure, the publication of underwater cable and infrastructure locations for the benefit of local fishermen, design plans, project environment monitoring programme, contracting of an Environmental Clerk of Works, lighting and marking plans, a decommissioning plan, a restoration plan and noise.

If the Councils had objected to the Applications, and even then if they did not withdraw their objections, the Scottish Ministers would have been statutorily obliged to hold a PLI under paragraph 2(2) of Schedule 8 to the Electricity Act.

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

The Scottish Ministers are satisfied that all the necessary tests set out within the Electricity Act have been met through the assessment of the Application and all procedural requirements have been complied with. The Company does not currently hold a generation licence, they intend to apply for one should they receive consent. Your officials have approached matters on the basis that Schedule 9, paragraph 3(1) obligations as apply to licence holders and the specified exemption holders should also be applied to the Company if the generation licence is granted.

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

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

(Environmental Impact Assessment) Regulations 2007 (as amended) (“the 2007 Regulations”).

An ES has been produced and the applicable procedures regarding publicity and consultation, all as laid down in the 2000 Regulations and the 2007 Regulations, have been followed.

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

MS-LOT has also consulted a wide range of relevant organisations, including colleagues within the Scottish Government on the Applications and ES in accordance with the regulatory requirements.

The Environmental Impact Assessment Consent Decision (“EIA Consent Decision”) for the Development has been given consideration under the Marine Works Regulations 2007. The EIA Consent Decision will be published and available on the Marine Scotland Licensing page of the Scottish Governments website.

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

### **The Habitats Directive and the Birds Directive**

Council Directive 92/43/EEC of 21<sup>st</sup> May 1992 on the conservation of natural habitats and wild fauna and flora (as amended) (“the Habitats Directive”), provides for the conservation of natural habitats and of wild flora and fauna in the Member States’ European territory, including offshore areas such as the proposed site of the Development. It promotes the maintenance of biodiversity by requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation (“SAC”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

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

“6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to an Appropriate Assessment (“AA”) of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

Council Directive 79/409/EEC of 2<sup>nd</sup> April 1979 on the conservation of wild birds (as amended and codified) (“the Birds Directive”), applies to the conservation of all species of naturally occurring wild birds in the member states’ European territory, including offshore areas such as the proposed site of the Development and it applies to birds, their eggs, nests and habitats. Under Article 2, Member States are obliged to “take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.” Article 3 further provides that “[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve maintain or 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 Birds Directive provides inter alia as follows:

- “1. The species mentioned in Annex I [of that Directive] shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. [...]
2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I [of that Directive], bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and

staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.[...]

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”

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

The 1994, the 2007 and the 2010 Regulations (“the Habitats Regulations”) clearly implement the obligation in art. 6(3) & (4) of the Habitats Directive, which by art. 7 applies in place of the obligation found in the first sentence of art. 4(4) of the Birds Directive. In each case the “competent authority”, which in this case is the Scottish Ministers, is obliged to “make an Appropriate Assessment (“AA”) of the implications for the site in view of the site’s conservation objectives”. Such authority is also obliged to consult SNH and, for the purpose of regulation 61 of the 2010 Regulations, to have regard to any representations made by SNH Regulation 61(5) and (6) of the 2010 Regulations is as follows:

“(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of a site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.”

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

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

Stage 2 - In light of the AA of the project’s implications for the site in view of the site’s conservation objectives, the competent authority must ascertain to the

requisite standard, that the project will not adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the consent is proposed to be granted.

In line with advice from SNH, and to ensure compliance with European Union obligations under the Habitats Directive and the Birds Directive, due consideration has been given to all of the Special Protection Areas (“SPAs”) and SACs, the result of which has identified no Likely Significant Effects (“LSE”) on any qualifying interest. MS-LOT, on behalf of the Scottish Ministers, undertook an AA and concluded that the Development will not adversely affect the integrity of any of the assessed SACs or SPAs, either alone or in combination with other plans or projects. Conditions can also be imposed on any grant of consent ensuring that the sites are protected from damage.

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

### **Marine (Scotland) Act 2010**

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

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

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

### **Climate Change (Scotland) Act 2009**

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

Due to the nature of the demonstration facility, and the unknown performance data for the new turbine designs, it is not possible to accurately predict the energy that will

be produced by the Development over the lifespan of its consent of 25 years and therefore a calculation of the displacement of CO<sub>2</sub> cannot be made. However, based on Scottish Government's published Renewable Electricity Output Calculator<sup>2</sup>, it can be estimated that, depending on the fuel type displaced, 11,198 tonnes (all fuels including nuclear and renewables) and 31,030 tonnes (coal) of CO<sub>2</sub> could be saved. It is also estimated that the WTG's with a maximum output of 12 MW of electricity will supply sufficient energy to meet the needs of 7,748 households in Scotland.

Any energy generated from the Development will result in the displacement of CO<sub>2</sub> generated from non-renewable sources and the aim of the Development, to further the development of the UK offshore wind industry, will therefore contribute to the reduction of CO<sub>2</sub> emissions from UK power generation in the long term.

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

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

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

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

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

## **MARINE AND TERRESTRIAL POLICIES**

### **Marine Policy**

#### **The UK Marine Policy Statement 2011**

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

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<sup>2</sup> <http://www.gov.scot/Topics/Statistics/Browse/Business/Energy/onlinetools/ElecCalc>

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

Chapter 3, paragraphs 3.3.1 to 3.3.5, 3.3.16 to 3.3.19, 3.3.22 to 3.3.24, 3.3.26, and 3.3.29 to 3.3.30 of the Statement are relevant and have been considered as part of the assessment of the Application.

The Statement introduced the framework for preparing Marine Plans and taking decisions affecting the marine environment. It clearly states that the new system of marine planning introduced across the UK will integrate with terrestrial planning. Existing terrestrial planning regimes generally extend to mean low water spring tides (“MLWS”). The marine plan area boundaries extend up to the level of mean high water spring tides (“MHWS”). The Statement also makes it clear that the geographic overlap between the Marine Plan and existing plans will help organisations to work effectively together and to ensure that appropriate harmonisation of plans is achieved. MS-LOT has, accordingly, had regard to the terms of relevant terrestrial planning policy documents and Plans when assessing the Applications for the purpose of ensuring consistency in approach.

The Scottish Ministers have had regard to the Statement when assessing the Application and consider that the Development accords with the Statement.

### **Scotland’s National Marine Plan**

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

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

Of particular relevance to this proposal are:

- Chapter 4 policies ‘GEN 1-21’, which guide all development proposals;
- Chapter 6 Sea Fisheries, policies ‘FISHERIES 1-3’;

- Chapter 8 Wild Salmon and Diadromous fish, policy ‘WILD FISH 1’;
- Chapter 11 Offshore Wind and Marine Renewable Energy, policies, ‘RENEWABLES, 1, 3-10’;
- Chapter 12 Recreation and Tourism, policies, ‘REC & Tourism 2 and 6; and
- Chapter 14 Submarine Cables, policies ‘CABLES 1-4’.

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

### **Other Marine Policy**

The Development will contribute 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. Scotland has considerable potential for offshore renewable energy developments. Estimates indicate that Scotland has up to 25% of Europe’s offshore wind potential (Scotland’s Renewable Resource 2001). Offshore wind is seen as an integral element in Scotland’s contribution towards action on climate change. The development of offshore wind also represents one of the biggest opportunities for sustainable economic growth in Scotland for a generation. Scotland’s ports and harbours present viable locations to service the associated construction and maintenance activities for offshore renewable energy. In addition, Scottish research institutions provide a base of academic excellence for delivering technological advancements and technology transfer and are also well placed to benefit from the creation of this new industry around Scotland.

### **Terrestrial Policy**

The Scottish Ministers have had regard to the terms of relevant terrestrial planning policy documents and Plans.

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

### **Scottish Planning Policy**

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

Whilst it makes clear that the criteria against which applications should be assessed will vary depending upon the scale of the development and its relationship to the characteristics of the surrounding area, it states that these are likely to include impacts on; landscapes and the historic environment; ecology (including birds, mammals and fish); biodiversity; 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 Applications, the ES and within the responses received to the consultations by the relevant planning authorities, SEPA, SNH, and other relevant bodies.

### **National Planning Framework 3**

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

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

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

Chapter 3 paragraphs 3.1, 3.2, 3.4, 3.6, 3.8, 3.9 of NPF3 is of particular relevance to the Application.

### **Strategic and Local Development Plans**

#### **The Highland-wide Local Development Plan ("HwLDP")**

The Highland-wide Local Development Plan (HwLDP) (2012) sets out the general policies for 2.24 the Highland Council area. Of note is the aspiration that by 2030, Caithness and Sutherland "have become an international centre of excellence for marine renewables – the Pentland Firth will be the location for marine renewables; related facilities and industries will be available locally."

Policy 28 – Sustainable Development supports developments which promote and enhance the social, economic and environmental wellbeing of the people of Highland.

Policy 29 – Design Quality and Place-Making establishes the expectations of that new developments should be designed to make a positive contribution to the architectural and visual quality of the place in which it is located.

Policy 31 – Developer Contributions establishes a requirement for proposed developments which create the need for improved public services, facilities or infrastructure to make a fair and reasonable contribution in cash or kind towards these additional costs or requirements.

Policy 49 – Coastal Development sets a framework for ensuring the sustainable use and development of the coastal areas. Development proposals for the coast or for installations in near shore waters should, in both their location and their design, show consideration to the range of existing interests ensuring best use of resources taking account of existing and planned marine activities and development. Proposals should not have an unacceptable impact on the natural, built or cultural heritage and amenity value of the area.

Policy 51 – Trees and Development supports developments which promote significant protection to existing hedges, trees and woodlands on and around development sites. The acceptable developable area of a site is influenced by tree impact, and adequate separation distances will be required between established trees and any new development. Where appropriate a woodland management plan will be required to secure management of an existing resource

Policy 55 – Peat and Soils establishes that unacceptable disturbance of peat will not be permitted unless it is shown that the adverse effects of such disturbance are clearly outweighed by social, environmental or economic benefits arising from the development proposal. Where development on peat is clearly demonstrated to be unavoidable then The Council may ask for a peatland management plan to be submitted which clearly demonstrates how impacts have been minimised and mitigated.

Policy 56 – Travel requires new developments to include sufficient information with the application to enable the Council to consider any likely on- and off- site transport implications of the development.

Policy 57 Natural, Built and Cultural Heritage considers impacts on natural, built and cultural heritage designations and features. These are split into three categories including local/regional importance (e.g. North Cliffs Special Protection Area (SPA) and Sites of Special Scientific Interest (SSSI) at Red Point Coast, Sandside Bay, and Strathly Coast), national importance and international importance.

Policy 58 – Protected Species requires a survey of the site and surrounding area, to be carried out to establish if a protected species may be present at the site or may be affected by the proposed development.

Policy 59 – Other Important Species requires the consideration of the presence of and adverse effects on any Other Important species which may be individually and/or cumulatively affected by the development.

Policy 60 – Other Important Habitats seeks to safeguard the integrity of features of the landscape which are of major importance because of their linear and continuous structure or combination as habitat “stepping stones” for the movement of wild fauna and flora.

Policy 61 – Landscape requires new developments to be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed.

Policy 63 – Water Environment supports proposals for development that do not compromise the objectives of Council Directive 2000/60/EC of 23<sup>rd</sup> October 2000 establishing a framework for Community action in the field of water policy (the Water Framework Directive);

Policy 67 - Renewable Energy Developments supports the principle of renewable energy development. This support, however, is subject to clearly addressing important issues and criteria.

Policy 72 – Pollution details that proposals resulting in significant pollution such as noise (including aircraft noise), air, water and light will only be approved where a detailed assessment report on the levels, character and transmission and receiving environment of the potential pollution is provided by the applicant to show how the pollution can be appropriately avoided and if necessary mitigated

Policy 77 – Public Access requires new developments which affects a route included in a Core Paths Plan or an access point to water, or significantly affects wider access rights to establish suitable alternative access..

The Highland Coastal Development Strategy: identifies the Highlands and Islands as containing some of the world’s best renewable energy resources in terms of wind, wave and tidal currents. The north coast in particular has the greatest potential for marine renewable energy generation due to its exposure and the strong tidal flows through the Pentland Firth. development of the marine renewables industry as a key opportunity for the North Coast due to the potential energy generation. The vision is to strengthen an already diverse renewable energy industry in the Highlands and Islands and develop a truly mixed renewable energy economy which supports the development of wave and tidal energy devices, biomass and deep-water offshore wind farms. This is also considered important for retaining a coastal population.

### **The Pilot Pentland Firth and Orkney Waters Marine Spatial Plan**

This plan sets out an integrated planning policy framework to guide marine development, activities and management decisions in the Plan area.

## **General Policies**

|                   |  |
|-------------------|--|
| General Policy 1A | Sustainable development  |
| General Policy 1B | Supporting sustainable social and economic benefits                |
| General Policy 1C | Safeguarding the marine ecosystem                                  |
| General Policy 2  | The well-being, quality of life and amenity of coastal communities |
| General Policy 3  | Climate change   |
| General Policy 4A | Nature conservation designations                                   |
| General Policy 4B | Protected species  |
| General Policy 4C | Wider biodiversity   |
| General Policy 4D | Landscape and seascape   |
| General Policy 4E | Geodiversity   |
| General Policy 5A | Water environment  |
| General Policy 5B | Coastal processes and flooding                                     |
| General Policy 7  | Integrating coastal and marine                                     |
| General Policy 8A | Noise  |
| General Policy 8B | Waste and marine litter  |
| General Policy 9  | Invasive non-native species  |

## **Sectoral Policies**

|                   |  |
|-------------------|--|
| Sectoral Policy 1 | Commercial fisheries   |
| Sectoral Policy 4 | Renewable energy generation                                  |
| Sectoral Policy 5 | Recreation, sport, leisure and tourism                       |
| Sectoral Policy 6 | Marine transport   |
| Sectoral Policy 7 | Ports, harbours and dredging                                 |
| Sectoral Policy 8 | Pipelines, electricity and telecommunications infrastructure |

## **Caithness Onshore Supplementary Guidance November 2016**

Onshore Wind Energy Supplementary Guidance is a material consideration in the determination of planning applications. This Guidance requires the proposal to be assessed, as noted above, within Policy 67 of the HwLDP. The Supplementary Guidance also expands on the considerations / criteria set out in the HwLDP policy.

## **Caithness and Sutherland Local Development Plan: Modified Proposed Plan**

The proposed onshore site is within area identified for Energy Business Expansion in the Plan's strategy. The Plan also refers to a "strong, diverse and sustainable economy characterised as being an internationally renowned centre for renewable energy, world class engineering, land management, sea based industries and a tourist industry that combines culture, history and adventure". One of the overall aims is to ensure that development helps to maintain and grow a strong and diverse Caithness and Sutherland Economy. The Proposed Plan confirms the boundaries of the Special Landscape Areas.

## **Highland Council Supplementary Planning Policy Guidance**

The following Supplementary Guidance forms a statutory part of the development plan and are pertinent to the determination of the Application:

- Flood Risk and Drainage Impact Assessment: Supplementary Guidance (January 2013);
- Highland Historic Environment Strategy: Supplementary Guidance (March 2013);
- Managing Waste in New Developments: Supplementary Guidance (March 2013);
- Sustainable Design Guide: Supplementary Guidance (January 2013); and
- Highland Statutorily Protected Species: Supplementary Guidance (March 2014).

**The Orkney Local Development Plan 2014 and The Proposed Orkney Development Plan (with minor modifications) 2016 and Supplementary Guidance.**

The adopted and proposed Local Development Plans for Orkney support the principle of renewable energy and sustainable development to deliver Scottish Government policy for renewable energy.

**Summary**

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

**CONSULTATION EXERCISE**

**Consultation on the Application and Environmental Statement**

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

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

The formal consultation process undertaken by the Scottish Ministers, which related to the application for s.36 consent (application i), the marine licence applications (application iii) and the ES, and the application that deemed planning permission be granted for the ancillary onshore development (application iv) commenced on 19<sup>th</sup> October 2016. Public notices were placed in the press and Edinburgh Gazette to notify any interested parties. All documents were made publicly available.

MS-LOT consulted a wide range of relevant organisations, including colleagues within the Scottish Government, on the Applications and the ES. In accordance with the statutory requirements, as part of the overall consultation, MS-LOT sought the

advice of the SNH, SEPA and the planning authorities most local to the Development, THC, and OIC.

### **Public Representations**

A total of seven (7) valid public representations were received by Marine Scotland from members of the public during the course of the public consultation exercise. Of these, five representations objected to the Development and two supported the Development.

The five (5) representations making objections, which were received from local residents, raised issues included, but were not limited to, visual impacts, impacts on tourism, impacts on house prices which would have a negative effect upon the area and loss of amenities, the number of actual jobs which would be created and the impact of onshore and offshore wind farms being built without consideration for the local residents

Other issues raised were related to the impacts on the migration of whales, ornithological concerns, the impact of onshore and offshore wind farms and that the Development would set a precedent of wind farms being built throughout the area without consideration of the impact this would have in the locals residents.

Regarding visual impact, the Company have confirmed the potential to site the Development further offshore.

Regarding employment, the Company have confirmed that as the project would be serviced from Scrabster Harbour, seven full time jobs would be created and over the 25 year period the Development would be operated, other jobs would be created and supported.

Regarding environmental impacts, the Company have confirmed that the ES had fully assessed the concerns surrounding fishing, marine ornithology, marine mammals and shipping and navigation. In addition the Company confirmed that, based on recent assessments, house process in Scotland had been showed to be unaffected by the development of wind turbines.

The Company stated that the provision of any community benefits is an additional voluntary measure provided by the Developer, and confirmed there was no reference to such funds within the application.

Two (2) representations were received in support of the Development. The representations considered that the proposal would bring skilled employment to the local economy, opportunities for young people to be trained and involved in the project and could see the growth of a new industry making use of an abundant natural resource. In addition, the representations supported using offshore wind as less contentious than onshore wind, with the advantage of much greater efficiency and reliability.

Scottish Ministers have recorded, reviewed, and taken into consideration these representations when determining this Application.

## **Objections**

No objections were received from stakeholders.

Objections from members of the public are being maintained.

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

## **Material Considerations**

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

The Scottish Ministers are content that the material concerns have been addressed in the Application and within the responses received to the consultations by the planning authorities most local to the Development, SEPA, SNH, and other relevant bodies.

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

## **Public Local Inquiry (“PLI”)**

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

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

Neither of the planning authorities (THC and OIC) consulted on the Applications, raised any objection to the Development, therefore a PLI is not automatically triggered in this instance.

In addition, paragraph 3(2) of Schedule 8 to the Electricity Act provides that where objections, or copies of objections, have been sent to the Scottish Ministers in pursuance of the Electricity (Applications for Consent) Regulations 1990 in those cases where a PLI must not be convened by them in terms of paragraph 2(2) of Schedule 8 (i.e. those cases where the planning authority either has not objected, or

objected and withdrawn their objection or where the “relevant planning authority” is the Scottish Ministers on account of the fact that all of the development being located at sea), then the Scottish Ministers “shall consider those objections together with all other material considerations” with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

### **Summary**

In addition to the issues raised by the representations, the Scottish Ministers have considered all other material considerations with a view to determining whether a PLI 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 AA and in the consultation responses received from the planning authorities most local to the Development, THC, OIC, SEPA, SNH and other relevant bodies, together with the 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:

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

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

- the Environmental Statement;
- the representations from the Company;
- the representations from consultees;
- the representations made from members of the public; and
- the Appropriate Assessment

for this Application, the Scottish Ministers have decided that it is not appropriate to cause a public inquiry to be held.

### **THE SCOTTISH MINISTERS' CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

The Scottish Ministers are satisfied that the ES has been produced in accordance with the 2000 Regulations and the 2007 Regulations and the applicable procedures regarding publicity and consultation laid down in the 2000 and 2007 Regulations have been followed.

The Scottish Ministers have taken into consideration the environmental information, including the ES and the representations received from the consultative bodies, including THC, OIC, SEPA and SNH and from all other persons.

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

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

When considering an application for a s.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.

Having carried out the AA (considering all the advice received from SNH, Marine Scotland Science ("MSS") and other relevant consultees) it can be stated with confidence that the Development, will not adversely affect site integrity of any the identified SPAs or SACs assessed to have connectivity with the Development.

The Scottish Ministers are convinced that 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.

In Scotland Scottish Ministers are currently in the process of identifying a suite of new marine SPAs. In 2014 advice was received from the Statutory Nature Conservation Bodies on the sites most suitable for designation and at this stage they became draft SPAs ("dSPAs"). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA ("pSPA") and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPAs is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45).

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

In accordance with regulation 63 of the 2010 Regulations the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPAs, review their decisions authorising the proposal. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated if LSE is identified (as they are currently pSPAs their conservation

objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

## **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 on the qualifying interests as given in the Appropriate Assessment.

### **Seascape, Landscape and Visual Impacts**

SNH, the Scottish Ministers' statutory advisors on visual impacts on designated landscape features, were consulted on the Application for the Development. SNH did not object to the Development and deferred advice on this matter to THC.

However, SNH confirmed that the Development is unlikely to significantly impact on or affect the integrity of nationally protected National Scenic Areas ("NSAs") or Wild Land Areas ("WLAs"). SNH confirmed that due to the relatively small footprint of the development and distance from the NSA significant effects are mitigated. With regard to the WLA, SNH agreed with the ES that there would be minor or negligible impact.

SNH considered the potential for moderate and ergo, significant effects, on sections of coastal character and high sensitivity visual receptors extending between Local Coastal Character Areas ("LCCAs"), However, these impacts will be largely localised and, therefore, do not trigger issues of national interest.

SNH disagreed that the seascape receptors (LCCAs) only including offshore developments. SNH stated that to omit consideration of terrestrial wind energy proposals currently being considered along the seaboard within or adjacent to the LCCAs means that the cumulative assessment is incomplete, and results of assessment are therefore misleading.

SNH stated that as the location of the Development (offshore) and relatively small footprint avoids complex interactions with the coast, this reduces or avoids intrusion on the experience of the indented coastline and bays. However SNH confirmed that in contrast, the scale and colour of the turbines and platform heightens visibility.

SNH considered that there will be moderate significant impact on local coastal character, which partially relates to the uncharacteristic context of the seascape site and scale of the turbines. However this is mitigated by the lower sensitivity of the coastal character and the context of the type of wind and wider energy production infrastructure and turbines within the area. SNH confirmed that the level of sensitivity on the landscape increases markedly immediately west of the area due to the costal and landscape character increasing in wildness qualities.

The view of SNH was that the visual material information provided in the impact assessment was poor in quality. The clarity of rendering makes the closer views difficult to discern, the visualisations underestimate the visibility of the turbines and colour of the platform (bright yellow) will contrast with the sea surface. However as these impacts are largely localised they do not trigger issues of national interest to SNH.

THC stated that the standard of information presented is not in accordance with THC standards and as a result THC does not consider that the assessment presented to be robust. However, THC acknowledged that visualisations in the ES are based on a worst case scenario and that the assessment is a subjective matter. THC stated that given the small footprint of the offshore site, alongside the wider panorama of coast and sea, the impact can be considered as acceptable.

THC concluded that the proposal will introduce a new feature to the coastline and considered that this will have localised significant visual impacts. However, THC stated that adverse visual impacts may be successfully mitigated by the reduction in height of the turbines and siting of these in the north west of the area under consideration

THC's conclusion was that the landscape and seascape effects depicted in the ES were understated, but considered acceptable as these are judged to be relatively limited in extent. The visual impacts outlined in the ES were based on a realistic worst case scenario, with the largest of the turbines at the closest point to the shore. Concerns have been raised about the significance of visual impacts. Whilst acknowledging the concerns of third parties, SNH, THC considered the localised visual impacts of the proposal to be acceptable on balance.

When assessing a development, THC advised that the cumulative effect of the Development together with similar developments in proximity is required and provided details of projects in the wider area that are operational, approved or have been submitted but not yet determined. However, given the impacts are based on relatively small areas of character type, these impacts are judged to be acceptable.

OIC were pleased to see that the ES considered the visual impacts of the development on the west coast of Orkney along with that of the NSA (Hoy and West Mainland Orkney) and the Wild Land Area of Hoy.

OIC were content that the ES assessed the development to be acceptable taking account of the relevant matters and impacts on landscape/seascape, and confirmed that, considering the proximity of the development to Orkney and the ferry routes to and from Orkney, the development will not have a significant adverse visual impact.

The Melvich Community Council ("MCC") felt that the developers of this proposal have clearly not shown consideration of the visual impact of the turbines to the area. MCC confirmed that the turbines, being of such a significant height, would have a substantial impact on the view across to Orkney, and this would put off any individuals who were considering moving to Melvich and Portskerra in the future.

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

### **Coastal character assessment**

Regarding the impact on coastal character, SNH stated that they agreed overall with the conclusion of no significant impacts and therefore required no specific mitigation. However SNH did refer to pre-application, in regard to the need to calculate seabed disturbance, not just in area, but also in volume; and also to calculate suspended sediment created if dredging for the clump weight plinth. This advice considered it unlikely that that such calculation of volumes would alter the judgement for all effects that magnitude is Negligible. Therefore this would not trigger identification of a significant effect requiring specific mitigation. SNH also recognised that the greatest potential for suspended sediment would come from jetting for export cable burial, and will have a magnitude of Negligible or perhaps Low. Therefore, suspended sediment from the dredging will have no significant effect requiring specific mitigation.

SNH confirmed that they have no reason to believe seabed processes and land forms in the project area are regionally important, or are not robust to potentially altered hydrodynamics. Therefore they are of Low vulnerability, and would not require specific mitigation.

SNH reiterated that their advice explicitly stating receptor vulnerability should be taken up, with the exception of the offshore component of "Changes... due to altered hydrodynamics" which is relevant to the queries raised regarding adequacy of the bathymetry data used. SNH have confirmed that due to revisions to the text their opinions 'have firmed' and this data was adequate for the assessment.

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

### **Marine Mammal/European Protected Species ("EPS") Impacts**

Whale and Dolphin Conservation ("WDC") stated that they felt that the Development would have negligible level of impact on marine mammals in the area as long as pile driving was not required. Should pile driving be required then an addendum to the ES and Habitats Regulation Appraisal ("HRA") would be required. WDC requested involvement with the development of a Vessel Management Plan ("VMP") and that Marine Mammal Observers ("MMOs") be used at all times through construction and deployment of the wind farm floating platform and cable laying.

Discussions between WDC and the Company have been on-going regarding the type of installation being utilised, the use of high definition aerial video surveys being

undertaken and monitoring requirements to be applied. These discussions have resulted in WDC withdrawing their request for MMOs to be present on the installation vessels.

SNH, agreed with the general conclusions of the ES, that the impacts on cetaceans were likely to be minor/negligible based on the sensitivities of the features and (estimated) duration/magnitude of the activities. Taking into account the scale of the project, and the information provided, SNH broadly agreed with the general conclusions of the ES, that the impacts on marine mammals and benthic features were likely to be small or negligible. However, in some cases, there was insufficient justification to support those conclusions.

SNH stated that a licence to disturb European Protected Species (“EPS”) would not be required given the short duration of the construction period and relatively low importance of the area for cetaceans.

Marine Scotland Science (“MSS”) advised that consideration had not been given to the proximity of the development site to the Inner Hebrides and the Minches candidate Special Areas of Conservation (“cSAC”) for the harbour porpoise.

MSS agreed with the requirement for a VMP during the construction period, but suggested this should extend to the operational phase of the Development. MSS recommended that the number of vessels and their duration at the site should be reduced wherever possible, and that the behaviour of the vessels should be in line with the Scottish marine wildlife watching code.

In addition MSS recommended that a monitoring programme be put in place to inspect the mooring lines for entangled debris and ‘ghost fishing gear’ and where possible, to remove it.

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

### **Benthic Impacts**

SNH agreed overall with the conclusions that impacts on the benthic features of the site will be minor/negligible based on the sensitivities of the features and the (estimated) duration/magnitude of the activities. SNH advised that a benthic survey of the cable route and mooring system location be undertaken before installation.

MSS, were generally happy with the assessments of the impacts to benthic ecology. However they stated that some topics required refinement, particularly regarding the use of previously collected multibeam data stating that the sediment loads and smothering impacts from cable trenching activities and impact of cable installation on the beach dynamics and the biota of Sandside Bay should be further examined.

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

### **Ornithological Impacts**

SNH agreed, overall, with the conclusions that the impacts on bird features would be minor/negligible based upon the site-specific survey results, sensitivities of the features and the duration/magnitude (estimated) of the works.

SNH did however state that monitoring should be undertaken which would provide data on the behaviour of bird species to the platform. In addition SNH confirmed that aerial surveys should continue during the breeding season, covering pre-construction, construction and post construction to monitor the densities of the seabirds.

SNH stated that the key potential impacts of the proposal are collision risk and displacement during the operation and maintenance phase of the project.

SNH stated that the physical presence of the turbines, platform and vessels may result in displacement. The construction phase displacement would be localised and temporary. Due to the small area affected, the displacement which could be caused during the operation and maintenance phase on the regional populations of species recorded during the site-specific surveys is unlikely to have a significant adverse impact.

SNH confirmed that the most abundant species recorded, puffin, would have a loss of 0.1% of the receptor population if all mortalities were breeding adults. However SNH confirmed that it is unlikely that there will be 100% mortality for displaced birds. Puffins have a large foraging range and is unlikely that the loss of the development area and 1 km buffer is unlikely to have a significant impact on the regional population.

Moderate numbers of arctic tern were recorded during site surveys, SNH confirmed that the site was of medium importance to this receptor species. SNH stated that with an 102% increase in annual mortality, a reduction of 48.4% breeding success and assuming a 50% mortality rate due to displacement, a high magnitude impact will be the result on the breeding population of this species. However SNH agreed with the ES in that this assessment is highly precautionary as it is likely that the receptor population is larger than estimated and the loss of the project footprint will not have a significant adverse impact on the regional population.

With regard to collision risk, SNH stated that the collision risk modelling included gannet, great skua, herring gull, greater black-backed gull, kittiwake and Arctic tern and presumed that other birds recorded at the site were excluded due to the flight height data indicating that they fly below the lowest turbine rota.

SNH stated that the ES confirmed that only one collision risk model was used however additional models were detailed in the ES. Site specific flight height data shows a greater proportion of birds within the rotor height and therefore resulted in slightly higher predicted collisions. SNH stated that they were disappointed that this worst case is not presented in the ES but accepted that predicted collisions are low for all species modelled.

SNH confirmed that there were inconsistencies with the use of avoidance rates in the collision risk modelling between the ES and the Marine Ornithology Appendix. However they re-affirmed that predicted collisions are low for all species modelled so this point is not important for this assessment. SNH stated that additional mortality caused by collisions would only cause a small increase to the baseline annual adult mortality rate for all species. SNH stated that overall that it would be unlikely that there would be significant impacts to the receptor populations.

SNH also commented on the impacts of the development during the non-breeding season. SNH stated that whilst they welcomed the use of Biologically Defined Minimum Population Size (“BDMPS”) populations from the Furness et al. (2015)<sup>3</sup> report they have not currently agreed the best way to incorporate the report into impact assessments and considered that any assessment should be qualitative. However SNH did state that it is unlikely that there will be any significant adverse impacts during the non-breeding season.

No cumulative impact assessment had been included within the ES; however, these were considered within the information to inform the HRA which confirmed that there would be no adverse effect on site integrity as a result of combination with other developments.

SNH stated that since the impact assessment was based on only one year of site-specific survey data monitoring of seabird densities and distribution covering pre-construction, construction and post-construction should be considered. This monitoring would be extremely informative for future proposals and to validate the conclusions of the ES.

In addition, SNH advised that if the Development is consented, monitoring should be undertaken to understand the seabirds behaviour to the platform given its low floating structure. SNH reiterated that this research would be informative for future proposals with similar technology.

Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) considered that even though the development is located in an environmentally sensitive region the project is small scale and unlikely to cause an adverse impact on seabirds in the Pentland Firth or the onshore bird population.

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<sup>3</sup> Furness, R.W. (2015). Non-breeding season populations of seabirds in UK waters: Population sizes for Biologically Defined Minimum Population Scales (BDMPS). Natural England Commissioned Reports, Number 164.

RSPB Scotland recognised the need and importance of demonstrating new renewable energy technologies and floating wind as being of particular interest to them. On the basis that a condition is imposed on any consent for an environmental monitoring programme which is made public, RSPB Scotland are keen to offer their support to the Development.

However, despite overarching support RSPB Scotland were keen to point out that they do have concerns over the marine ornithological assessment. Based on these concerns RSPB Scotland confirmed that any proposals for future projects/phases would require these concerns to be addressed.

RSPB Scotland commented that it is unclear whether survey data collected included the project area and the buffer area combined, and if so how this was done

Regarding collision mortality, RSPB Scotland noted numerous inconsistencies in the results presented and the main text of the ES. The estimated mortality rates have been based on generic flight height assumptions from Johnston et al 2014<sup>4</sup> as a proportion of flights through the turbine window. RSPB Scotland stated that the estimates are not specific to turbine design and do not allow for a design incorporating a larger swept area as intended for the Development. The calculated mortalities based on site specific flight parameters are higher than those based on generic flight height parameters presented in the main text. Discussions surrounding these differences would have been appropriate and would have provided justification.

RSPB Scotland regretted the omission of a review of any available existing information relating to seabird densities and stated that the ES did not make clear whether the reported seabird densities in the study area are higher or lower than elsewhere in the region.

RSPB Scotland welcomed the approach of assessing the impacts of the development on the non-breeding seabird populations against the BDMPS. However RSPB Scotland stated that this consideration should have been applied in the context of the Birds Directive through the undertaking of a HRA. RSPB Scotland considered this to be a serious omission within the Application. RSPB Scotland confirmed that even though this is a small scale proposal, potential in-combination effects with future renewable and other anthropogenic marine activities could have an adverse effect on the seabird populations unaccounted for in contemporary HRAs. RSPB Scotland emphasised that this must be a consideration when appraising this and other proposals against member state's obligations under the Birds Directive.

In addition, RSPB Scotland stated that the colony size information on which the assessments of impacts to colonies is based is over 15 years old. There has been

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<sup>4</sup> Johnston, A., Cook, A.S.C.P., Wright, L.J., Humphreys, E.M., Burton, N.H.K., 2014. Modelling flight heights of marine birds to more accurately assess collision risk with offshore wind turbines. *J. Appl. Ecol.* 51, 31 – 41.

adjustment made for known decline in Kittiwake numbers however no adjustment for other species e.g. fulmar had been made.

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

### **Fish (including diadromous fish) and Shellfish**

Broadly, SNH agreed with the general conclusions that the impacts on diadromous fish, marine fish including marine fish Priority Marine Features ("PMFs") and shellfish are likely to be minor / negligible based on the sensitivities of the features and the (estimated) duration / magnitude of the activities.

SNH highlighted that there was potential for interaction between some fish and shellfish, however the impact was unlikely to be significant. As pin-piling was no longer required, installation noise is unlikely. Some dredging may cause habitat disturbance, however SNH welcome the mitigation measures proposed.

SNH welcomed the measure of burying the cable to a target depth of 2 m, with rock armour protection where burial is unachievable. It was noted that burying the cable would not be expected to reduce the extent of the emission from the electromagnetic field, the distance between the cable and the water column would be increased.

The ES states that there is potential for cumulative impacts to arise from the Development and the Orkney-Caithness interconnector cable, however SNH agree that the construction impacts are likely to be temporary and unlikely to overlap.

MSS agreed with the conclusion of no Likely Significant Effect ("LSE") on the three salmon Special Area of Conservations ("SACs") considered, that no appraisal is required for salmon SACs further afield, and that the main issue is establishing the correct level of engagement with the National Research and Monitoring Strategy for Diadromous Fish.

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

### **Fisheries Impacts**

MSS were content with the conclusion that no significant impacts were to be expected on the identified fisheries arising from the Development, assuming appropriate conditions were imposed.

MSS stated that the project description did not provide a clear description of the type of scour protection. This should be included in a Cable Plan ("CaP"). In addition MSS

stated that the proposed mitigation measures of a Fisheries Liaison Officer (“FLO”), Fisheries Mitigation Plan (“FMP”), Fisheries Management and Mitigation Strategy (“FMMS”) and operational safety zone are satisfactory. MSS confirmed that the mitigation option for the export cable should include a cable burial plan and cable protection monitoring. Impacted fishermen should be given the opportunity to review and influence both documents.

The SFF acknowledged that extensive desktop and physical research had gone into choosing the site, with consideration given to lessening impacts on fishing. However the SFF expressed concerns regarding the dredging proposed to provide a flat bottom for the plinth, and the scour protection for the anchors. The SFF stated that due to the lack of detail in the ES, these would potentially be a significant problem at the time of decommissioning, because they would make it virtually impossible to restore the area to its pre-development state.

The SFF commented that the lack of detail given on the export cable route, 2.8 km of rock dumping, together with the potential scour protection and dredging would result in the need for a lot of discussion to take place around these subjects together with discussion surrounding the CaP.

Given the evidence provided regarding the seabed and route options, the SFF stated that they are prepared to discuss the suitability of rock dumping or mattresses for use in any given area and that this would also be the appropriate time to discuss scour protection and whether the wave motion is sufficient to make this a problem.

The SFF noted the commitment to follow the Fishing Liaison with Offshore Wind and Wet Renewables Group (“FLOWW”) guidelines and stressed the importance of having a good FLO with particular reference being made to the implementation of arbitrary phrases used within the ES such as ‘operational advisory zone’.

The SFF stated that there are sections of the ES in relation to fishing activity which are confusing and misleading, mixing three levels of data together rather than concentrating on relevant local figures.

In addition the SFF stated that the description and value of the fleet is not helpful and claims to use local vessels to deploy equipment and cables is positively disingenuous. The SFF stated that they wished to see, from the Developer, clarity on the work which can genuinely be offered to local vessels to mitigate the disturbance during construction. The SFF were surprised that the developers have not referenced the 2012 publication “Best Practice Guidelines for Fishing Industry Financial and Economic Impact Assessment” which the SFF state would have assisted the developer greatly.

Once the works have been completed the SFF have stated that they wish to see a post lay survey to confirm burial of the cable which should be disseminated by the FLO, and that the SFF should be notified of lost gear which becomes trapped in the mooring system along with the Fishing for Litter project.

The SFF reaffirmed that they are open to further discussion especially surrounding the Cable Burial Plan and on the Developer’s mitigation proposals.

The Company stated that no significant impacts were identified from the loss of fishing grounds however they did find that there would be moderate impacts identified for creel fishing due to loss of access to fishing grounds, localised nature of the fishing activity and greater sensitivity to change.

Issues regarding marine cable laying will be addressed through the consideration of the relevant Marine Licence application.

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

### **Noise Impacts**

The ES assessed the potential noise effects, through operational, construction and decommissioning stages of the Development. THC stated that in relation to the offshore section of the Development the turbines would not produce unacceptable noise or shadow flicker issues. However an upper limit noise condition would be required.

In relation to the onshore aspects of the Development, THC stated that no residential or commercial properties would be significantly affected, and upper noise limits for the operation of the substation/switchgear could be secured by condition in addition to controls which exist under the Control of Pollution Act 1974 (as amended).

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

### **Terrestrial ecology**

SNH confirmed that no protected species were recorded within the onshore survey area other than breeding birds, and the mitigation outlined in the ES is standard in relation to avoiding impacts on breeding birds. In addition to pre-construction checks for breeding birds which the Company will undertake, SNH advised that checks for EPS (e.g. otter) and other protected species should be completed prior to works commencing.

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

### **Air Quality**

THC stated that the onshore construction activities could give rise to some local air quality impacts associated with dust however these were not considered to be a significant issue and would be addressed with mitigation as detailed within the ES. The submission of a Construction Environmental Management Plan was requested. This will be dealt with through the requirement for an Onshore Environmental Management Plan (“OnEMP”).

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

### **Geology and Hydrology**

SEPA noted that the finalised location of the onshore infrastructure was yet to be agreed but that indicative proposals were outlined. SEPA stated that, as long as the infrastructure is located within the corridors shown in the ES, they were content as development within these areas will not have a significant environmental effect on most of the aspect of the environment in which they have a specific interest (such as peat, watercourses and private water supplies). SEPA detailed that cable corridor 1 (where open cut trenching would be used from the Horizontal Directional Drilling compound to the substation location) could have a direct effect on vegetation classification MG10 habitat but they were content that this could be successfully addressed via the mitigation.

THC stated that there were no significant impacts with regard to geology and hydrology; however they consider it appropriate that a Flood Risk Assessment (“FRA”) was undertaken, and a Flood Drainage Impact Assessment and Strategy (“FDIAS”) be developed once the onshore site had been fully selected.

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

### **Habitats Regulations Appraisal**

As SNH advice confirms that the Development is likely to have a no significant effect on the qualifying interests of the Faray and Holm of Faray SAC, North Rona SAC, the Sanday SAC, the River Thurso SAC, River Borgie SAC and the River Naver SAC, MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, were not required to carry out an Appropriate Assessment (“AA”).

SNH confirmed that there was no LSE from the Development on certain qualifying interests of the Sule Skerry and Sule Stack SPA, the North Rona and Sula Sgeri SPA, Rum SPA, St Kilda SPA, Caithness and Sutherland Peatlands SPA, Caithness Lochs SPA and North Caithness Cliffs SPA. Therefore MS-LOT on behalf of the Scottish Ministers, as the “competent authority”, were not required to carry out an AA.

SNH identified appropriate SACs and SPAs, for which the Development was likely to have significant effect on certain qualifying interests. Therefore, MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, are required to carry out an AA.

Having carried out the AA (considering all the advice received from SNH) it can be ascertained with sufficient confidence that the Development, subject to appropriate conditions being included within the consent, will not adversely affect the integrity of the Scottish Ministers, as a 'competent authority' under the Regulations, must be satisfied that the proposal will not adversely affect the integrity of any European site (SACs and SPAs) either alone or in combination with other plans or projects before authorisations can be given for the proposal.

SNH agreed with all conclusions reached in the AA.

SNH noted that conditions would be included in the decision letter and consent.

### **Summary**

The Scottish Ministers have undertaken a full and thorough consultation with relevant stakeholders and members of the public and are of the opinion that there are no considerations which would prevent consent being granted to the Development in its current location, subject to the imposition of conditions (subject to the Minister's approval). The Application has been considered fully and carefully, as have its accompanying documents and all relevant responses from consultees. Third party representations received have also been considered.

The Scottish Ministers are satisfied that whilst the Development would have an impact on the environment, by taking into account the extent to which any environmental effects will be reduced by measures the Company has agreed to take, or will be required to take under the conditions attached to the s.36 consent, marine licences and deemed planning permission, the environmental issues can be appropriately addressed by way of mitigation and monitoring and that any impacts which remain are outweighed by the benefits the Development will bring.

### **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 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to 12 MW (as described in **Annex 1**).

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT A DECLARATION** under section 36A of the Electricity Act 1989 (as amended) for the construction and operation of the Development, with a permitted capacity of up to 12 MW (as described in **Annex 1**).

Subject to the conditions set out in **Annex 2** to this Decision, the Scottish Ministers **GRANT A DIRECTION** under section 57(2) of the Town and Country Planning

(Scotland) Act 1997 (as amended) (“the 1997 Act”) that planning permission for the ancillary onshore development be deemed to be granted.

In accordance with the 2000 Regulations and the 2007 Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality of the Development. The Company must provide copies of the public notices to the Scottish Ministers.

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

Copies of this letter and consent have been sent to THC and OIC. This letter has also been published on the Marine Scotland licensing page of the Scottish Government’s website:

<http://www.scotland.gov.uk/Topics/marine/Licensing/marine/scoping>

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

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  
16 March 2017

## Annex 1

### DESCRIPTION OF THE DEVELOPMENT

The Development shall be approximately 6 km offshore from Dounreay, Caithness, with a permitted generating capacity not exceeding 12 MW and shall be comprised of:

- one single floating, semi-submersible, column-stabilised platform, comprising of buoyancy columns interconnected in a steel lattice truss framework. The maximum length will be 230 m, maximum width will be 135 m and maximum 15 m above water surface; the platform will rotate 360° and have a passive mooring system. The mooring system will consist of up to 8 mooring lines, passing through a 600 tonne clump weight suspended in the water beneath the platform. A total of 16 anchors will be attached to the mooring lines, two per line, with a maximum radius of 800 m from the platform centre;
- two Demonstration offshore wind turbine generators (“WTGs”) each with an installed capacity of up to 6 MW, giving a total maximum generating capacity not exceeding 12MW. Each turbine will be a three bladed structure with a maximum hub height of 124 m above Lowest Astronomical Tide (“LAT”), including the jacket, and with a maximum blade tip height of up to 201 m above LAT and a maximum rotor diameter of 154 m;
- grid infrastructure including the installation of one subsea cable which will bring the power ashore immediately to the west of the Dounreay Restoration Site fence line; and
- associated onshore infrastructure, including, underground cabling and turbine transformers comprising medium and low voltage container units, to be located at, or near to the existing Dounreay 132/33/11kV substation.

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

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

**Figure 1 : Development Location – Douvreay Trī Floating Wind Demonstration Project Onshore and Offshore Project Boundary and Phase 1 turbine deployment locations**

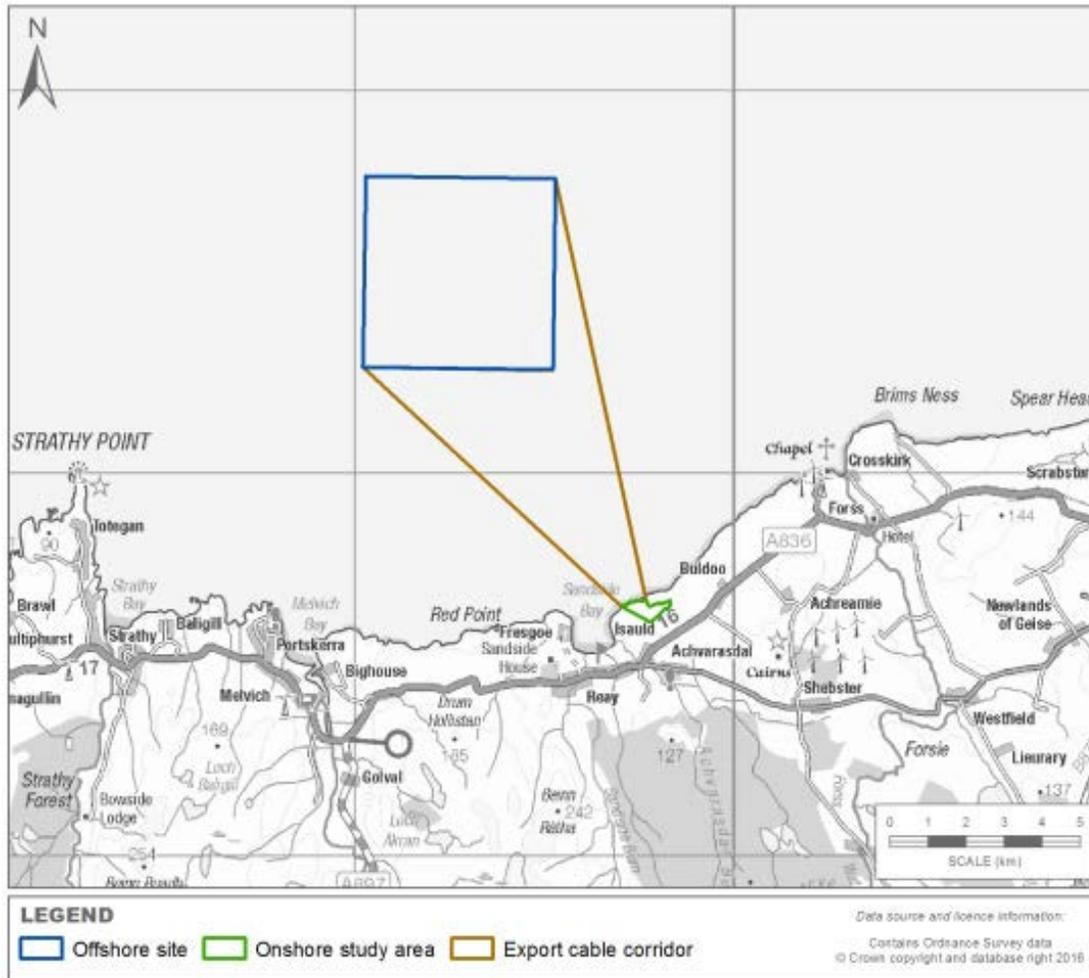


Figure 2: Dounreay Trì Floating Wind Demonstration Project - Onshore Project Boundary, export cable corridor, and onshore cable corridor option 1 and option 2.

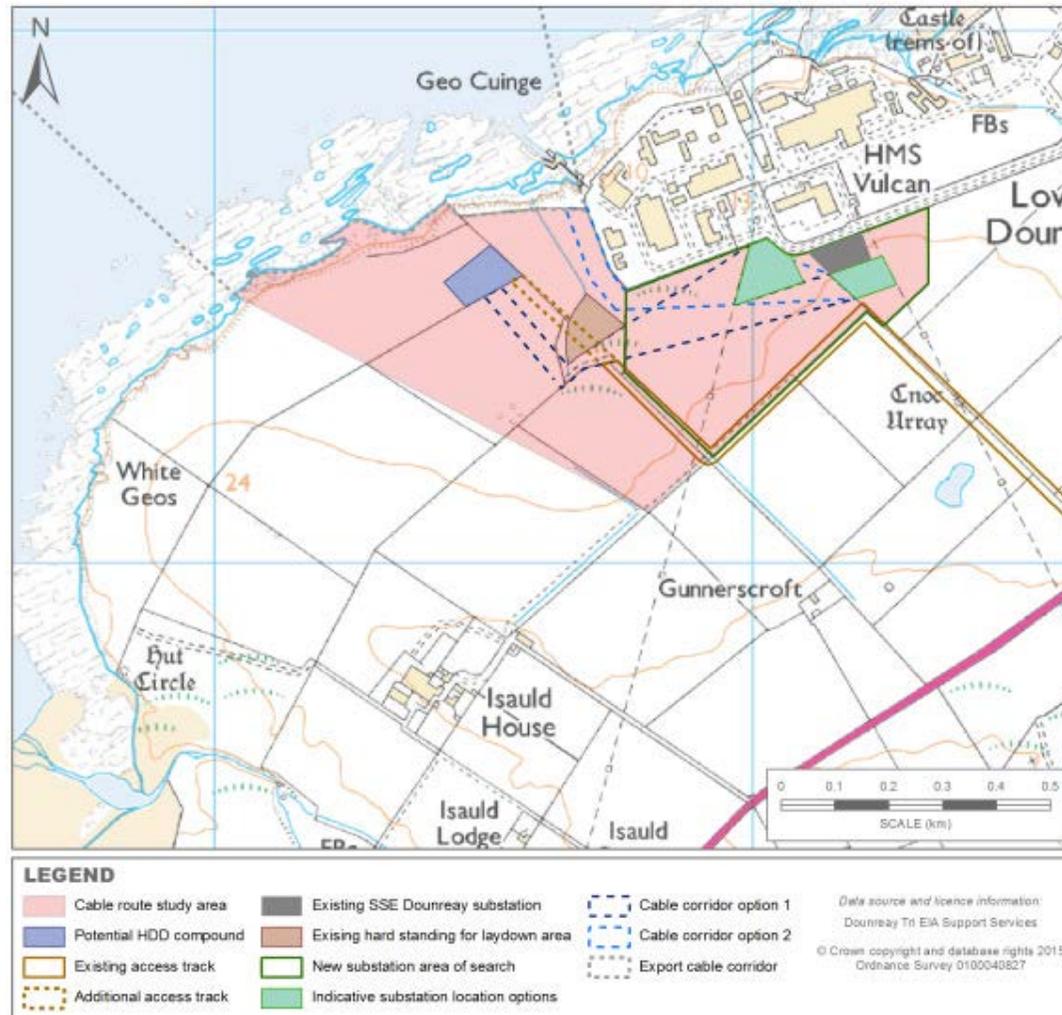
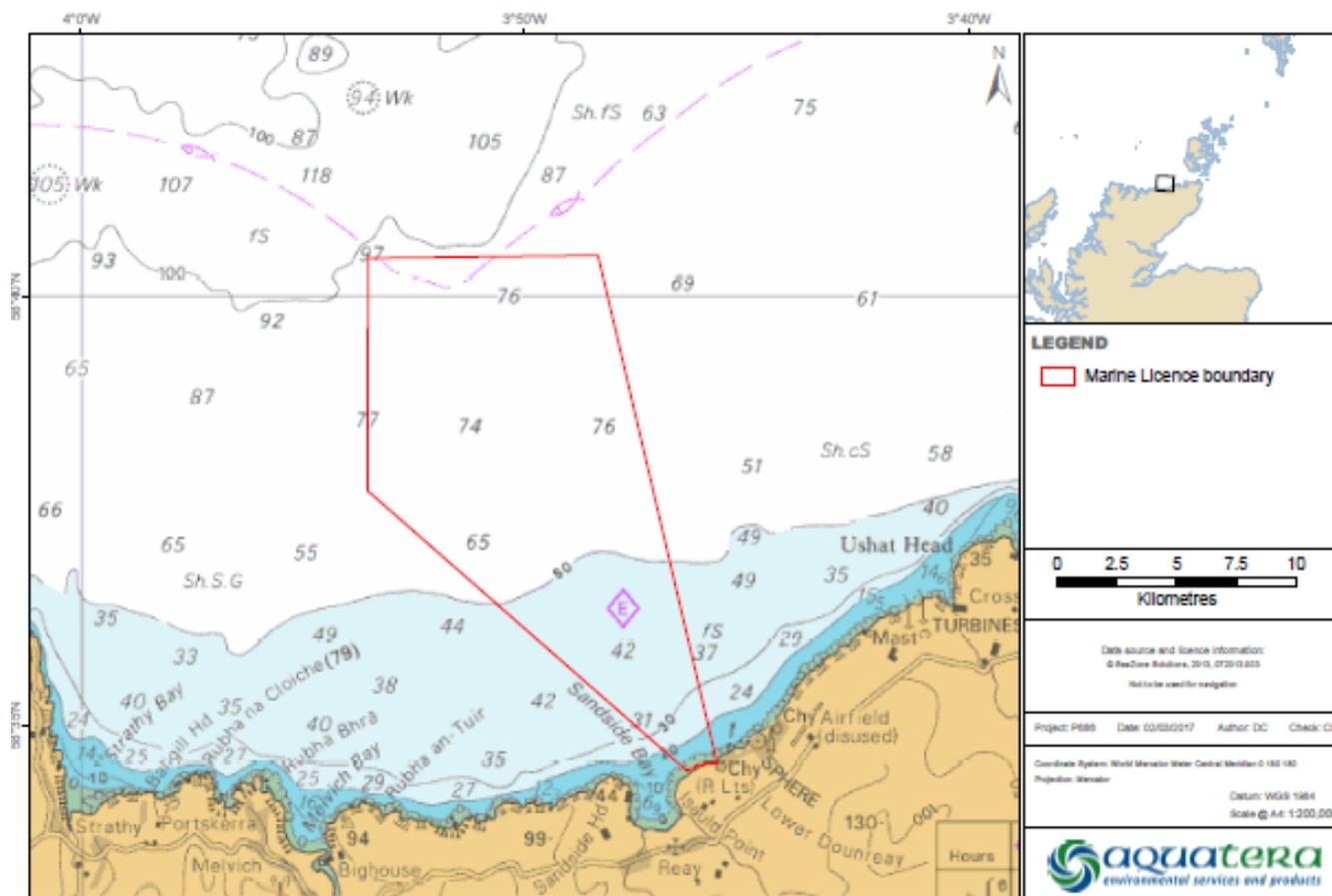


Figure 3: Dounreay Trì Floating Wind Demonstration Project Offshore export cable corridor.



## Annex 2

### CONDITIONS

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

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

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

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

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

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

#### **1. Duration of the Consent**

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

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

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

#### **2. Commencement of Development**

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

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

### **3. Assignment**

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

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

### **4. Redundant turbines**

In the event that for a continuous period of 6 months or more any WTG installed and commissioned and forming part of the Development fails to produce electricity on a commercial basis to the National Grid then, unless otherwise agreed in writing by the Scottish Ministers and after consultation with the Company and any advisors as required at the discretion of the Scottish Ministers, any such WTG may be deemed by the Scottish Ministers to cease to be required. If so deemed, the WTG (together with any related infrastructure) must, within the period of 12 months from the date of the deeming decision by the Scottish Ministers, be decommissioned and the area of the Site upon which the WTG is located must be reinstated by the Company in accordance with the procedures laid out within the Company's Decommissioning Plan.

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

### **5. Incident Reporting**

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

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

### **6. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required by the terms of this consent and its associated deemed planning permission, the Development must be constructed and operated in

accordance with the Application and the Environmental Statement submitted by the Company on 19<sup>th</sup> October 2016 and any other documentation lodged in support of the Application.

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

## **7. Transportation for site inspections**

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

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

## **8. Construction Programme**

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Construction Programme (“CoP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the SNH, MCA, NLB, SEPA, THC and OIC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

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

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

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

## **9. Offshore Construction Method Statement**

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

Restoration Limited (“DSRL”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

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

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

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

## 10. Development Specification and Layout Plan

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit a Development Specification and Layout Plan (“DSLPL”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, MoD, CAA, MCA, NLB, NATS, MCC, THC and OIC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) a plan showing the location of the floating platform (subject to any required micro-siting), including WTG identification/numbering, seabed conditions, bathymetry, confirmed anchor and mooring system for the platform and any key constraints recorded on the Site;
- b) a list of latitude and longitude coordinates accurate to three decimal places of minutes of arc for each anchor point. This should also be provided as a Geographic Information System (“GIS”) shapefile using the World Geodetic System 1984 (“WGS84”) format;
- c) a table or diagram of each WTG dimensions including – height to blade tip (measured above Lowest Astronomical Tide (“LAT”)) to the highest point,

- height to hub (measured above LAT to the centreline of the generator shaft), rotor diameter and maximum rotation speed;
- d) the generating capacity of each WTG used on the Site, and a confirmed generating capacity for the Site overall;
  - e) the finishes for each WTG (and in accordance with conditions contained within Marine Licences 06178/17/0 and 06174/17/0); and
  - f) the length and proposed arrangements on the seabed of the anchor and mooring system.

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

## **11. Design Statement**

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

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

## **12. Offshore Environmental Management Plan**

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

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

- a) all construction as required to be undertaken before the Final Commissioning of the Development; and
- b) the operational lifespan of the Development from the Final Commissioning of the Development until the cessation of electricity generation. (in accordance with conditions contained within Marine Licences 06178/17/0 and 06174/17/0).

The OffEMP must be in accordance with the ES insofar as it relates to environmental management measures. The OffEMP must set out the roles, responsibilities and chain of command for the Company personnel, any contractors or sub-contractors in

respect of environmental management for the protection of environmental interests during the construction and operation of the Development. It must address, but not be limited to, the following over-arching requirements for environmental management during construction:

- a) mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the ES and pre-consent and pre-construction monitoring or data collection, and include the relevant parts of the Offshore and Onshore CMS;
- b) a Pollution Prevention and Control Method Statement, including contingency plans;
- c) management measures to prevent the introduction of invasive non-native marine species;
- d) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, re-use and recycle should be encouraged;
- e) the reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders (including, but not limited to, SNH and SEPA) with regular updates on construction activity, including any environmental issues that have been encountered and how these have been addressed.

The Company must, no later than 3 months prior to the Final Commissioning of the Development, or at such a time as agreed with the Scottish Ministers, submit an updated OffEMP to cover the operation and maintenance activities for the Development, in writing to the Scottish Ministers for their written approval. Such approval may be given only following consultation with SNH, SEPA and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OffEMP must be regularly reviewed by the Company and the Scottish Ministers, at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

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

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

### **13. Vessel Management Plan**

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

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

- a) the number, types and specification of vessels required;
- b) how vessel management will be co-ordinated, particularly during construction but also during operation; and
- c) location of working port(s), how often vessels will be required to transit between port(s) and the Site and indicative vessel transit corridors proposed to be used during construction and operation of the Development;

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

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

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

#### **14. Offshore Operation and Maintenance Programme**

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

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

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

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

#### **15. Navigational Safety Plan**

The Company must, no later than 6 months prior to the Commencement of the Development or at such a time as agreed with the Scottish Ministers, submit a Navigational Safety Plan (“NSP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish

Ministers with MCA, NLB, RYA Scotland and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

- a) navigational safety measures;
- b) construction exclusion zones;
- c) notice(s) to Mariners and Radio Navigation Warnings;
- d) anchoring areas;
- e) temporary construction lighting and marking;
- f) emergency response and coordination arrangements (ERCoP) for the construction, operation and decommissioning phases of the Development and to be in accordance conditioned in Marine Licences 06178/17/0 and 06174/17/0; and
- g) buoyage.

The Company must confirm within the NSP that they have taken into account and adequately addressed all of the recommendations of the MCA in the current Marine Guidance Note 543 (“MGN 543”), and its annexes that may be appropriate to the Development, or any other relevant document which may supersede said guidance prior to approval of the NSP.

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

## **16. Project Environmental Monitoring Programme**

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

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

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

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

ES, the Scottish Ministers may require the Company to undertake additional monitoring.

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

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

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

The PEMP is a live document which will be regularly reviewed by the Scottish Ministers, at timescales to be determined by them to identify the appropriateness of on-going monitoring. Following such reviews, the Scottish Ministers may, in consultation with ecological advisors or organisations as required at the discretion of the Scottish Ministers, require the Company to amend the PEMP and submit such an amended PEMP, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation, by the Scottish Ministers, with the SNH, RSPB Scotland, WDC and any other ecological advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

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

## 17. Fisheries Management and Mitigation Strategy

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

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

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

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

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

## 18. Environmental Clerk of Works

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

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

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

- e) inducting and toolbox talks to onsite construction teams on environmental policy and procedures and keeping a record of these;
- f) monitoring that the Development is being constructed according to the plans and this consent, the Application and ES and compliance with all relevant legislation;
- g) reviewing and reporting incidents/near misses and reporting any changes in procedures as a result; and
- h) agreement of a communication strategy with the Scottish Ministers.

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

## 19. Fisheries Liaison Officer

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

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

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

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

## 20. SpORRAn (Scottish Offshore Renewables Research Framework)

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

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

## **21. Fisheries Working Group**

The Company must participate in a Fisheries Working Group (“FWG”), or any successor group, formed to facilitate commercial fisheries dialogue, for the purposes of defining and finalising a Fishing Management and Mitigation Strategy (“FMMS”). The FWG must adhere to the working group protocol.

**Reason:** *To mitigate the impacts on commercial fishermen*

## **22. Scottish Strategic Marine Environment Group**

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

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

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

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

### **23. Commencement of Development**

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

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

### **24. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required under this consent and deemed planning permission, the Development must be undertaken in accordance with the Application, the ES, and other documentation lodged in support of the application.

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

### **25. Design of sub-station and ancillary development**

There must be no Commencement of Development before final details of the external appearance, dimensions, and surface materials of the onshore substation building, associated compounds, any construction compound, welfare facilities, any areas of hard standing, turning areas, access tracks, material stockpiles, oil storage, boundary fencing, walls external lighting, parking areas landscaping, screening, bunding paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the Scottish Ministers. Such approval may only be granted following consultation by the Scottish Ministers with the THC and HES and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. All onshore Development must be constructed in accordance with the approved details.

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

## 26. Construction Hours

Construction work which is audible from any noise-sensitive receptor must only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work permitted to take place on a Sunday or on national public holidays. Outwith these specified hours, only works relating to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, may take place without the need for prior approval to be given, in writing, by the planning authority (THC). Other works may take place outwith these specified hours, but only following prior approval being given, in writing, by the Local Planning Authority (THC).

HGV movements to, and from, the site (excluding abnormal loads) during construction of the wind farm is only permitted between 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements (other than abnormal loads) permitted to, or from, the site taking place on a Sunday or on national public holidays.

**Reason:** *In the interests of local amenity.*

## 27. Traffic and Transportation Plan

The Company must, at least 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 THC 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 be constructed and operated in accordance with the approved TTP.

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

## 28. Noise

The rating level of noise emissions from the wind farm, including the application of any tonal penalty when determined in accordance with best practice as set out in ETSU-R-97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes, must not exceed 35dB LA90 10 minute at wind speeds up to and including 10m/s at the curtilage of any dwelling which is lawfully existing or has planning permission at the date of this permission. Noise limits expressed in dB LA90, 10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined at the turbine location averaged over 10 minute periods.

Within 21 days from receipt of a written request from the Local Planning Authority (THC) following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator must, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise

emissions from the wind farm at the complainant's property. The written request from the Local Planning Authority must set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

The assessment of the rating level of noise emissions must be undertaken by an independent noise consultant in accordance with best practice as set out in ETSU-R-97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes over the relevant range of conditions.

The wind farm operator must provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the Local Planning Authority. All data collected for the purposes of undertaking the compliance measurements must be made available to the Planning Authority on request.

Time periods above may only be extended following written agreement by the Local Planning Authority.

If the assessment concludes that noise from the wind farm is not complying with the limit stipulated in condition 1, the wind farm must cease operation immediately until a mitigation scheme, approved in writing by the Local Planning Authority, is implemented.

Noise arising from within the operational land of the sub-station when measured and/or calculated as an Leq, 5 min, in the 100Hz one third octave frequency band must not exceed 30 dB, at noise sensitive premises.

The Rating Level of noise arising from the use of plant, machinery or equipment installed or operated within the operational land of the sub-station, hereby permitted, must not exceed the current background noise levels at noise sensitive premises. The Rating Level must be calculated in accordance with BS 4142: 2014: Methods for rating and assessing industrial and commercial sound.

**Reason:** *To ensure that noise levels can be measured to assess whether or not agreed noise limits have been breached and where such noise limits have been breached, suitable mitigation is undertaken. To protect nearby residents from undue noise and disturbance. To ensure that noise limits are not exceeded and to enable prompt investigation of complaints.*

## **29. Onshore Construction Method Statement**

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit an Onshore Construction Method Statement ("OnCMS"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, THC and any such other

advisors or organisations as may be required at the discretion of the Scottish Ministers.

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

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

The OnCMS must adhere to the construction methods assessed in the Application and in the ES. The OnCMS must also, so far as is reasonably practicable, be consistent with the DS and all other onshore Plans.

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

### **30. Onshore Environmental Management Plan**

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

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

- a) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged;
- b) continuous monitoring of radioactive particles;
- c) acknowledgement that the Company have registered with SEPA to receive flood alerts for the Caithness area;
- d) a Flood Risk Assessment;
- e) environmental management - identification of mechanisms to ensure subcontractors are well controlled and are aware of relevant environmental issues. This must include details of on-going monitoring and emergency procedures / pollution response plans and the provision of spillage kits;
- f) a pollution prevention and control method statement, including arrangements for the storage and management of oil, fuel and chemicals on the site which must comply with the Water Environment (Oil Storage) (Scotland) Regulations 2006;

- g) a drainage management strategy, demonstrating the use of sustainable drainage systems (SUDs) in line with Scottish Planning Policy for all surface water runoff or details of the means whereby surface water will discharge directly to coastal waters;
- h) sewage disposal and treatment in the event of permanent toilet facilities or kitchen which are connected to the public sewer;
- i) temporary site illumination; and
- j) timing of works.

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

### **31. Onshore Cable Plan**

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

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

- a) the location and cable laying techniques for the cables;
- b) the results of monitoring or data collection work (including geophysical, geotechnical information) to help inform cable routing;
- c) technical specification of cables;
- d) a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures;
- e) methodologies for surveys and monitoring of the cables through the operational life of the wind farm where protection of cables is deployed; and
- f) methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables.

Any consented cable protection works must ensure that safe navigation is not compromised.

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

## **ANNEX 3**

### **DEFINITIONS AND GLOSSARY OF TERMS**

In this decision letter and in Annex 1 and 2:

“AA” means Appropriate Assessment;

“BDMPS” means Biologically Defined Minimum Population Size

“cSAC” means candidate Special Areas of Conservation

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

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

“Date of Final Commissioning” means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling [eighteen] months from the date of First Commissioning.

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

“dSPA” means Draft Special Protection Area;

“ECoW” means Environmental Clerk of Works;

“EIA” means Environmental Impact Assessment;

“EPS” means European Protected Species;

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

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

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

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

Ministers deem the first WTG to be complete;

“FLO” means Fisheries Liaison Officer;

“GIS” means Geographic Information System;

“GWh” means gigawatt hour

“HRA” means Habitats Regulations Appraisal;

“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;

“LCCAs” means Local Coastal Character Areas;

“LAT” means Lowest Astronomical Tide;

“LSE” means Likely Significant Effect;

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

“MHWS” means Mean High Water Spring tides;

“MLWS” means Mean Low Water Spring tides;

“MMO” means Marine Mammal Observer;

“MW” means megawatt;

“nm” means nautical miles;

“NSA” means National Scenic Area;

“Planning Authorities” means The Highland Council and Orkney Island Council;

“PMFs” means Priority Marine Features;

“PLI” means Public Local Inquiry;

“pSPA” means proposed Special Protection Area;

“SAC” means Special Area of Conservation;

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

“SPA” means Special Protection Area;

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

“the Company” means Dounreay Tri Ltd (Company Number SC515140) having its registered office at Ostgotagatan 100, SE-166 64, Stockholm, Sweden;

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

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

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

“WGS84” means the World Geodetic System 1984;

“WTG” means wind turbine generator;

## **Organisations and Companies**

“CAA” means The Civil Aviation Authority;

“DECC” means Department for Energy and Climate Change;

“DGC” means Defence Geographic Centre;

“DSRL” means Dounreay Site Restoration Limited;

“HES” means Historic Environment Scotland;

“IHO” means International Hydrographic Organisation;

“MCA” means The Maritime and Coastguard Agency;

“MCC” means Melvich Community Council;

“MoD” means Ministry of Defence;

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

“MSS” means Marine Scotland Science;

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

“NLB” means The Northern Lighthouse Board;

“OIC” means Orkney Islands Council;

“PFYC” means Pentland Firth Yacht Club;

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

“RYA Scotland” means Royal Yachting Association Scotland;

“SEPA” means The Scottish Environment Protection Agency;

“SFF” means The Scottish Fishermen’s Federation;

“SM” means Scheduled Monument;

“SNH” means Scottish Natural Heritage;

“THC” means The Highland Council;

“TS” means Transport Scotland;

“UKHO” means United Kingdom Hydrographic Office;

“WDC” means Whale and Dolphin Conservation;

“WLAs” means Wild Land Areas;

### **Plans and Programmes**

“CaP” means Offshore Cable Plan;

“CoP” means Construction Programme;

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

“DS” means Design Statement;

“DSL P” means Development Specification and Layout Plan;

“EMP” means Environmental Management Plan;

“FDIAS” means Flood Drainage Impact Assessment and Strategy;

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

“FMMS” means Fisheries Management and Mitigation Strategy;

“FMP” means Fisheries Management Plan;

“FRA” means Flood Risk Assessment;

“LMP” means Lighting and Marking Plan which is conditioned in the Wind Farm Marine Licence;

“NSP” means Navigational Safety Plan;

“OffCMS” means Offshore Construction Method Statement;

“OffEMP” means Offshore Environmental Management Plan;

“OffO&MP” means Offshore Operation and Maintenance Programme;

“OnCaP” means Onshore Cable Plan;

“OnCMS” means Onshore Construction Method Statement;

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

“OnEMP” means Onshore Environmental Management Plan;

“OnO&MP” means Onshore Operation and Maintenance Programme;

“PAD” means Protocol for archaeological discoveries;

“PEMP” means Project Environmental Monitoring Programme;

“PMS” means Particle Monitoring Strategy;

“TPV” means Third Party Verification;

“TTP” means Traffic and Transportation Plan;

“VMP” means Vessel Management Plan;

“WSI” means Written Scheme of Investigation;

### **Legislation and Statutory Documents**

“Birds Directive” means Council Directive 79/409/EEC of 2<sup>nd</sup> 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 30<sup>th</sup> November 2009;

“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);

“HwLDP” means The Highland-wide Local Development Plan;

“NMP” means the National Marine Plan;

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

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

“SPP” means Scottish Planning Policy;

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

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

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

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

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

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

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

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

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

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

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

“the Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (as amended) and the Conservation of Habitats and Species Regulations 2010;

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