

Agenda Item	<b>7.9</b>
Report No	<b>PLN/070/21</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 14 September 2021

**Report Title:** 21/03368/S36: Moray Offshore Windfarm (West) Limited

Moray West Offshore Windfarm, Ulbster, Lybster

**Report By:** Area Planning Manager - North

### Purpose/Executive Summary

**Description:** Moray West Off-shore Wind Farm Variation - Application to increase turbine blade width from 6m to 6.6m and remove reference to the developments maximum generating capacity in the description of development

**Ward:** 03 - Wick and East Caithness

**Development category:** Major (Electricity Act Consultation)

**Reason referred to Committee:** Major Electricity Act Consultation

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### Recommendation

Members are asked to agree the recommendation to **RAISE NO OBJECTION** to the application as set out in section 11 of the report

## 1. BACKGROUND AND PROPOSED DEVELOPMENT

- 1.1 The Highland Council has been consulted by Marine Scotland on an application made under Section 36C of the Electricity Act 1989 (as amended) for an increase in blade width and the removal of references to an overall generating capacity of the consented but not yet constructed Moray West Offshore Windfarm.
- 1.2 The Council were consulted by Marine Scotland on the original Section 36 application under planning reference 18/03309/S36. The scheme was presented to the North Area Planning Committee on 27<sup>th</sup> November 2018 and the subsequent EIA addendum which removed the largest wind turbine design (285m in height) was presented on 22<sup>nd</sup> January 2019. The Planning Committee resolved to Raise No Objection to the proposal at both committee meetings. The Windfarm was subsequently granted consent by Scottish Ministers on 14<sup>th</sup> June 2019. A copy of the Section 36 decision notice can be found in Appendix A of this report.
- 1.3 Although the existing Section 36 permission granted consent for one windfarm with up to 85 wind turbines and infrastructure, the final design and number of turbines will be dependent upon a range of factors such as site conditions and the available turbine model. As a consequence, Scottish Ministers in granting consent set particular design parameters/ scenarios. The following table summarises the consented parameters for both the 72 and 85 turbines scenarios and identifies the proposed variation which is the subject of this current application.

1.4

Turbine Parameters	Parameters relating to the 85-turbine scenario	Parameters relating to the 72-turbine scenario	Proposed Variation
Maximum number of turbines	85	72	No variation
Maximum blade tip	230m	265m	No variation
Maximum rotor blade diameter	195m	230m	No variation
Maximum hub height	132.5m	150m	No variation
Minimum blade tip clearance	35m	35m	No variation
Maximum blade width	6m	6m *	*variation – increase blade width to 6.6m for 72 turbine scenario only

Minimum spacing (crosswind)	1,050m	1,050m	No variation
Minimum spacing (downwind)	1,200m	1,200m	No variation

- 1.5 The applicant also requests the removal of any reference to Moray West having a maximum generating capacity of around 850 MW. Furthermore, as a result of the proposed variations there will also be consequential changes to the wording contained within the 2019 Section 36 consent decision notice from Scottish Ministers.
- 1.6 Pre-Application Consultation: No formal pre-application consultation has been undertaken with the Council on the proposed variation.
- 1.7 Supporting Information: A formal screening response on the proposed variations was issued by Scottish Ministers on 12 November.2020. This confirmed that the changes did not constitute EIA development and an Environmental Impact Assessment Report (EIAR) was not required. As such the present Section 36C application is accompanied by a Section 36 Variation Report which focuses on the rationale for the proposed changes, the ornithological impacts and an outline of the proposed variations to the Section 36 decision notice.
- 1.8 Variations: No variations have been made during this consultation period.

## **2. SITE DESCRIPTION**

- 2.1 The site covers an area of approx. 225km<sup>2</sup> on the Smith Bank in the Outer Moray Firth, located approx. 22.5km (12 nautical miles) from the Caithness coastline. The development is located adjacent to the Moray East offshore wind farm which is currently under construction (generating capacity of 1,116MW) and the Beatrice offshore which is fully operational (generating capacity of 588MW).
- 2.2 There are no natural heritage designations on the site. However, there are a number of important designations located along the Highland coastline. These designations, and notified interests, include:
- Inner Moray Firth SPA – bottlenose dolphin, sandbank
  - Dornoch Firth and Morrich More SPA – common seal, sandbank, dune habitat and species
  - East Caithness Cliffs SPA, SSSI – seabirds incl. herring gull, guillemot, cormorant, shag, peregrine, kittiwake
  - North Caithness Cliffs SPA, SSSI (including Dunnet Head RSPB Reserve) – peregrine, puffin, fulmar kittiwake, guillemot
  - Berriedale and Langwell Waters SAC – Atlantic salmon
  - River Oykel SAC – Atlantic salmon, freshwater pearl mussel
  - River Thurso SAC – Atlantic salmon
  - River Evelix – Freshwater pearl mussel
  - River Moriston – Atlantic salmon, freshwater pearl mussel

- 2.3 From a landscape/seascape perspective, the development has a bearing on the National Seascape Unit of East Caithness and Sutherland as set out in the SNH Seascapes Report (SNH, 2005). This seascape unit includes Seascape Character Types (SCT) 1 – 3, Remote High Cliffs, Rocky Coastline with Open Sea Views and Deposition Coastline. SCT 2 – Rocky Coastline with Open Sea Views is the predominant type. The sensitivity of this seascape to change is regarded as low – medium with oil rigs and offshore wind turbines identified as an influence already on this unit.
- 2.4 The nearest Special Landscape Area (SLA) is the Flow Country and Berriedale Coast SLA which is located approx. 16.5km from the western extent of the site.

### **3. PLANNING HISTORY**

- |     |            |  |  |
|-----|------------|--|--|
| 3.1 | 27.03.2012 | 12/00397/FUL - for the erection of a 50m onshore meteorological mast, to gather data for the proposed Moray Offshore Renewables Ltd (MORL) wind farms in the Outer Moray Firth, on land south-west of Lybster. | Planning permission granted  |
| 3.2 | 19.03.2014 | 12/01659/S36 – Construction and operation of an offshore wind farm – Beatrice  | Consent granted by Ministers   |
| 3.3 | 19.03.2014 | 12/03359/S36 - Construction and operation of an offshore generating station (McColl).  | Consent granted by Ministers   |
| 3.4 | 19.03.2014 | 12/03360/S36 - Construction and operation of an offshore generating station (Telford).   | Consent granted by Ministers   |
| 3.5 | 19.03.2014 | 12/03361/S36 - Construction and operation of an offshore generating station (Stevenson).   | Consent granted by Ministers   |
| 3.6 | 19.03.2018 | 17/05856/S36 – Variation of consent for Moray East.  | Consent granted by Ministers   |
| 3.7 | 14.06.2019 | 18/03309/S36 - Construction and operation of an offshore generating station (Moray West)   | Consent granted by Ministers   |
| 3.8 | 12.11.2020 | 20/03655/MAR - Section 36 Consent Variation Screening Request for Moray West submitted to Scottish Ministers on 25th August 2020. The Council were consulted on 23 <sup>rd</sup> Sept 2020.                    | Screening response issued by Scottish Ministers. Not EIA development |

### **4. PUBLIC PARTICIPATION**

- 4.1 The application was advertised as follows:
- Edinburgh Gazette – 20 July 2021
  - Lloyd's List – 13 July 21

- The Scotsman –17 and 22 July 21
- Press & Journal – 13 and 20 July 21
- Banffshire Journal – 13 and 20 July 21
- Fishing News – 15 and 22 July 21

Representation deadline: 22 August 2021

Representations received 0  
by The Highland Council

Representations received 0  
by Marine Scotland

## 5. CONSULTATIONS

### Consultations undertaken by The Highland Council

- 5.1 **Berriedale and Dunbeath Community Council:** Object to the proposed variation and consider that the coastline will become a corridor of steel.
- 5.2 **Latheron, Lybster and Clyth Community Council:** do not object to the proposed variation.
- 5.3 **Transport Planning:** do not object to the proposed variation.
- 5.4 **Access Officer:** do not object to the proposed variation.
- 5.5 **Environmental Health:** do not object to the proposed variation, given the distance from land.

### Consultations undertaken by Scottish Government (Marine Scotland)

- 5.6 **Aberdeen Airport:** do not object to the proposed variation.
- 5.7 **British Telecommunications:** do not object as the proposal will not cause interference to BT's current and presently planned radio network.
- 5.8 **Civil Aviation Authority:** do not object to the proposed variation.
- 5.9 **Historic Environment Scotland:** do not object to the proposed variation.
- 5.10 **Marine Scotland Science (MSS):** do not object to the proposed variation and agree the requested change does not contravene the worst-case scenario (WCS) assumptions used in assessment for avian collisions. However, MSS have recommended that with respect to the increase in maximum energy generation, clarification should be sought as to whether any operational change in the wind turbine generators is required to achieve any new limit suggested and how this might impact, subsequently, the assumptions made in the WCS assessment.

- 5.11 **Maritime and Coastguard Agency:** do not object to the proposed variation.
- 5.12 **Ministry of Defence:** do not object to the proposed variation subject to the conditions attached as per the existing consent.
- 5.13 **NatureScot:** do not object to the proposed variation
- 5.14 **North and East Coast Regional Inshore Fisheries Group:** Object to the variation until the following concerns are clarified: It understand the grid connection for this development is 860 MW which appears to be in consistent with the generation of 850 MW. their does not consider that there is clear rational rationale for the variation request and any impact on the grid connection. It would like to see clarification of what the impact of the increased flexibility in generation capacity would mean in real terms and how this will further impact the commercial fishing industry.
- 5.15 **Northern Lighthouse Board:** do not object to the proposed variation.
- 5.16 **Royal Society for the Protection of Birds:** do not object to the variation but consider that despite this predicted decrease in avian collisions, it considers there remains a substantial impact to seabirds from the proposed development. it is disappointed further steps have not been taken to reduce the collision risk.
- 5.17 **Royal Yachting Association:** do not object to the proposed variation.
- 5.18 **Scottish Environmental Protection Agency:** do not object to the proposed variation.
- 5.19 **Scottish Fishermen's Federation:** Object to the variation. It considers that the development is contrary to Scotland's National Marine Plan.
- 5.20 **Sport Scotland:** do not object to the proposed variation.
- 5.21 **Transport Scotland:** do not object to the proposed variation subject to condition 31 being attached as per the existing consent.
- 5.22 **United Kingdom Chamber of Shipping:** do not object to the proposed variation.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **6.1 Highland Wide Local Development Plan 2012**

28 - Sustainable Development

49 - Coastal Development

57 - Natural, Built & Cultural Heritage

58 - Protected Species

59 - Other important Species

- 60 - Other Importance Habitats
- 61 - Landscape
- 63 - Water Environment
- 67 - Renewable Energy Developments
- 69 - Electricity Transmission Infrastructure

- 6.2 The Highland-wide Local Development Plan is currently under review and is at Main Issues Report Stage. It is anticipated the Proposed Plan will be published following publication of secondary legislation and National Planning Framework 4.

## **7. OTHER MATERIAL CONSIDERATIONS**

### **Scottish Government Planning Policy and Guidance**

- 7.1 Scottish Planning Policy (SPP) advances principal policies on Sustainability and Placemaking, and subject policies on A Successful, Sustainable Place; A Low Carbon Place; A Natural, Resilient Place; and A Connected Place. It also highlights that the Development Plan continues to be the starting point of decision making on planning applications. The content of the SPP is a material consideration that carries significant weight, but not more than the Development Plan, although it is for the decision maker to determine the appropriate weight to be afforded to it in each case.
- 7.2 SPP recognises that support for renewable energy projects and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals. The planning system has a significant role in securing appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy. National policies highlight potential areas of conflict, but also advise that detrimental effects can often be mitigated and or effective planning conditions can be used to overcome potential objections to development.
- 7.3 Criteria outlined within SPP for the assessment of applications include landscape and visual impact; effects on heritage and historic environment; contribution to renewable energy targets; effect on the local and national economy and tourism and recreation interests; benefits and dis-benefits to communities; aviation and telecommunications; noise and shadow flicker; and cumulative impact.
- 7.4 Paragraph 170 of SPP sets out that areas identified for wind farms should be suitable for use in perpetuity. This means that even though the consent is time limited the use of the site for a wind farm must be considered as, to all intents and purposes, a permanent one. The implication of this is that operational effects should be considered as permanent, and their magnitude should not be diminished on the basis that the specific proposal will be subject to a time limited consent.

- 7.5 Paragraph 174 of SPP sets out that proposals to repower existing wind farms which are already in suitable sites can help to maintain or enhance installed capacity, under pinning renewable energy targets. It further highlights that the current use of a wind farm site will be a material consideration in any repowering proposal.

#### **Scotland's National Marine Plan (NMP) (adopted 2015 and reviewed in 2018)**

- 7.6 The NMP sets out strategic policies for the sustainable development of Scotland's marine resources out to 200 nautical miles offshore. The plan sets out objectives and an approach to managing the sustainable development of human impact on Scotland's seas. The plan identifies a number of marine sectors which includes offshore and marine renewable energy. This recognises the importance of offshore wind energy as contributing to renewables energy targets, decarbonisation targets and the economic benefits. It also recognises the potential for impacts to other marine sectors such as fisheries, aquaculture, shipping and defence. The Outer Moray Firth is identified as an offshore wind zone.

#### **Scottish Energy Strategy: The future of energy in Scotland (2017)**

- 7.7 This document sets out Scotland's Energy Strategy until 2050 which sets targets such as 50% of Scotland's heat, transport and electricity consumption to be supplied from renewable resources. The strategy identifies off-shore wind as being integral to meeting these targets and the subsequent industrial and economic potential benefits attached to offshore wind development are recognised. This is further emphasised in the objectives of the National Marine Plan (2015) and detailed above.

### **8. PLANNING APPRAISAL**

- 8.1 As detailed above, this application has been submitted to the Scottish Government for approval under Section 36 of the Electricity Act 1989 (as amended). Should Ministers approve the development, it will receive deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). While not a planning application, the Council processes S36 applications in the same way as a planning application as a consent under the Electricity Act will carry with it deemed planning permission.

Schedule 9 of The Electricity Act 1989 contains considerations in relation to the impact of proposals on amenity and fisheries. These considerations mean the developer should:

- 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; and
- Reasonably mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.



It should be noted that for applications under the Electricity Act 1989 that the Development Plan is just one of a number of considerations and Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise, is not engaged.

### **Determining Issues**

- 8.2 While this is the case the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application. The principle of the development has been established through the original planning permission granted in 2019. In essence this is an application to modify two aspects related to the consented scheme, the first an increase in the width of the blades from 6m to 6.6m and the second to remove the 850 MW cap on generation capacity. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan and national policy and take into consideration any other material considerations.

### **Planning Considerations**

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
  - b) modification of the blade width including impacts upon ornithology and seascape, landscape and visual impacts.
  - c) removal of the 850MW generating capacity
  - d) any other material considerations.

### **Development plan/other planning policy**

- 8.4 The Development Plan comprises the adopted Highland-wide Local Development Plan (HwLDP) and all statutorily adopted supplementary guidance. Given the location of the development, none of the area Local Development Plans are relevant. If the Council is satisfied that the proposal is not significantly detrimental overall, then the application will accord with the Development Plan. The HwLDP and relevant supplementary guidance was in place at the time of consideration and determination of the original application. Therefore, the development plan position has not changed with regard to the proposal.

### **Highland-wide Local Development Plan**

- 8.5 The Development Plan recognises the potential for renewable energy development in Highland. While the development plan does not specifically reference offshore wind energy within policy, it is considered that the key policy relating to renewable energy, Policy 67 (Renewable Energy Developments), of The Highland wide Local Development Plan would apply. This gives general support to renewable energy development highlighting the need to take into consideration the contribution to meeting energy targets and any positive or

negative effects on the local/national economy. Various safeguards are built into the policy wording reflecting the need to balance this support with the impact on matters such as habitats and species, landscape and visual impact, residential amenity, telecommunications, navigation to name a few.

- 8.6 If the Council is satisfied that the proposal is not significantly detrimental overall, then the application will accord with the Development Plan.

### **National Planning Policy**

- 8.7 National planning policy remains supportive of wind energy development with the framework for assessing wind farm proposals set out in Scottish Planning Policy (SPP). SPP sets out that areas identified for wind farms should be suitable for use in perpetuity. In determining the original application, Ministers considered that impacts had been minimised or mitigated.
- 8.8 Notwithstanding the overarching context of support, SPP recognises that the need for energy and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals. The planning system has a significant role in securing appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy. National policies highlight potential areas of conflict but also advise that detrimental effects can often be mitigated or effective planning conditions can be used to overcome potential objections to development.
- 8.9 Criteria outlined within SPP for the assessment of applications for renewable energy developments include landscape and visual impact; effects on heritage and historic environment; contribution to renewable energy targets; effect on the local and national economy and tourism and recreation interests; benefits and dis-benefits to communities; aviation and telecommunications; noise and cumulative impact. A number of criteria are set out in SPP against which proposals for wind energy development should be assessed (paragraph 169). These criteria are primarily reflected in Policy 67 (Renewable Energy) of the Highland-wide Local Development Plan. A failure against one of these criteria does not necessarily mean that a development fails, all these criteria must be given consideration.
- 8.10 As a statement of the Government's approach to spatial planning in Scotland, National Planning Framework 3 (NPF3) is a material consideration that should be afforded significant weight in the planning balance. NPF 3 provides a context for establishing Scotland as a leading location for the development of renewable energy technology and an energy exporter over the long term. It encourages a mix of technologies and recognises the contribution of offshore wind including the Moray Firth.
- 8.11 The Scottish Government published, Scotland's Fourth National Planning Framework Position Statement in November 2020. The position statement clearly sets out that the current NPF3 and SPP remain in place until NPF4 is adopted by Ministers. It goes on to set out that the Position Statement provides an idea of the direction of travel in the preparation of the NPF4, and states that it "is not, in itself, a document setting out policy. Statements in this Position Statement as to what

the content of a revised National Planning Framework will contain should be read in that context.” (page 4). It can be afforded limited weight, particularly because the status of NPF3 and SPP has not changed.

- 8.12 The Position Statement provides general support for delivery of renewable development through the introductory statements and key opportunities set out in the Position Statement. The Position Statement includes a proposal for a “Plan for Net-Zero Emissions”. It is of note that the Scottish Government expects that the Global Climate Emergency should be a material consideration in considering applications for appropriately located renewable energy developments (page 9). This continues to support the aim of the presumption in favour of sustainable development set out in para 28 of SPP 2020 of achieving the right development in the right place; not allowing development at any cost.
- 8.13 The Position Statement sets out that “We will have to rebalance the planning system so that climate change is a guiding principle for all plans and decisions. We will need to focus our efforts on actively encouraging all developments that help to reduce emissions”. While this may have implications for applications for renewable energy developments, this needs to be considered in the context of the potential policy changes which look to site specific assessment of proposed developments demonstrating that proposals are acceptable. The way in which this scheme has addressed site specific matters will be addressed in this report.
- 8.14 A number of publications relating to national energy policy have been published by the Scottish Government. In short, none indicate a relevant distinct policy change. Most relevant to this application are as follows:
- Scottish Energy Strategy: The future of energy in Scotland (Dec 2017)
  - Scottish Government, Securing a Green Recovery on a Path to Net Zero: Climate Change Plan 2018–2032 – update, December 2020;
  - Committee on Climate Change, The Sixth Carbon Budget, *The UK’s Path to Net Zero*. (including Policy and Methodology) December 2020;
  - National Audit Office, Net Zero Report, December 2020;
  - HM Government, Energy White Paper, Powering our Net Zero Future, December 2020.
- 8.15 Further to the above, in late 2019 the Scottish Government’s targets for reduction in greenhouse gases were amended by The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. This sets targets to reduce Scotland’s emissions of all greenhouse gases to net-zero by 2045 at the latest, with interim targets for reductions of at least 56% by 2020, 75% by 2030, 90% by 2040.
- 8.16 The statements of continued strong support relating to wind energy development contained within these documents are acknowledged. However, it is also recognised that such support should only be given where justified.

## **Modification of the Blade Width**

- 8.17 A Section 36 Variation Report has been submitted in support of the application. Within this the applicant states that the reason for the variation is that the developer was unsuccessful in the last Contracts for Difference Auction round which is the Governments main mechanism for supporting new low carbon electricity generation projects. Consequentially, the developer has been exploring various options for developing the project, including the installation of larger wind turbine generators. However, through further modelling and discussions with suppliers it has become evident that, when looking at larger wind turbine generators with larger rotor diameters, there is a corresponding increase in blade width. It is this emerging change in technology and the need to keep development options open that has driven this variation request.
- 8.18 The blade width of the turbines was considered in the Section 36 and marine licence application in relation to its impact on ornithology, and specifically to the collision mortality impacts of kittiwake, great blackbacked gull, gannet and the herring gull. The original Collision Risk Modelling (CRM) submitted with the Section 36 consent and marine licence applications, concluded that effects on all four species were not significant. In support of the proposed increase in blade width from 6m to 6.6m for the 72-turbine scenario an updated CRM and assessment has been produced.
- 8.19 As detailed in Appendix B of the applicants Section 36 Variation Application Report. The predicted collisions under the 72-turbine scenario with the increase in blade width, are slightly lower for each of the four species than those predicted by the modelling for the 85-turbine scenario. NatureScot have no objection to the variation, and it is considered that the increase in blade width does not affect any of the conclusions presented in the consented EIAR or the Habitats Regulation Assessment in relation to ornithology. Scottish Ministers will however be required to undertake a Habitat Regulations Appraisal prior to determination of the variation application.
- 8.20 As part of the consented scheme a Seascape, Landscape and Visual Impact Assessment (SLVIA) was undertaken. This considered the scheme both in isolation and in conjunction with adjacent development. Although significant effects were identified the Scottish Ministers in granting considered that there were no outstanding concerns in relation to the impact of the Development on seascape, landscape and visual amenity which would require consent to be withheld. In response to the EIA variation screening request, Scottish Ministers concluded that the proposed change would not result in any significant effects above those already considered and does not constitute EIA development. As such the applicants have not re-visited the SLVIA. Given the scale of the proposed variation in blade width, the variation is not likely to be discernible from viewpoints on land and it is not considered that there will be any new potential impacts and/or changes of significance of impact to those described in the original application nor affect any of the conclusions presented in the EIAR.

## **Removal of the 850MW Generating Capacity**

- 8.21 The Section 36 consent includes reference to a maximum generating capacity of around 850MW. The earliest target date for commissioning of the consented wind farm is 2024 and so there remains opportunity for existing available turbines to increase their rated outputs as turbine technology develops and for new designs to enter the market. As such the applicants would like to remove the reference to a maximum generating capacity to enable flexibility and the ability to accommodate new and improved wind turbines that may become available in the future.
- 8.22 The applicants reasoning for the request of the 850MW generating capacity and allowing for a higher output is understood and will allow the project to take advantage of advances in technology as the build programme progresses. This approach would appear to be supported by the Government's renewable energy agenda outlined earlier in this report and would allow the scheme to make a greater contribution to renewable energy production and net zero targets. In addition, the generating capacity of individual turbines was unspecified in the EIAR submitted in support of the consented Section 36 application. No assessment of the cap for a maximum generating capacity of 850MW was undertaken as part of the consented scheme and the EIA assessments were not linked to, or affected by, wind turbine generation capacity. As such this aspect of the proposal does not raise any substantive concerns and increasing the generating output without increasing the environmental impacts is logical in principle. However, it is likely that generation capacity will in reality be limited to by the grid connection and offshore export cable capacity.

## **Other material considerations**

- 8.23 The existing consent was granted subject to 31 planning conditions. As a result of the proposed variations outlined above, there will be consequential changes to the wording contained within the 2019 Section 36 consent decision notice issued by Scottish Ministers. The changes in wording will affect Section 1.5, Annex 1: Description of the Development and the definition of the application contained within Annex 2: Section 36 Consent Conditions (see Appendix A).
- 8.24 However, the proposed changes only relate to the design parameters of the 72-turbine scheme and the maximum generating capacity. The applicant does not seek to vary any of the 31 conditions attached to the existing consent. As such these consequential aspects of this variation application do not raise any substantive planning or procedural concerns. Members are asked to Raise No Objection to this variation application subject to the conditions and reasons attached to the existing consent as these all remain relevant.

## **9. CONCLUSION**

- 9.1 The Scottish Government gives considerable commitment to renewable energy and encourages planning authorities to support the repowering of wind farms where it can be demonstrated that they are on suitable sites and environmental and other impacts have been shown to be capable of mitigation. The principle of a wind farm has been established in this location. The key consideration therefore is

whether the proposed variations is deemed acceptable. By increasing the blade width and removing the upper generating capacity limit this scheme has further potential over the consented scheme to provide a significant contribution to meeting the renewable energy targets and overall strategy and can be realised with limited additional impact.

- 9.2 The Council has determined its response to this application against the policies set out in the Development Plan, principally Policy 67 of the Highland-wide Local Development Plan. This policy also reflects policy tests of other policies in the plan, for example Policy 28 and those contained within Scottish Planning Policy. Given the above analysis, the application to variations proposed are considered acceptable in terms of the Development Plan, national policy and is acceptable in terms of all other applicable material considerations

## **10. IMPLICATIONS**

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: The proposed variations to the consent will provide the developer with more flexibility to secure new and improved wind turbines that may become available in the future which provide more MW of potential renewable energy capacity.
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

## **11. RECOMMENDATION**

It is recommended that The Highland Council **Raise No Objection** to this variation application subject to the conditions and reasons set out in the existing Section 36 consent contained within Appendix 1.

Designation: Area Planning Manager – Area Planning Manager - North

Author: Alison Harvey

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1: Location Plan  
Plan 2: Site Plan

## **Appendix A – Copy of Section 36 Decision notice from Scottish**

E:MS.MarineRenewables@gov.scot



**Scottish Government**  
**Riaghaltas na h-Alba**  
gov.scot

Mr Daniel H. Finch  
Moray Offshore Windfarm (West) Limited  
C/O Shepherd And Wedderburn LLP  
Condor House  
10 St. Paul's Churchyard  
London  
EC4M 8AL

Our Reference: 012/OW/MORLW – 8

14 June 2019

Dear Mr Finch

### **THE ELECTRICITY ACT 1989 (AS AMENDED)**

### **THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED)**

### **DECISION NOTICE FOR THE SECTION 36 CONSENT FOR THE CONSTRUCTION AND OPERATION OF THE MORAY WEST OFFSHORE WIND FARM, APPROXIMATELY 22.5KM SOUTHEAST FROM THE CAITHNESS COASTLINE**

#### **1 Application and description of the Development**

- 1.1 On 5 July 2018, Moray Offshore Windfarm (West) Ltd (Company Number 10515140) having its registered office at Condor House, 10 St. Paul's Churchyard, London EC4M 8AL ("Moray West" or "the Company"), submitted to the Scottish Ministers applications under the Electricity Act 1989 (as amended) ("the Electricity Act 1989") for:
  - A consent under section 36 ("s.36") of the Electricity Act 1989 for the construction and operation of the Moray West Offshore Wind Farm, approximately 22.5km southeast off the Caithness coastline ("the Application").
- 1.2 The Application was accompanied by an Environmental Impact Assessment Report ("EIA Report") as required under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 EW regulations") and a Habitats Regulations Appraisal ("HRA") as required under the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and the Conservation of Habitats and Species Regulations 2017

(collectively hereinafter referred to as “the Habitats Regulations”). An addendum of additional information (“EIA Addendum Report”) concerning ornithology and seascape and landscape visual impacts was submitted by the Company on 23 November 2018. A Report to Inform the Appropriate Assessment (“RIAA”) was submitted on 5 July 2018. A Population Viability Analysis Report (“PVA Report”) to amend and update the RIAA was submitted on 31 August 2018. On 18 March 2019, the Company also submitted an “Information to Inform HRA– Great Black-Backed Gull” Report (“GBBG Report”) in addition to the RIAA. The EIA Addendum Report, PVA Report and the GBBG Report are also referred to as part of the Application.

1.3 The Scottish Ministers carried out four consultation exercises:

- 1) A consultation on the Application (“the Original Consultation”);
- 2) A consultation on the PVA Report; this consultation was carried out at the same time as the Original Consultation. Responses were included within the Original Consultation. Therefore the PVA consultation is considered part of the Original Consultation;
- 3) A consultation on the EIA Addendum Report (“the EIA Addendum Consultation”); and
- 4) A consultation on the GBBG Report (“the GBBG Report Consultation”).

1.4 In addition to the Application, the Company has also applied for two marine licences (under the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010) to construct the offshore renewable energy works and offshore transmission infrastructure (“OfTI”). Separate decision notices will be issued in respect of any marine licences granted.

1.5 The Application is for the construction and operation of an offshore energy generating station, within a maximum generating capacity of around 850 megawatts (“MW”). The offshore generating station shall comprise either:

1. No more than 85 three-bladed horizontal axis Wind Turbine Generators (“WTG”) each with:
  - a. a maximum rotor tip height of 230 metres (measured from Highest Astronomical Tide (“HAT”));
  - b. a maximum rotor diameter of 195 metres;
  - c. a maximum hub height of 132.5 metres (measured from HAT);
  - d. a minimum blade tip clearance of 35 metres (measured from HAT);
  - e. blade width of up to 6 metres; and
  - f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind.

**or**



If the rotor tip height of the WTGs exceeds 230 metres (measured from HAT), no more than 72 WTGs each with:

- a. a maximum rotor tip height of 265 metres (measured from HAT);
- b. a maximum rotor diameter of 230 metres;
- c. a maximum hub height of 150 metres (measured from HAT);
- d. a minimum blade tip clearance of 35 metres (measured from HAT);
- e. blade width of up to 6 metres; and
- f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind;

2. No more than 275km of inter-array cable;

3. Monitoring equipment, such as metocean buoys;

4. Up to 85 foundations and substructures, and associated fixtures, fittings and protections;

5. Scour and inter-array cable protection;

6. The design of the WTG substructure will be chosen from the following options:

- i. Gravity base;
- ii. Monopile;
- iii. Jacket Foundation;
- iv. Suction Caisson;

All as described in the Application.

1.6 The total area within the Moray West Offshore Wind Farm ("the Development"), site boundary is 225km<sup>2</sup>. The location and boundary of the Development site is shown in Figure 1.

**This decision notice contains the Scottish Ministers' decision to grant consent for the Development detailed above, in accordance with regulation 21 of the 2017 EW regulations.**

## 2 Summary of environmental information

2.1 The environmental information provided was:

- An [EIA Report](#) that provided an assessment of the impact on a range of receptors;
- A [RIAA](#);
- A [PVA Report](#) to amend the conclusions of the RIAA;
- An [EIA Addendum Report](#) as a result of the responses from Scottish Natural Heritage (“SNH”) and the Royal Society for the Protection of Birds Scotland (“RSPB Scotland”), received through the Original Consultation; and
- A [GBBG Report](#) as a result of the responses from SNH, in relation to great black-backed gull (“GBBG”), received through the EIA Addendum Consultation.

2.2 In May 2016, the Company submitted a [scoping report](#) and a request for a scoping opinion in respect of the Development to the Scottish Ministers. Following consultation with statutory and other consultees, a [scoping opinion](#) was issued by Scottish Ministers on 15 August 2016, advising on the scope of the impacts to be addressed and the methods of assessment to be used within the EIA Report.

2.3 The EIA Report and the EIA Addendum Report assessed the impact pathways identified in the scoping opinion and was prepared in accordance with the terms of the 2017 EW Regulations. As the request for a scoping opinion was made before 16 May 2017, the transitional arrangements within Part 12 of the 2017 EW regulations applied.

2.4 A summary of the environmental information provided in the EIA Report and the EIA Addendum Report is given below.

### 2.5 Physical Processes and Water Quality

2.5.1 Impacts on receptors, and the associated pathways, during construction, operation and decommissioning phases were assessed. Impacts scoped into the EIA Report were increases in Suspended Sediment Concentration (“SSC”) and deposition of disturbed sediments to the seabed; jack-up vessel footprints on the seabed; impacts to designated marine and coastal geomorphological features; impacts to recreational surfing venues; impacts to the Smith Bank; and changes to water quality due to chemical release and contaminated sediments.

2.5.2 Changes to water quality due to sediment disturbance were required to be scoped in by the Scottish Ministers only if the Offshore Export Cable (“OEC”)

corridor would make landfall at Cullen Bay. The Company did not choose this location for the Development landfall, therefore changes to water quality to sediment disturbance were scoped out of the EIA Report.

- 2.5.3 All impacts assessed in respect of effects of the Development on physical processes and water quality alone and in-combination with the Moray East Offshore Wind Farm and the Beatrice Offshore Wind Farm ( “the Moray Firth Developments”) were considered to be of negligible or minor significance in the EIA Report. Changes to pathways were not considered to result in impacts on marine processes or receptors.

## 2.6 Benthic and Intertidal Ecology

- 2.6.1 Using information gathered during geophysical, benthic and intertidal surveys, the likely significant effects on benthic and intertidal ecology of the construction, operation and maintenance and decommissioning phases of the Development and OfTI were assessed in the EIA Report. As requested by SNH and Joint Nature Conservation Committee (“JNCC”) during scoping, biotope and habitat mapping were included within the EIA Report and this was used to inform the initial wind farm layout.
- 2.6.2 With embedded mitigation, the EIA Report concluded that effects on the benthic and intertidal habitats from the Development were, at worst, of minor adverse significance during construction, operation and decommissioning. Stated embedded mitigation includes avoidance of sensitive benthic habitats/species and species/habitats of conservation importance during construction, with this managed through post consent surveys and plans.
- 2.6.3 The EIA Report also considered the cumulative impact of long term habitat loss from the Development in combination with the Moray Firth Developments and concluded that the cumulative effect of habitat loss caused by these developments is considered to be negligible and therefore not significant in Environmental Impact Assessment (“EIA”). The cumulative effects of scouring of benthic habitats at foundations and around cables was also assessed and concluded to be of negligible to minor significance and therefore not significant in EIA terms.
- 2.6.4 The OEC corridor traverses through the Southern Trench proposed Marine Protected Area (“pMPA”) and includes the proposed qualifying features: Seapens and burrowing megafauna in circalittoral fine mud (burrowing mud). Potential impacts upon this biotope may therefore occur as a result of the cable laying, and cable operation and maintenance. Within the EIA Report, the effects on this biotope have been assessed as not significant in terms of EIA. A HRA for benthic habitats associated with the Moray Firth Special Area of Conservation (“SAC”) and its qualifying feature of subtidal sandbanks has been undertaken as a separate exercise, within the RIAA.

## 2.7 Fish and Shellfish ecology

- 2.7.1 The following impacts for all phases of the Development (construction, operation and maintenance and decommissioning) were depicted in the EIA Report chapter on fish and shellfish ecology: temporary and long term habitat loss, noise and vibration, increased suspended sediment concentration/deposition, accidental release of hydrocarbons and chemicals from infrastructure installation processes or from vessels, creation of new substrate and habitat, Electro Magnetic Field (“EMF”), seabed sediment heating from subsea cables, removal of structures and hard substrates.
- 2.7.2 For the Development alone, the aforementioned impacts were deemed to be not significant in EIA terms. Similarly, given that there is limited potential for any overlap in construction periods within the Moray Firth Developments, the cumulative impacts were assessed to be not significant.
- 2.7.3 The EIA Addendum Report did not identify any additional significant impacts on fish and shellfish as result of the change of boundaries request.

## 2.8 Marine Mammals

- 2.8.1 In relation to the potential impacts on marine mammals, the following were scoped out of the EIA Report: toxic contamination; disturbance leading to long-term avoidance as a result of operational noise; and stranding due to EMF. The impacts assessed were underwater noise during construction and decommissioning; collision risk from vessels; and reduction in foraging and prey availability during all phases of the Development. The species subject to the study were harbour seal, grey seal, bottlenose dolphins, harbour porpoises and minke whales.
- 2.8.2 The Company committed to a range of mitigation measures in the EIA Report to reduce the effects on marine mammals, including the implementation of a Vessel Management Plan (“VMP”) to ensure avoidance of high risk areas and a Piling Strategy (“PS”) that will incorporate a Marine Mammal Mitigation Plan.
- 2.8.3 The specific effects of the Development were predicted to be not significant on any marine mammal species in terms of the EIA Regulations. No significant effects were predicted for any marine mammal species as a result of the cumulative impact assessment.
- 2.8.4 The EIA Report also considered the impacts of the Development on minke whales. The baseline provided in the EIA Report on marine mammals concludes that higher densities of minke whales have been recorded in the Southern Trench possible Marine Protected Area (“pMPA”), particularly in the summer months. The EIA Report concludes that overall the impacts of the Development on minke whales are not significant in EIA terms.

- 2.8.5 For the Development alone, the RIAA predicted no significant effects on any marine mammal species. The cumulative impacts were also assessed to be not significant.
- 2.8.6 The EIA Addendum Report did not identify any additional impacts on marine mammals as a result of the change of boundaries request. The conclusion of the EIA Report of no significant impacts on marine mammals was still valid.
- 2.9 Ornithology
- 2.9.1 The EIA Report assessed the impacts on ornithology receptors during the construction, operation and maintenance and decommissioning phases of the Development. Effects from the Development in isolation were reported to be of negligible or minor significance. These included impacts from disturbance and displacement, barrier, collision, attraction to lit structures and pollution. No additional mitigation measures beyond the embedded mitigation, were proposed. Impacts during the decommissioning phase of the Development were assessed to be similar or identical to those during the construction phase.
- 2.9.2 The Company committed to mitigation measures within the EIA Report to reduce the effects on ornithological receptors including an appropriate EMP and a Marine Pollution Contingency Plan ("MPCP"), a VMP, installation of appropriate lighting on wind farm structures, and a minimum blade tip clearance of 35 metres above HAT. Cumulative impacts on disturbance and displacement were considered to be of only minor adverse significance.
- 2.9.3 Cumulative assessment of collision impacts were assessed in combination with the Moray Firth Developments during the breeding season. In addition cumulative impacts were assessed in-combination with the Kincardine Floating Offshore Wind Farm and the Hywind Scotland Pilot Park Offshore Wind Farm. During the non-breeding season, impacts from additional Scottish and North Sea wind farm developments were also considered. The cumulative impacts due to collision with turbines, in both scenarios, were assessed as not significant.
- 2.9.4 The EIA Report concluded that that only minor adverse effects were predicted when considering the Development in-combination with other projects and activities. During the operational phase, cumulative impacts were considered not significant in EIA terms.
- 2.9.5 Within the EIA Addendum Report, the Company made a commitment to limit kittiwake collisions to no more than 53 through a reduction in turbine numbers or changes to other design parameters. The EIA Addendum Report did not identify any additional significant impacts on ornithology as a result of the change of boundaries request.
- 2.9.6 In addition to the EIA Report, the RIAA considered the impact of the Development on East Caithness Cliffs Special Protection Area ("SPA"),

North Caithness Cliffs SPA, Buchan Ness to Collieston Coast SPA, Troup, Pennan and Lion's Head SPA, Moray Firth SAC, Dornoch Firth and Morrich More SAC and Moray Firth proposed SPA ("pSPA"). The GBBG Report also considered the impact of collision mortality and the integrity of the East Caithness Cliffs SPA.

- 2.9.7 The RIAA and the GBBG Report, concluded that the Development would not adversely affect the integrity of these protected sites alone or in-combination with other plans or projects.

2.10 Commercial Fisheries

- 2.10.1 Impacts from the construction, operation, maintenance and decommissioning phases were considered within the EIA Report. The construction period is anticipated to last three years of which a period of six months is included for installation of the OEC.
- 2.10.2 Construction phase impacts considered the potential for temporary loss or restricted access to traditional fishing grounds for a range of fish resources, associated with the implementation of safety measures. Safety zones would be implemented around active areas of construction and construction vessels within the Development, along the OEC corridor, and around the installed or partially installed infrastructure prior to commissioning. Due to the temporary nature of the construction phase, impacts on fishing fleets, ranging from six months to three years, were considered to be not significant.
- 2.10.3 Potential operational phase impacts included those arising from the physical presence of the project infrastructure within the Development, leading to a reduction in access to, or exclusion from, established fishing grounds. Specific potential impacts were identified as collision or snag risks, additional steaming to alternative fishing grounds for vessels, and navigational conflict within fishing grounds, arising from changes to shipping routes and maintenance vessel traffic.
- 2.10.4 Permanent loss or restricted access to fishing grounds may occur as a result of the presence of the OEC and with the exception of the safety zones around the infrastructure (50 metres) and maintenance works (500 metres). Fishing activity is not prohibited outside safety zones and vessels will have the option to steam throughout the Development site. Impacts during the operational phase were therefore assessed to be not significant and safety issues were assessed to be within acceptable limits where compliance with mitigation is in place. Displacement of fishing activity into other areas was assessed to be minor or negligible.
- 2.10.5 Decommissioning phase impacts were assessed to be the same as for the construction phase.
- 2.10.6 The cumulative impact assessment considered the impact of other relevant projects in the following areas:

Area	Project
Moray Firth	Consented Moray East Offshore Ltd Eastern Works (Telford, Stevenson and MacColl offshore wind farms)
	Under construction Beatrice Offshore Wind Ltd Wind Farm
	Active Beatrice Oil Field
	Consented Caithness Moray Interconnector High Voltage Direct Current cable
Forth and Tay and wider area	Consented Inch Cape Offshore Wind Ltd Wind Farm (Revised Design)
	Consented Neart na Gaoithe Offshore Wind Ltd Wind Farm Revised Design
	Proposed Seagreen Wind Energy Ltd Phase I Wind Farm
	Operational Aberdeen Offshore Wind Farm Ltd Wind Farm
	Operational Hywind Scotland Demonstration WTG
	Operational Kincardine Offshore Windfarm Ltd Floating Offshore Wind Farm
	Consented Forthwind Ltd Wind Farm Demonstrator Project – Phase 1
	Proposed Forthwind Ltd Wind Farm Demonstrator Project – Phase 2
	Operational ORE Catapult Levenmouth Demonstration WTG
English Wind Farms	Consented Dounreay Tri Ltd Floating Wind Demonstration Project
	Operational Blyth Offshore Wind Farm
	Under construction Blyth Offshore Wind Demonstration Project – Array 2
	Operational Rampion Offshore Wind Farm

As the same obligations for safety issues will apply to all developments, this was not considered as part of the assessment. Fishing may continue within traditional grounds as a result of the limited area lost during operation. A significant level of fishing activity currently occurs for the most part inshore, coinciding with locations of export cables for the majority of projects. Permanent loss or restricted access to traditional fishing grounds was

therefore found to be minor or negligible and therefore not significant in EIA terms.

## 2.11 Shipping and Navigation

2.11.1 The impacts of the Development on shipping and navigation receptors during the construction, operation and decommissioning phases were considered in the EIA Report. The impacts of the Development in isolation were found to be broadly acceptable for all vessels with the exception of oil and gas vessels which were found to be tolerable with mitigation, which includes vessel presence outside the buoyed construction area and the implementation of minimum safe passing distances. Diminishing emergency response resources were also considered within the operational phase due to the potential for an increase in incidents requiring deployment of Search and Rescue ("SAR"). However, the EIA Report concluded that the frequency of occurrence, in circumstances where there would not be emergency response capability, would be negligible and therefore not significant.

2.11.2 Cumulative construction and operation effects were considered alongside the Moray Firth Developments, with regards to increased vessel to vessel collision risk, vessel to structure collision risk, and anchor interaction and snagging with export and other cables and pipelines. The EIA Report concluded that the impacts were not significant. Mitigation to reduce vessel to vessel collision risks include the implementation of a VMP and Navigational Safety Plan ("NSP") to ensure that construction traffic does not interact with third party activity. Vessel displacement due to deviation around the Development was also considered within the operational phase. The EIA Report concluded that vessels are likely to slowly adapt to alternative routes over time and considered the impact to be not significant.

2.11.3 The EIA Report did not anticipate any cumulative decommissioning effects.

## 2.12 Military and Aviation

2.12.1 The EIA Report concluded that the Development would have major significant effects on military and aviation receptors.

2.12.2 The EIA Report stated that the Development in isolation would have major significant effects on the National Air Traffic Service Safeguarding ("NATS"), en route Allanshill Primary Surveillance Radar ("PSR"), and Royal Air Force ("RAF") Lossiemouth PSR, from the turbines masking or reflecting aircraft signals and from clutter on the radar system. Helicopter approach procedures to offshore installations, Wick Airport approach procedures and minimum safe altitude requirements were also assessed as significant. Mitigation within the EIA Report, including the necessity to notify the presence of obstructions to NATS for inclusion in appropriate aviation related documentation and aviation mapping, reduced the effects to not significant. Residual mitigation is to be agreed with the Ministry of Defence ("MOD"), when the final locations of the constructed turbines, turbine movement and



maximum height of construction infrastructure is known. Interference with Helicopter Main Route X-Ray, used by helicopters to prevent direct physical conflict with the WTGs, was considered negligible and assessed as not significant.

- 2.12.3 The EIA Report concluded that no further assessment with respect to cumulative effects was required. Whilst other wind farm developments may be located in close proximity to the Development, the impact on any aviation receptor is a standalone effect and can therefore be considered in isolation. The EIA Report stated that it is necessary for mitigation measures to be carried out under separate arrangements, such as negotiations and discussions with aviation stakeholders.

## 2.13 Cultural Heritage

- 2.13.1 The EIA Report considered impacts on archaeological and cultural heritage receptors, both onshore and offshore, arising from the construction, operation, maintenance and decommissioning phases of the Development.
- 2.13.2 The effects arising from the Development on the setting of onshore cultural heritage and marine archaeology receptors were reported to be of minor or negligible significance where the implementation of mitigation measures are embedded.
- 2.13.3 The EIA Report considered the effects of the Development on cultural heritage during the construction and operational phases, and in-combination with the export cables for the Moray Firth Developments. These effects were deemed to be of negligible or no significance where a Protocol for Archaeological Discoveries ("PAD") is followed.
- 2.13.4 Cumulative effects on the setting of onshore cultural heritage assets and marine archaeology receptors, was also reported to be of minor, negligible or no significance. No cumulative effects were identified during the decommissioning phase.

## 2.14 Seascape and Landscape Visual Impact Assessment

- 2.14.1 The EIA Report concluded that there would be significant visual effects, during all phases of the Development, as occurring along the coastal area of Caithness, north east Sutherland and the Highlands (between the A9 at Crakaig in the east and Wick in the north) spanning a section of coast approximately 60km in length. Significant effects at night were predicted to be concentrated in the coastal areas between Wick and Navidale. Significant effects related to construction and decommissioning of the OEC were identified in the Sandend area on the Moray coast. Sandend Beach and all potential landfall locations to the west towards Findlater Castle have now been removed from the design. Investigations for the final location are ongoing.

- 2.14.2 Significant effects on landscape and seascape character were concentrated along the coast between north east Helmsdale and Sarclet Head and between the A9/A99 and the coast. This included a small part of the area designated as the Flow Country and Berriedale Coast Special Landscape Area ("SLA"), as well as the Dunbeath Castle Gardens Designated Landscape, as a result of increased extent of open sea views affected by the Development and the scale of proposed turbines.
- 2.14.3 The EIA Report considered impacts upon seascape and landscape of the Development cumulatively with current operational and consented offshore and onshore wind farms. Significant impacts were reported in the Highlands where, when visibility is very good or excellent, there are open sea views towards the Development and the Moray Firth Developments. In some instances, predicted visual effects were the sequential and/or successive visibility of the Development in-combination with onshore wind farms. Along the moray coast in locations where visibility is excellent, significant cumulative visual effects would occur as a result of the Development being seen in the context of the Moray East Offshore Wind Farm.
- 2.14.4 The EIA Addendum Report concluded that mitigation via the removal of the Model 4 WTG, the largest of the proposed turbines from the design and the reduction in the duration of the wind farm operation from 50 years to 25 years could lead to a reduction in impact.
- 2.15 Socio-Economics
- 2.15.1 The EIA Report advised that socio-economic impacts during the construction, operation and decommissioning phases of the Development were positive, with effects that are quantifiable, ranging from minor to major positive effects upon the "Local Study Area" (defined as the combined local authorities of Highlands, Moray, Aberdeenshire & Aberdeen City) to minor to moderate positive Scotland wide effects.
- 2.15.2 Positive significant effects, ranging from minor to moderate, were reported for the construction phase of the Development resulting from direct and indirect employment creation in the construction supply chain for both the Local Study Area and Scotland. Positive significant effects, resulting from indirect and direct Gross Value Added ("GVA") creation in the construction supply chain, ranged from minor to major for the Local Study Area and minor to moderate for Scotland.
- 2.15.3 Positive significant effects, ranging from moderate to major for the Local Study Area were reported during the operational and maintenance phases of the Development from the direct and indirect employment impact resulting from localised high value and long term employment opportunities. Minor positive significant Scotland wide effects were reported due to the localised nature of jobs. Effects during the decommissioning phase were stated to be similar to that during the construction phase.

- 2.15.4 The EIA Report assessed the cumulative effects dependant on the extent to which the Development and other relevant projects, namely the Moray Firth Developments and the Beatrice Oil Field decommissioning, draw on a similar supply chain and labour market within the Local Study Area. The report also considered whether the construction phase for the Development and other projects are undertaken simultaneously or consecutively and the ability of the supply chain and labour markets to adapt to increased demand. The EIA Report concluded that cumulative impacts were expected to be of major beneficial significance. In-combination effects may be even higher for the Local Study Area, however, this cannot be quantified as it is not yet known which port the Development would use for the operational and maintenance phases.

### **3 Consultation**

- 3.1 In accordance with the 2017 EW Regulations, on 5 July 2018, the Company submitted an EIA Report and HRA Report describing the Development and giving an analysis of its environmental effects. On 31 August 2018, the Company submitted a PVA Report amending some of the results in the RIAA. On 18 March 2019, the Company submitted the GBBG Report.
- 3.2 Advertisement of the Application was made in the local and national press and the Application website. The notices were placed in the public domain and the opportunity given for those wishing to make representations.
- 3.3 The dates of the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken.

<b>Document</b>	<b>Date received</b>	<b>Dates of consultation</b>	<b>Publication</b>
EIA Report and Application	5 July 2018	8 July 2018 – 21 August 2018  8 July 2018 – 12 November 2018 (for Planning Authorities)	The Press & Journal (10 July 2018 and 18 July 2018)  The Edinburgh Gazette (10 July 2018) The Scotsman (10 July 2018) The Banffshire Journal (10 July 2018)
PVA Report	31 August 2018	31 August 2018 – 2 October 2018	The Press & Journal (4 September 2018) The Edinburgh Gazette (4 September 2018)
EIA Addendum Report	23 November 2018	23 November 2018 – 7 January 2019	The Press & Journal (23 November 2018 and 30 November 2018) The Edinburgh Gazette (23 November 2018) The Scotsman (24 November 2018)
GBBG Report	18 March 2019	19 March 2019 – 2 April 2019	The Press & Journal (19 March 2019) The Edinburgh Gazette (19 March 2019)

## **4 Summary of statutory consultee responses**

- 4.1 Under the 2017 EW Regulations, the statutory consultees are as follows: SNH, the Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”). The planning authorities whom the Scottish Ministers considered appropriate to consult in respect of the proposed Development are Aberdeenshire Council, Moray Council and the Highland Council.
- 4.2 In addition, the Maritime and Coastguard Agency (“MCA”) and Northern Lighthouse Board (“NLB”) are statutory consultees under the Marine (Scotland) Act 2010.
- 4.3 Aberdeenshire Council
- 4.3.1 Aberdeenshire Council responded to the Original Consultation, the EIA Addendum Consultation and the GBBG Report Consultation.
- 4.3.2 Aberdeenshire Council raised no objection to the Application and underlined that there are crossovers between the Application and the Company’s application for the onshore components of the project.
- 4.3.3 Aberdeenshire Council stated that the Development in isolation would have a non-significant impact on the landscape and seascape. Aberdeenshire Council also underlined that although Sandend village is stated in the EIA Report to have potential significant impacts, these would be short term and temporary. Aberdeenshire Council had no substantial concerns with the potential cumulative visual impacts, of the Development in-combination with the Moray Firth Developments. However, it recommended that any wind turbines should be of an appropriate scale to reduce any potential adverse impacts of this nature as far as possible.
- 4.3.4 In order to ensure that the recreational activities in Sandend are minimally impacted by the construction activities, Aberdeenshire Council requested that the Company continues to engage with the affected community and local businesses.
- 4.3.5 Due to the issues raised by the local community of Sandend and sports groups, the Company withdrew Sandend as a potential site for landfall by letter to the Scottish Ministers on the same day the Application was submitted.
- 4.3.6 Concerning the archaeology assessment presented in the EIA Report, Aberdeenshire Council accepted the methodology used and agreed with its conclusions. Aberdeenshire Council welcomed the Company’s commitment to the creation of a Written Scheme of Investigation (“WSI”), albeit the Council requested that the WSI should be appropriately secured.

- 4.3.7 In terms of onshore and offshore works interactions, Aberdeenshire Council requested that, where possible, these should run concurrently and that details of timings of works should be submitted to the Council to ensure that potential disruptions to the community are limited. Aberdeenshire Council also commented on the protection of rocks and cliffs around the shoreline, and that the Company should ensure ongoing engagement with the local community as the proposal evolves and decisions are made on cable landfall and installation method. In addition, Aberdeenshire Council recommended that, if Horizontal Directional Drilling (“HDD”) is not used, then further intertidal surveys at the exact landfall area should take place.
- 4.3.8 Aberdeenshire Council stated that any proposed impact on the Cullen to Stakeness Coast Site of Special Scientific Interest (“SSSI”) running along the coast should be addressed. In addition, it is requested that the Company should demonstrate that no adverse noise impact would occur.
- 4.3.9 In its response to the EIA Addendum Consultation, Aberdeenshire Council referred back to the comments submitted with the Original Consultation. Overall, Aberdeenshire Council had no objections to the changes proposed by the EIA Addendum Report.
- 4.3.10 Aberdeenshire Council submitted a response on the GBBG Report. As GBBG are not a qualifying interest for any designated sites within the Aberdeenshire region, Aberdeenshire Council stated that the GBBG Report did not raise any concerns in relation to the Application.
- 4.3.11 Conditions have been attached to the s.36 consent to address the concerns raised by Aberdeenshire Council, these mandate that the Company prepares, consults on, and adheres to, the terms of a PAD and WSI, a Construction Programme (“CoP”), a Construction Method Statement (“CMS”) and a Design and Layout Specification Plan (“DSLIP”). Further, conditions will be attached to any marine licence(s) granted, in relation to any cable landfall area and the use of HDD.
- 4.4 Historic Environment Scotland
- 4.4.1 HES responded to the Original Consultation and to the EIA Addendum Consultation.
- 4.4.2 HES did not object to the Application. HES stated that any consent should ensure that the WSI that includes the PAD should be approved by Scottish Ministers and/or HES before the works are allowed to commence.
- 4.4.3 HES submitted a response to the EIA Addendum Consultation. HES was content that the part 1 of the Addendum (Ornithology and Seascape, Landscape and Visual Assessment, (“SLVIA”)) did not relate to its cultural remit, and that Part 2 (the site boundary variation) included an updated baseline and that due consideration has been given to archaeological assets.

- 4.4.4 HES stated that the conclusions of the EIA Report are still valid and that the changes are unlikely to increase the effects on marine archaeological assets. HES reiterated its recommendation to include a condition on PAD and WSI in the s.36 consent, if this were to be granted.
- 4.4.5 A condition requiring the Company to prepare, consult on and adhere to, a PAD and WSI has been attached to the s.36 consent.
- 4.5 Maritime and Coastguard Agency
- 4.5.1 MCA responded to the Original Consultation and to the EIA Addendum Consultation.
- 4.5.2 MCA did not object to the Application and confirmed that it was content that all recommendations regarding the Marine Guidance Note (MGN) 543 checklist provided as part of the Navigation Risk Assessment ("NRA") were addressed.
- 4.5.3 The main concerns raised by MCA related to the proximity of the Development to the Moray Firth Developments, in relation to the layout designs affecting the safety of navigation and SAR capabilities. MCA highlighted that there is no designated navigational corridor or sufficient air space to allow SAR helicopters to manoeuvre safely outside the turbine boundaries.
- 4.5.4 MCA requested that the Company should discuss the turbine layout as soon as possible and that, prior to construction, the layout must be approved. In addition, MCA requested that the Company should conduct a radio survey prior to any construction taking place.
- 4.5.5 MCA requested that conditions should be added to the s.36 consent, including:
- A lighting and marking plan which includes the use of aviation lights visible at 360°, compatible with night vision imaging systems as detailed in CAP 764 CAA Policy and Guidelines on Wind Turbines and in compliance with the updated MGN;
  - Hydrographic surveys should fulfil the requirements of the International Hydrographic Organisation ("IHO") Order 1a standard;
  - Any consented cable protection works must ensure existing and future safe navigation is not compromised. MCA would accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum. The Beatrice Offshore Wind Farm cables would have to be addressed in the cable burial plans; and
  - Safety zones.
- 4.5.6 MCA highlighted that the Company must ensure that its contractors and subcontractors must have the required certification for all vessel operations, and early engagement with the local Marine Office should be undertaken,

where necessary, to ensure there are no issues with regards to survey and inspections, towage and safety requirements.

- 4.5.7 MCA responded on the EIA Addendum Consultation stating that there was no concern in principle. However, the change in redline site boundary would require a change in security measures to ensure that all the requirements of MGN 543 are fulfilled.
- 4.5.8 The Company withdrew the change of site boundary on 25 February 2019.
- 4.5.9 Conditions have been placed upon the s.36 consent to mitigation the impacts highlighted by MCA, including the requirement to prepare, consult on and adhere to the Emergency Co-operation Plan (“ERCoP”), Cable Plan (“CaP”), CMS, DSLP, NSP, VMP and Lighting and Marking Plan (“LMP”).
- 4.6 Moray Council
- 4.6.1 Moray Council raised no objections to the Application or to the EIA Addendum Report.
- 4.7 Northern Lighthouse Board
- 4.7.1 NLB responded to the Original Consultation and the EIA Addendum Consultation.
- 4.7.2 NLB did not object to the Application. NLB noted that there was no defined number, size or location of the turbines. therefore its response was general in nature. NLB requested that the Company should establish a NSP and an LMP. The LMP should cover all phases of the Development. NLB confirmed that the lighting and marking of the Development may require to be altered to reflect developments in the future. During the operational phase the Development shall be marked and lit as per the International Association of Marine Aids to Navigation (“IALA”) Recommendations O-139.
- 4.7.3 NLB also required that an emergency response plan should be prepared by the Company. NLB stated that all navigational lighting and marking should require NLB Statutory Sanction and that works should be published via Notice to Mariners (“NtMs”), Navigation Warnings and relevant publications. Finally, all turbine locations, cable route and landing points should be communicated to the United Kingdom Hydrographic Office (“UKHO”).
- 4.7.4 NLB advised that its Original Consultation response remained valid in respect of the EIA Addendum Report.
- 4.7.5 Conditions have been placed upon the s.36 consent to mitigate the impacts highlighted by NLB, including the requirement to prepare, consult on and adhere to the DSLP, NSP, and LMP.



4.8 Scottish Environmental Protection Agency

4.8.1 SEPA responded to the Original Consultation and to the EIA Addendum Consultation.

4.8.2 SEPA did not object to the Application. However, SEPA requested that a condition for a decommissioning plan will be attached to the s.36 consent. SEPA confirmed that if this condition was not applied then the response should be treated as an objection.

4.8.3 SEPA requested that a decommissioning schedule and plan, and an active waste management strategy and plan be included as conditions of the s.36 consent.

4.8.4 In response to the EIA Addendum Consultation, SEPA raised no objection and advised the Company to refer to its standing advice.

4.8.5 Conditions requiring the Company to prepare, consult on and adhere to CoP, CMS, EMP and Decommissioning Programme ("DP") have been attached to the s.36 consent.

4.9 Scottish Natural Heritage

4.9.1 SNH responded to the Original Consultation, the EIA Addendum Consultation and the GBBG Report Consultation.

4.9.2 SNH objected to the Application based on the Development having adverse predicted effects on the site integrity for kittiwake as a qualifying interest of the East and North Caithness Cliffs SPA, in- combination with the Moray Firth Developments, collision risk being the key impact. SNH raised concerns on the cumulative impacts of the Development on the landscape and seascape of the East Sutherland Coast.

4.9.3 SNH stated that the Company had provided insufficient information to enable it to conclude whether there would be no adverse effect caused by the Development in isolation on site integrity for kittiwake as a qualifying interest of the East Caithness Cliffs SPA; or in-combination effects on common guillemot and razorbill of the East Caithness Cliffs SPA; and to reach a conclusion for GBBG as a qualifying feature of East Caithness Cliffs SPA.

4.9.4 SNH advised that for the Development in isolation and in-combination with the Moray Firth Developments there would be no adverse effect on site integrity of any SPAs with respect to the following qualifying interests:

- East Caithness Cliffs SPA – fulmar and herring gull;
- North Caithness Cliffs SPA – common guillemot, razorbill, puffin, fulmar;
- Buchan Ness to Collieston Coast SPA– herring gull, common guillemot, fulmar and kittiwake; and

- Troup, Pennan and Lion's Head SPA – herring gull, kittiwake, common guillemot, razorbill, fulmar.
- 4.9.5 SNH also advised that, for the Development in isolation and in-combination with the Moray Firth Developments, there would be no adverse effect on site integrity for all of the qualifying interests of the Moray Firth pSPA.
- 4.9.6 SNH advised that there would be no adverse effect on the site integrity of the Moray Firth SAC, with respect to the bottlenose dolphin qualifying interest, provided appropriate mitigation is implemented through s.36 consent and/or marine licence conditions.
- 4.9.7 SNH advised that there would be no adverse effect on site integrity of the Dornoch Firth and Morrich More SAC with respect to the harbour seal qualifying interest, provided appropriate mitigation is implemented through s.36 consent and/or marine licence conditions. SNH advised that the Development, both in isolation and in-combination with the Moray Firth Developments, had no significant long term effect on the population trajectory of harbour seals.
- 4.9.8 In relation to noise modelling, to inform assessment of effects on marine mammals, SNH stated that although it would be more accurate to conduct noise modelling using a conversion factor of 1%, SNH accepted the assessment conducted in the EIA Report with a 0.5% conversion factor.
- 4.9.9 In relation to the potential impacts of the Development on the Southern Trench pMPA, SNH advised that the Development was unlikely to have an impact on the minke whale qualifying interest when the animals are within the pMPA. Potential impacts on the Southern Trench pMPA from the OfTI will be considered in the OfTI decision notice.
- 4.9.10 SNH agreed with the EIA Report conclusions that there would be no significant effects on physical processes caused by the Development. However, in relation to the landfall area, SNH stated that it is preferable to avoid the Cullen to Stakeness coast SSSI and that a detailed landfall plan should be agreed with SNH and Marine Scotland in advance of the works.
- 4.9.11 SNH supported the conclusions of the EIA Report, that the Development would be unlikely to have significant impacts on the benthic environment. However, considering that details on the landfall area are unclear, SNH indicated that further work to assess potential impacts would be necessary, in particular by way of intertidal surveys.
- 4.9.12 SNH welcomed the commitment of the Company to bury cables to one metre depth and, where not possible, protect the cables to reduce the impacts of magnetic fields on diadromous fish. SNH also welcomed the commitment of the Company to submit a PS.

- 4.9.13 SNH underlined that if Marine Scotland is to recommend approval of the Development, then SNH wishes to provide advice on the conditions to mitigate impacts on natural heritage interests.
- 4.9.14 In its consultation response to the EIA Addendum Report, SNH maintained its objection. SNH based its objection on the information provided for ornithology impacts. Specifically, SNH stated that the amended proposal would continue to have an adverse effect on site integrity for kittiwake as a qualifying interest of the East and North Caithness Cliffs SPAs, in-combination with the Moray Firth Developments. SNH also stated that there was still insufficient information to allow it to reach a conclusion for GBBG as a qualifying feature of the East Caithness SPA. SNH advised of no adverse effect on site integrity for common guillemot and razorbill for East Caithness Cliffs SPA.
- 4.9.15 In relation to the SLVIA, SNH welcomed the changes proposed to reduce the visual impacts, in particular the proposed reduction in turbine height and change in site boundary.
- 4.9.16 Concerning marine mammals, SNH was pleased to see that the noise modelling was run with a 1% conversion factor. SNH agreed with the conclusions of the EIA Addendum Report, that the magnitude of impact would be low or negligible. SNH reiterated that the Company would have to apply for a European Protected Species (“EPS”) licence. Finally, considering that the Company predicted large effect zones on minke whale, SNH advised that an EPS licence for injury may be required, unless appropriate mitigation is included in the PS.
- 4.9.17 In response to the GBBG Report Consultation, SNH advised on 2 April 2019 that the Development, in-combination with the Moray Firth Developments, would have an adverse effect on the integrity of East Caithness Cliffs SPA with respect to GBBG. SNH advised that if s.36 consent was to be granted, pre-construction monitoring should be undertaken to understand the movements of adult GBBG recorded in the Development site during the breeding season.
- 4.9.18 Conditions requiring the Company to prepare, consult on and adhere to a CoP, CMS and EMP have been attached to the s.36 consent to mitigate concerns raised by SNH.
- 4.10 The Highland Council
- 4.10.1 The Highland Council responded to the Original Consultation and to the EIA Addendum Consultation.
- 4.10.2 The Highland Council raised no objections to the Development. The Highland Council stated that although the Development would be likely to have visual impacts, it would also be likely to have positive effects on the

local economy, in particular upon the number of jobs that are to come to the Highlands.

4.10.3 The Highland Council had no objections to the changes proposed in the EIA Addendum Report, subject to the addition of conditions that would address the following issues:

- Design, layout and lighting of the Development;
- Maximisation of the GVA in terms of employment and associated economic activities that comes to the Highlands, as a result of the construction phase of the project;
- Engagement with the Highlands renewable energy supply chain and its ports and harbours, including Nigg and Port of Cromarty as a potential operation and maintenance facility;
- Engagement with the relevant public and private sector bodies in the Highlands to ensure that the area achieves maximum socio-economic returns from the Development.

4.10.4 Officials considered the request from the Highland Council and concluded that the specific conditions could not be attached to the s.36 consent, if granted. Therefore, officials contacted the Highland Council to request further clarification on its position if conditions related to the socio-economic impacts of the Development were not attached to the s.36 consent, if granted. Officials also underlined that these aspects could be monitored via specific plans.

4.10.5 The Highland Council responded to the officials' correspondence stating that whilst understanding the reason why specific conditions cannot be attached, it is pleased that monitoring of the socio-economic impacts is possible. Although, the Highland Council welcomed the fact that the Company received a "supply chain certificate" from BEIS, it was not aware of any specific dialogue with the Company in respect of its request for the Highlands to benefit more widely from this Development. The Highland Council underlined that members of the committee were keen to ensure that Moray West would invest in the Highlands. The Highland Council concluded that the fact that the suggested conditions cannot be secured is not a reason to object to the development. Therefore the Highland Council does not object to the Application.

4.10.6 Conditions requiring the Company to prepare, consult on and adhere to a DSLP, Design Statement ("DS"), PEMP and LMP have been attached to the s.36 consent.

## **5 Summary of non-statutory consultee responses**

### **5.1 British Telecom (“BT”)**

5.1.1 BT did not object to the proposal and confirmed that the project should not cause interference to BT’s current and planned radio networks.

5.1.2 BT did not object to the EIA Addendum Report.

### **5.2 Cruising Association (“CA”)**

5.2.1 CA had no comments on the Application.

### **5.3 Fordyce, Sandend and District Community Council (“FSDCC”)**

5.3.1 FSDCC responded to the Original Consultation and to the EIA Addendum Consultation.

5.3.2 FSDCC had no comments in respect of the Development and its electricity generation infrastructure.

5.3.3 FSDCC highlighted several deficiencies in the EIA Report with respect to the OfTI and associated cable landfall proposals. FSDCC concluded that the failure to include a landfall geology assessment to inform the HDD installation method demonstrated that this method is unproven. Until the HDD method is proven to be suitable, FSDCC is of the view that the landfall cable methodology proposed is flawed.

5.3.4 In addition, FSDCC felt that any change in the morphodynamics of the embayment below Mean High Water Springs (“MHWS”) would potentially impact on the propagation of waves within the bay at Sandend. FSDCC also highlighted that the Company had not demonstrated any quantifiable analysis of the outcome of the sea bed installation works and ongoing cable burial over 50 years or on the morphodynamics which currently exist.

5.3.5 FSDCC had no comments in relation to the EIA Addendum Report. However, it reiterated that it retained its interest in matters regarding the OfTI.

5.3.6 To mitigate concerns raised in relation to the export cable, FSDCC will be consulted on post consent plans required as conditions of the marine licence for the OfTI, if granted. Such conditions will require the Company to prepare, consult on and adhere to a CoP, a CMS and an CaP.

### **5.4 Highlands and Islands Enterprise (“HIE”)**

5.4.1 HIE had no comments on the Application and did not respond to the EIA Addendum Consultation.

## 5.5 Ministry of Defence

5.5.1 MOD responded to the Original Consultation and to the EIA Addendum Consultation.

5.5.2 MOD objected to the Application stating that the Development's turbines would be detectable by and cause unacceptable interference to the Air Traffic Control ("ATC") radar used by RAF Lossiemouth. MOD confirmed that following an operational assessment of the proposal by an ATC subject matter expert, the proposed turbines would have a significant and detrimental effect on the provision of air traffic services at RAF Lossiemouth. MOD therefore objected on these grounds.

5.5.3 In addition, MOD objected to the Development for the following reasons:

- a) Restrictions that the Development would impose upon departure routes including Standard Instrument Departures ("SIDS");
- b) Restrictions that the Development would impose upon approach and arrival procedures;
- c) Restrictions that the Development would impose upon traffic patterns, in particular the radar to visual profile;
- d) Restrictions that the Development would impose upon lower airspace radar service and the Lossiemouth zone controller;
- e) Restrictions that the Development would impose upon special tasks conducted by the ATC unit;
- f) Restrictions that the Development would impose upon aircraft operating areas;
- g) Restrictions that the Development would impose upon Tactical Aid to Navigation procedures;
- h) Restrictions that the Development would impose upon final approach routes;
- i) Restrictions that the Development would impose upon holding areas;
- j) Restrictions that the Development would impose upon instrument flight paths;
- k) The position of the Development in relation to controlled airspace;
- l) The position of the Development in relation to restricted/danger areas;
- m) MOD's future airspace and operational requirements;
- n) The frequency of the provision of MOD traffic service and deconfliction service in the vicinity of the Development;
- o) Air traffic density in the vicinity of the Development;
- p) Existing clutter or wind farms in the vicinity of the Development;

- q) The type and characteristics of aircraft routinely using the airspace in the vicinity of the Development;
  - r) The performance of the radar;
  - s) The complexity of the ATC task.
- 5.5.4 MOD stated that, should the Company overcome these issues, the turbines in the Development would be required to be fitted with aviation lighting in accordance with Article 219 of the Air Navigation Order.
- 5.5.5 In response to the EIA Addendum Report, MOD maintained its objection and added that the proposed variation of the site boundary would cause unacceptable interference to the Precision Approach Radar ("PAR") located at RAF Lossiemouth. As a result of this objection, on the 25 February 2019, the Company submitted a letter to the Scottish Ministers withdrawing the request for a change of site boundary
- 5.5.6 On 10 April 2019, MOD sent an official letter to the Scottish Ministers to provide clarity on its position in relation to the Application. MOD informed the Scottish Ministers that it has been in discussions with the Company to reach agreement on measures to address the unacceptable impacts identified by MOD.
- 5.5.7 MOD added that the Company submitted a technical proposal to mitigate the impacts on the ATC radar at RAF Lossiemouth. MOD accepted the proposal. In its letter, MOD has proposed four draft conditions, previously agreed with the Company, to be attached to s.36 consent, if consent were to be granted.
- 5.5.8 Conditions have been attached to the s.36 consent requesting that the Company prepare, consult and submit for approval to the Scottish Ministers an ATC Radar Mitigation Scheme and a LMP. Conditions regarding MOD notification when works commence and in relation to charting requirements have also been attached to the s.36 consent.
- 5.6 National Air Traffic Services
- 5.6.1 NATS responded to the Original Consultation and to the EIA Addendum Consultation.
- 5.6.2 NATS objected to the Application on the basis that the Development would have unacceptable impacts on NATS (En Route) Public Limited Company ("NERL") Allanshill Radar. The concerns of NATS related to the generation of false primary plots and a possible reduction in the probability of the radar's detection of real aircraft.
- 5.6.3 NATS maintained its objection to the Application in its response to the EIA Addendum Consultation. However, NATS notified the Scottish Ministers that it and the Company were actively working to agree on an option for mitigation.

- 5.6.4 NATS submitted a letter to inform the Scottish Ministers that the Company and NATS have entered an agreement on future mitigation implementation. Therefore, NATS would withdraw its objection, subject to the imposition of a proposed condition. The Company submitted a letter on 5 April 2019 notifying the Scottish Ministers that it accepts and recognises the need of the condition proposed by NATS.
- 5.6.5 A condition has been attached to the s.36 consent requiring the Company to prepare and submit an Primary Radar Mitigation Scheme ("PRMS") for approval by the Scottish Ministers. Such condition states also that no part of any WTG shall be erected above mean sea level until a PRMS has been submitted and approved by Scottish Ministers. No blades should be fitted until the mitigation measures are fully implemented in accordance with the PRMS. .
- 5.7 Royal Society for the Protection of Birds Scotland
- 5.7.1 RSPB Scotland responded to the Original Consultation, the EIA Addendum Consultation and the GBBG Report Consultation.
- 5.7.2 RSPB Scotland objected to the Application based on the in-combination impacts on seabird population from the Moray Firth Developments and other UK east coast projects.
- 5.7.3 RSPB Scotland noted that the Company had used more up-to-date assessment methods than had been deployed in relation to the Moray Firth Developments. However, RSPB Scotland considered that the EIA Report confirmed that the impacts of the already consented Moray Firth Developments would exceed the environmental capacity of regional seabird populations to cope with new threats.
- 5.7.4 RSPB Scotland advised that the Development in-combination with the Moray Firth Developments would lead to an adverse effect on the site integrity of East Caithness Cliffs and North Caithness Cliffs SPAs with respect to kittiwake. RSPB advised that the effects would likely lead to an adverse effect on the site integrity of Troup, Pennan and Lion's Heads SPA with respect to kittiwake. RSPB Scotland advised that in-combination impacts on kittiwake from UK wind farms is significant in EIA terms.
- 5.7.5 RSPB Scotland maintained its objection to the Application in its response to the EIA Addendum Consultation. RSPB Scotland stated that the concerns that it raised in its original response still stood and that the impacts of the Development alone and in-combination would be too significant. However, RSPB Scotland welcomed the change in duration of the Development from 50 to 25 years and the efforts made to change the Application to reduce the impacts of the Development.
- 5.7.6 In response to the GBBG Report Consultation, RSPB Scotland advised on 2 April 2019 that the Development in-combination with the Moray Firth



Developments would have an adverse effect on the integrity of East Caithness Cliffs SPA with respect to GBBG. RSPB Scotland also raised queries on some technical aspects of the PVA modelling.

5.7.7 The Company responded to RSPB providing further clarity on points raised by RSPB. RSPB responded to the Company reiterating its position of maintaining its objection.

5.7.8 To mitigate concerns raised, a condition requiring the Company to prepare, consult on and adhere to a Project Environment Monitoring Programme (“PEMP”) has been attached to the s.36 consent.

## 5.8 Royal Yachting Association Scotland (“RYA”)

5.8.1 RYA responded to the Original Consultation and to the EIA Addendum Consultation.

5.8.2 RYA did not object to the Application. RYA noted that the layout is yet to be agreed and confirmed that it wished to be consulted on the post consent DSLP.

5.8.3 RYA submitted a response to the EIA Addendum Consultation, stating that the alternative layout would be preferable to the original one for recreational sailors.

## 5.9 Scottish Fishermen’s Federation (“SFF”)

5.9.1 SFF objected to the Application. SFF stated that it felt that the Development runs contrary to the following general planning policies within Scotland’s National Marine Plan (“NMP”):

- GEN 1 General planning principle;
- GEN 2 Economic benefit;
- GEN 3 Social benefit;
- GEN 4 Co-existence;
- GEN 17 Fairness.

SFF also stated that the Development runs contrary to the following within the fisheries policies of Scotland’s NMP:

- Fisheries 1 - which refers to safeguarding fishing opportunities wherever possible;
- Fisheries 2 - which refers to the cultural and economic importance of fishing, potential impacts on sustainability of fish and shellfish, and impacts of displacement of fish stocks and the socio-economic costs to fishers;

- Fisheries 3 - which states that where existing fishing opportunities or activity cannot be safeguarded, a Fisheries Management and Mitigation Strategy ("FMMS"), should be prepared.

- 5.9.2 Whilst SFF welcomed the Company's acknowledgment that the Development would have an effect on the fishing industry at the Development, SFF highlighted that the potential losses must be taken into account. In particular, SFF stated that the exclusion from fishing grounds could cause ten million pounds per annum losses mostly in relation to scallop and nephrops, but also in respect of smaller fisheries in the area such as squid.
- 5.9.3 SFF underlined that in the worst case scenario the Development could exclude fishers from the area for the Development life-cycle of 50 years. SFF stated that this aspect would render it difficult for stakeholders to comment on some of the conclusions of the EIA Report. In particular, SFF advised that it would be difficult for stakeholders to consider the extent to which fishing would be feasible after construction, as it was impossible to define which areas of ground would be safe for use of mobile gear.
- 5.9.4 SFF consistently asked for the seabed to be restored post-decommissioning to ensure the safety of fishing activities, and stated that rig-to-reef options are not acceptable.
- 5.9.5 In response to the EIA Addendum Report, SFF maintained its objection to the Development. SFF stated that dropping the Model 4 of turbines had a negative impact on fisheries, as using Model 4 would have allowed the Company to install fewer turbines (62 as originally intended rather than 85).
- 5.9.6 Although SFF welcomed the change in the Development life from 50 years to 25 years, it was not satisfied that the worst case scenario for impacts on fisheries would be 36 months of displacement or loss of fishing grounds. SFF advised that the worst case scenario should be of 25 years of displacement or loss of fishing grounds. Therefore, monitoring of fishing activities post-construction should be in place and the FMMS should outline the manner in which the Company intended to compensate losses.
- 5.9.7 SFF also stated that, as there is insufficient evidence, further monitoring should be in place for increased sediment and deposition, noise and vibration and EMF.
- 5.9.8 SFF identified squid and scallop fisheries as the most affected by the variation due to the larger size of the Development. SFF also requested that any consent/licence would contain a condition to address potential issues that could arise during construction.
- 5.9.9 The Company has engaged with SFF and other stakeholders as depicted in the table below:

<b>Date</b>	<b>Relevant document/ engagement type</b>	<b>Subject / Purpose</b>	<b>Main Outcome</b>
May 2016	Moray West Offshore Wind Farm scoping report	Commencement of formal EIA scoping consultation period	<p>SFF responded to Marine Scotland's request for comments on the scoping report and its comments were addressed in the EIA Report.</p> <p>The following commercial fisheries organisations and other advisors were consulted on the scoping report but did not provide a response:</p> <ul style="list-style-type: none"> <li>• Marine Scotland Compliance (Buckie, Fraserburgh, Scrabster and Ullapool offices);</li> <li>• North &amp; East Coast Inshore Fisheries Groups;</li> <li>• Scottish Fishermen's Organisation.</li> </ul>
May 2017	Moray West offshore transmission infrastructure scoping report	Additional formal EIA scoping consultation period	<p>SFF responded to Marine Scotland's request for comments on the scoping report and its comments were addressed in the EIA Report.</p> <p>The following commercial fisheries organisations and other advisors were consulted on the scoping report but did not provide a response:</p> <ul style="list-style-type: none"> <li>• Inshore fisheries (Scottish Government);</li> <li>• Marine Scotland Compliance (Buckie, Fraserburgh, Scrabster and Ullapool offices);</li> <li>• North &amp; East Coast Inshore Fisheries Group;</li> <li>• Scottish Fishermen's Organisation.</li> </ul>
14 May 2018	SFF and Scottish White Fish Producers Association Meeting (Aberdeen)	To discuss draft FMMS in advance of the Application	The meeting and discussion points were incorporated into an updated version of the draft FMMS that was subsequently shared with SFF on 22 May 2018 in advance of the Application.

31 May 2018	Wider commercial fisheries and offshore wind industry meeting (Dundee)	Bringing the offshore wind and fisheries sectors together	Moray West provided the attendees (including members of SFF) with a project update and participated in group discussions. As well as this Moray West had discussions on a one-to-one basis with SFF, other commercial fisheries representatives and individual fishermen at this event.
10 July 2018	EIA Report	Commencement of Original Consultation	<p>SFF responded to Marine Scotland's request for comments on the Application on 26 August 2018</p> <p>The following commercial fisheries organisations and other advisors were consulted on the EIA Report but did not provide a response:</p> <ul style="list-style-type: none"> <li>• Marine Scotland Compliance (Buckie, Fraserburgh, Scrabster and Ullapool offices).</li> <li>• North &amp; East Coast Inshore Fisheries Groups.</li> <li>• Scottish Fishermen's Organisation.</li> </ul> <p>No other commercial fisheries representatives or individuals responded.</p>
1 Oct 2018	Meeting (Edinburgh)	To discuss SFF's response to the Application	<p>Moray West committed to the following:</p> <ul style="list-style-type: none"> <li>• Continued engagement with SFF throughout the Development process and during preconstruction, construction and operation;</li> <li>• Issue of an indicative layout of the turbines and export cable in the future, post consent and post Contracts for Difference ("CfD") award.</li> </ul>
23 Nov 2018	EIA Addendum Report	Commencement of EIA Addendum Consultation.	SFF responded to Marine Scotland's request for comments on the EIA Addendum Report on 11 January 2019.

			No other commercial fisheries representatives or individuals responded the public consultation.
6 Dec 2018	SFF and SWFPA Meeting (Edinburgh)	To present the EIA Addendum Report to SFF, allowing for an opportunity to comment and ask questions prior to receiving the formal SFF response	Moray West gave an overview of the Application and EIA Addendum.  SFF committed to providing its response to the addendum by mid-January 2019.
11 Jan 2019	Fishermen's Meeting (Helmsdale and Wick)	Moray West engagement meetings with fishing vessel owners of the Reliant CY799 and Southern Belle WK25	Moray West updated the fishermen with the latest project developments / timelines and committed to future engagement (e.g. through NtMs) throughout the Development project. SFF attended both meetings and contributed to discussions at both meetings.
15 Jan 2019	Wider commercial fisheries and offshore wind industry meeting (Dundee)	Bringing the offshore wind and fisheries sectors together	Moray West provided the attendees (including members of SFF) with a project update and participated in group discussions. As well as this Moray West had discussions on a one-to-one basis with SFF, other commercial fishermen representatives and individual fishermen at this event.

5.9.10 To mitigate concerns raised, SFF will be consulted on conditions requiring the Company to prepare, consult and adhere to a CoP, CMS, DSLP, VMP, NSP, CaP, PEMP and FMMS.

#### 5.10 Sports Scotland

5.10.1 Sports Scotland noted that the area is used by a range of sports businesses and that the Company should engage with Mountaineering Scotland and other sports bodies in regards to the potential impacts at Redhythe Point.

#### 5.11 The Joint Radio Company Limited ("JRC")

5.11.1 JRC did not foresee any potential problems arising from the Development, based on known interference scenarios. However, it stated that if any details change, particularly the disposition or scale of the WTGs, then it would be necessary for it to re-evaluate the proposal.

## **6 Representations from other organisations and members of the public**

- 6.1 Three organisation representations and four public representations were received, five of these objected to the Development.
- 6.2 Wick Harbour
  - 6.2.1 Wick Harbour submitted a representation in support of the Application due to the potential for job creation. Wick Harbour requested to become a consultee for future projects that are close to the port.
- 6.3 Mountaineering Scotland
  - 6.3.1 Mountaineering Scotland stated that the EIA Report had omitted to assess the impacts on the landfall works on Redhythe Point and “the Widow” sites used by various outdoors centres.
  - 6.3.2 Mountaineering Scotland welcomed the Company’s decision to remove Sandend beach from the plans and acknowledged that views of the surfing community had been taken into account and accommodated.
  - 6.3.3 The Company responded to Mountaineering Scotland stating that viable locations had been identified on the boundary between Redhaven and Skedam Cliff. Mountaineering Scotland raised concerns regarding the close proximity of the areas of “the Widow” of 500 metres and 700 metres respectively.
  - 6.3.4 The Company confirmed that the area of concern is outside the marine licence area for the cable landfall and that there would therefore be no direct effects on the climbing area. The Company stated that the CaP will confirm the location of the landfall site and installation techniques. Approval of working methods will be sought from Aberdeenshire Council and SNH to avoid unacceptable impacts within the Cullen and Stakeness Coast SSSI where the climbing area is located.
  - 6.3.5 Mountaineering Scotland requested to be consulted on plans that will be requested by the potential OfTI marine licence. Furthermore, Mountaineering Scotland requested that it be included in conversations on the choice of the landfall area and on potential impacts on the rock climbing community.
- 6.4 Caithness Wind Farm World Council for Nature
  - 6.4.1 Caithness Wind Farm World Council for Nature responded to the Original Consultation with enquiries relating to information within the Application documentation and requirements for public notice. The enquiry was forwarded onto the Company and no formal objection was received.
- 6.5 Three public representations raised an objection related to the landfall area of the Development being Redhythe Point. The main concerns raised were

with regards to the onshore impacts on the sea cliff as a result of construction work and how these could impact rock climbers.

- 6.6 A member of the public objected to the Development based on the impacts of the landfall works on Sandend beach. The individual also stated that the EIA Report did not include onshore impacts of landfall works on the bay area.

## **7 Advice from third parties**

- 7.1 Marine Scotland-Licensing Operations Team (“MS-LOT”) sought advice from the Marine Analytical Unit (“MAU”) on the Application and from Marine Scotland Science (“MSS”) on the Application, EIA Addendum Report, PVA Report, GBBG Report and consultation responses. MSS provided advice as follows and also provided expertise in completing the Appropriate Assessment (“AA”).

### **7.2 Marine Mammals**

- 7.2.1 Overall, MSS agreed with SNH comments on marine mammals. However, MSS advised that the Company would run the noise modelling with a 1% conversation factor to ensure a precautionary approach is followed. MSS advised that precaution was built in to other aspects of the model.
- 7.2.2 Regarding the EIA Addendum Report, MSS noted the inclusion of results of the noise modelling conducted with 1% conversion factor and agreed that the impacts on marine mammals due to noise are not significant in EIA terms. MSS noted that even though some scenarios for minke whales have a large effect zone, these are very unlikely scenarios and an EPS for injury would be a precautionary measure.

### **7.3 Ornithology**

- 7.3.1 MSS noted that the technical appendix 10.1A ‘Baseline Data Decision Support Flow Charts and use of a single year’s baseline survey’ was missing from the EIA Report. The absence of this appendix did not allow a full review of the process of the assessment on the EIA Report conclusions on the Development’s impacts on seabirds.
- 7.3.2 MSS agreed with SNH and RSPB comments on: collision risk modelling and the choice of avoidance rates; lack of clarity of the method used to calculate displacement effects; and on the PVA scenarios run.
- 7.3.3 In addition, MSS agreed with SNH’s advice in relation to the lack of sufficient information on the manner in which the Development would affect the GBBG qualifying interest of the East Caithness Cliffs SPA.
- 7.3.4 As regards the EIA Addendum Report, MSS agreed with SNH’s conclusions on the effects of the Development on kittiwake. MSS also stated that there was insufficient information on GBBG.

- 7.3.5 MSS provided comments on the GBBG Report. MSS accepted the refinements applied to the collision risk modelling for the in-combination impacts of the Development with the Moray Firth Developments. MSS stated that the Company followed the apportioning method advised by SNH for the breeding season. In relation to the non-breeding season apportioning, MSS discussed the two methods proposed by the Company and concluded that the first method is more biologically accurate.
- 7.3.6 MSS was content that the Company followed the approach to the PVA modelling, advised at the scoping stage, in the GBBG Report.
- 7.3.7 MSS stated that pre-construction studies on the presence of GBBG in the Development area could provide useful data. MSS underlined that it is not clear how practical such a study could be due to the current GPS tracking technology. However, MSS also added that the evolution of this technology could allow tracking of GBBG for longer time periods.
- 7.3.8 In consideration of RSPB Scotland's response to the GBBG Report, specifically on its criticism of the PVA modelling, MSS stated that, after reviewing the model, it was appropriate.
- 7.4 Marine Fish Ecology
- 7.4.1 Whilst MSS did not disagree with the conclusions of the EIA Report, it did advise that there was not enough information on the effects of offshore development on cod. Therefore, MSS suggested that post-construction surveys should be carried out to better understand the extent to which the Development would affect cod presence at the local level across the site.
- 7.4.2 In terms of impacts on sandeel, MSS advised that if gravity bases were to be used, then further considerations should be given to micro-siting to avoid areas of suitable habitat after site characterisation has taken place.
- 7.4.3 MSS welcomes the embedded mitigation and any involvement with the EMP, MPCP, Cable Burial Risk Assessment ("CBRA") and PS.
- 7.4.4 MSS advised that the EIA Addendum Report considered all the comments MSS submitted in regards to the Original Consultation.
- 7.5 Diadromous Fish
- 7.5.1 Overall MSS agreed with the conclusion in the EIA Report in relation to diadromous fish. MSS emphasised the importance of the National Research and Monitoring Strategy for Diadromous Fish, considering that the Company did not commit to contribute to specific research.
- 7.5.2 In its advice on the EIA Addendum Report on diadromous fish, MSS stated that the information used lacked clarity in relation to salmon research and EMF impacts. MSS also questioned whether salmon fisheries representatives were consulted.



- 7.5.3 The Company responded to MSS, providing clarification on the points raised and officials clarified that Fisheries Management Scotland was consulted as representatives of salmon fisheries.
- 7.5.4 MSS did not raise any issues with the responses provided.
- 7.6 Commercial Fisheries
- 7.6.1 MSS welcomed a draft copy of the FMMS. MSS underlined that the Company failed to address the need for a resolution mechanism for when construction vessels cause damage to static gear.
- 7.6.2 MSS also noted the absence of any post-construction monitoring programmes to validate the assumption that fleets would regain access to the site after the end of construction.
- 7.6.3 Concerning potential cumulative impacts that could arise during construction, MSS suggested that, as the construction schedule is presented, there should be further discussion with the fishing industry to limit the impacts on the nomadic scallop fleet.
- 7.6.4 In the EIA Addendum Report, the Company responded to MSS concerns on post-construction monitoring, stating that Marine Scotland already possessed the tools to monitor fisheries operations post-construction. MSS stated that Marine Scotland conducting certain monitoring of fishing activities would not abrogate the Company of responsibility to validate the assumptions made in the EIA Report.
- 7.7 Benthic Ecology
- 7.7.1 With regard to the Development's impacts on the benthic environment, MSS focused on the proposed worst case scenario of using of gravity bases and the proposal to use open cut-trenching for the export cable route.
- 7.7.2 MSS advised that there would be a need for further surveys and mitigation if gravity bases were to be used. MSS also stated that HDD would be the preferred method for export cable landfall installation.
- 7.7.3 Concerning the Company's proposal to leave the cables in situ after decommissioning, MSS advised that the Company would carry out periodic inspections to ensure that no cable parts had become exposed.
- 7.7.4 A telephone call was organised with the Company, MSS benthic advisor and MS-LOT, to discuss the comments on benthic ecology. During this telephone call, it was agreed that further surveys and mitigation should be in place in case gravity bases were to be chosen as foundation structures.
- 7.7.5 MSS was satisfied with the content of the EIA Addendum Report, and reiterated that even although certain comments were addressed during these telephone conversations, these comments remain relevant.

## 7.8 Physical Processes

- 7.8.1 MSS agreed with the model used during the assessment and the results of the EIA Report.

## 7.9 Socio-economics

- 7.9.1 MAU stated that the Company had provided a comprehensive socio-economic baseline included in the EIA Report related to the socio-economic impact assessment of the Development. However, the assessment lacked evidence of how the main socio-economic indicators would change as a result of the Development. Moreover, MAU advised that the EIA Report failed to provide further evidence for the estimates of employment and GVA impacts presented. Therefore, MAU could not provide final advice due to the lack of evidence in the EIA Report.
- 7.9.2 MAU also stated that the assessment only focused on a minimal number of indicators, which did not give enough understanding of the social impacts of the Development.
- 7.9.3 The Company submitted an official response to MAU and provided commercially sensitive data to ensure that MAU could formulate final advice. The Company also stated that the number of indicators was limited to those aspects that were included in the scoping opinion as needing further assessment.
- 7.9.4 In response, MAU stated that, following review of the evidence provided, the Company's approach on the assessment of GVA and employment impacts provided greater clarity and confidence in the results within the EIA Report. In addition, MAU welcomed the Company's initiative to engage and develop a local supply chain for the Development, therefore increasing the potential to have higher GVA and employment.

## 7.10 Summary

- 7.10.1 Scottish Ministers have considered the advice provided in reaching their decision.

## **8 Public Local Inquiry("PLI")**

- 8.1 Scottish Ministers did not require a PLI to be held.

## **9 The Scottish Ministers Considerations**

### **9.1 Environmental Matters**

- 9.1.1 Scottish Ministers are satisfied that an environmental impact assessment has been carried out. Environmental information including the EIA Report has been produced and the applicable procedures regarding publicity and consultation laid down in regulations have been followed. The environmental impacts of the Development have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.
- 9.1.2 The Scottish Ministers are satisfied that the Company, when formulating its proposal to construct the generating station, had regard to the desirability of preserving natural beauty, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.
- 9.1.3 The Scottish Ministers have had regard to the desirability of the matters mentioned in the previous paragraph and the extent to which the Company has done what it reasonably could to mitigate the effects of the Development on those features, and are satisfied that the Company has done what it reasonably could with regard to mitigation.
- 9.1.4 The Scottish Ministers have considered fully and carefully the Application, EIA Report, RIAA, PVA Report, EIA Addendum Report, GBBG Report and all relevant representations from consultees, MSS and third parties .

### **9.2 Main Determinative Issues**

- 9.2.1 The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:
- The extent to which the Development accords with and is supported by Scottish Government policy and the terms of the NMP and relevant local development plans;
  - Renewable energy generation and associated policy benefits;
  - Economic impacts; and
  - The significant effects of the Development on the environment, which are in summary:
    - Impacts on marine mammals and seabirds including impacts on European sites and European offshore marine sites;
    - Impacts on commercial fisheries;
    - Impacts on cultural heritage;
    - Impacts on seascape, landscape and visual amenity; and
    - Impacts on aviation.

### 9.3 Scottish Government Policy Context

9.3.1 The NMP, formally adopted in 2015, and recently reviewed in Spring 2018, provides a comprehensive statutory planning framework for all activities out to 200nm. Scottish Ministers must take authorisation and enforcement decisions, which affect the marine environment, in accordance with the NMP.

9.3.2 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 11 Offshore Wind and Marine Renewable Energy, policies 'RENEWABLES 1, 3-10';
- Chapter 12 Recreation and Tourism, policies 'REC & TOURISM 2 and 6';
- Chapter 13 Shipping, Ports, Harbours and Ferries, policies 'TRANSPORT 1 and 6';
- Chapter 14 Submarine Cables, policies 'CABLES 1, 2 and 5'; and
- Chapter 15 Defence, policy 'DEFENCE 1'.

9.3.3 The Development will contribute to Scotland's renewable energy targets and will provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Route Map and the National Renewables Infrastructure Plan ("NRIP"). 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.

9.3.4 Scottish Planning Policy 2014 ("SPP") sets out the Scottish Government's planning policy on renewable energy development. 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 ("GHG") 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 NRIP. Communities can also gain new opportunities from increased local ownership and associated benefits.

9.3.5 Whilst the SPP makes clear that the criteria against which applications should be assessed will vary depending upon the scale of the development and its relationship to the characteristics of the surrounding area, it states that these are likely to include: impacts on landscapes and the historic environment; ecology (including birds, mammals and fish); biodiversity and nature conservation; the water environment; communities; aviation;

telecommunications; noise; shadow flicker and any cumulative impacts that are likely to arise. It also makes clear that the scope for the development to contribute to national or local economic development should be a material consideration when considering an application.

9.3.6 Scotland's National Planning Framework 3 ("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.

9.3.7 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 power.

#### 9.4 Impacts of the Development on the environment

##### 9.4.1 *Impacts on marine mammals, seabirds, European sites and European offshore marine sites*

9.4.1.1 The Habitats Regulations require Scottish Ministers to consider whether the proposed Development would be likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects), as defined in the Habitats Regulations.

9.4.1.2 Owing to SNH's view that the Development is likely to have a significant effect on the qualifying interests of the Moray Firth SAC, Dornoch Firth and Morrich More SAC, East and North Caithness Cliffs SPAs, Buchan Ness to Collieston Coast SPA, Troup, Pennan and Lion's Head SPA and Moray Firth pSPA, MS-LOT, on behalf of the Scottish Ministers, as the "competent authority", was required to carry out an AA.

9.4.1.3 For marine mammals species, the main impact of the Development would be underwater noise from piling, underwater noise from construction and decommissioning activities and collision with vessels during the construction phase and the operational and maintenance phase.

9.4.1.4 For the SAC qualifying interests, namely bottlenose dolphin and harbour seal, SNH advised that there would be no adverse effect on the integrity of the above SACs. The AA considered the conservation objectives, the populations at the sites, the predicted levels of effect and population consequences, the precaution in the assessment methods and the advice from SNH. Scottish Ministers concluded that the Development, subject to the

application of conditions, would not adversely affect the site integrity of the Moray Firth SAC with respect to bottlenose dolphin and the Dornoch Firth and Morrich More SACs, with respect to harbour seal, either alone or in-combination with the Moray Firth Developments. The AA provides detail on the noise propagation modelling and population modelling undertaken to inform the assessment.

9.4.1.5 For bird species, the main impacts come from either collision and/or displacement and barrier effects. SNH considered that there would be a likely significant effect (“LSE”) as follows:

- East Caithness Cliffs SPA – kittiwake, GBBG, guillemot, razorbill, herring gull and fulmar;
- North Caithness Cliffs SPA – kittiwake, guillemot, razorbill, puffin and fulmar;
- Buchan Ness to Collieston Coast SPA – kittiwake, herring gull, guillemot and fulmar;
- Troup, Pennan and Lion’s Head SPA – herring gull, kittiwake, guillemot, razorbill and fulmar;
- Moray Firth pSPA – all species.

9.4.1.6 After receiving information provided by the Company, SNH objected to the Development on 7 September 2018. SNH’s objection was on the basis that the Development, in-combination with the Moray Firth Developments, would have an adverse effect on site integrity for kittiwake as a qualifying interest of the East and North Caithness Cliffs SPAs. Collision risk was identified as the key impact. SNH also advised that there was insufficient evidence to conclude no adverse effect on site integrity for GBBG, guillemot and razorbill as qualifying interests of the East Caithness Cliffs SPA.

9.4.1.7 As a result of the EIA Addendum Report, SNH advised that due to changes to the Development, including the reduction of the operational life from 50 to 25 years, it could conclude there would be no adverse effect on the site integrity of the East Caithness Cliffs SPA with respect to common guillemot and razorbill. On 2 April 2019, SNH advised that the Development, in-combination with the Moray Firth Developments, would have an adverse effect on the integrity of East Caithness Cliffs SPA with respect to GBBG and kittiwake. SNH advised that if s.36 consent was granted then pre-construction monitoring should be undertaken to understand the movements of adult GBBG recorded in the Development site during the breeding season.

9.4.1.8 RSPB Scotland also objected to the Application due to in-combination effects with the Moray Firth Developments leading to an adverse effect on the site integrity of East Caithness Cliffs, North Caithness Cliffs, Troup, Pennan and Lion’s Heads SPAs with respect to kittiwake. RSPB Scotland raised concerns regarding the assessment of impacts on GBBG, herring gull, guillemot, razorbill and puffin. RSPB Scotland advised that gannet should be

included in the assessment. However, this was not advised by SNH through the scoping exercise or HRA screening exercise. On 11 January 2019, RSPB Scotland, in response to the EIA Addendum Report, maintained its objection and highlighted its particular concern with regard to predicted impacts on kittiwake. On 2 April 2019, RSPB Scotland advised that the Development, in combination with Moray Firth Developments, would have an adverse effect on the integrity of East Caithness Cliffs SPA with respect to GBBG.

- 9.4.1.9 The AA considered the conservation objectives, the populations at the sites, the predicted levels of effect and population consequences, the precaution in the assessment methods and the advice from SNH. Scottish Ministers concluded that there will be no adverse effect on the site integrity of the Buchan Ness to Collieston Coast SPA, East Caithness Cliffs SPA, North Caithness Cliffs SPA, Troup, Pennan and Lion's Head SPA, Moray Firth pSPA, Moray Firth SAC or Dornoch Firth and Morrich More SAC (where each SAC, SPA or pSPA is taken as a whole) from the Development either in isolation or in combination with other plans or projects.
- 9.4.1.10 In reaching their conclusion, Scottish Ministers have given considerable weight to SNH's advice. The methods advised by SNH through scoping, and additional information requested by SNH, have been fully incorporated into the AA. As such, divergence from SNH advice is limited to differing conclusions in relation to site integrity for kittiwake at East Caithness Cliffs SPA and North Caithness Cliffs SPA and GBBG at East Caithness Cliffs SPA. In reaching a different conclusion, Scottish Ministers consider that the level of impact being adverse to site integrity is a subjective opinion. In reaching their own conclusions, Scottish Ministers have taken account of the entire context of this assessment, in particular its precautionary assumptions, which make it unlikely the number of impacted individuals will be as large as the values presented in the assessment. For these reasons, Scottish Ministers consider the levels of assessed impact to be reasonable and are convinced that there will be no adverse impacts on site integrity of any of the SACs, SPAs or the pSPA considered in this AA.
- 9.4.1.11 Scottish Ministers are currently in the process of identifying a suite of new marine SPAs in Scottish waters. In 2014, advice was received from the Statutory Nature Conservation Bodies ("SNCBs") on the sites most suitable for designation and at this stage they became draft SPAs ("dSPAs"). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of 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.
- 9.4.1.12 It is not a legal requirement under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna or flora ("the Habitats Directive") or the Habitats Regulations for the AA to assess the implications of the Development on the pSPA. Nevertheless, the AA includes an

assessment of implications upon this site in accordance with domestic policy. Scottish Ministers are 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 pSPA. 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.

- 9.4.1.13 SNH advised that the Development in-combination with the Moray Firth Developments would not adversely affect the integrity of the Moray Firth pSPA. The completed AA came to the same conclusion.
- 9.4.1.14 Considering article 4(4) of the Birds Directive, Scottish Ministers concluded that the Development will not cause pollution or deterioration of habitats and any disturbance will be negligible.
- 9.4.1.15 In accordance with regulation 50 of the Conservation (Natural Habitats, &c.) Regulations 1994, and regulation 65 of the Conservation of Habitats and Species Regulations 2017, the Scottish Ministers will review their decision authorising the Development as soon as reasonably practicable following the formal designation of the pSPA. If required, this will include a supplementary AA being undertaken concerning the implications of the Development on the site as designated (as the site is currently a pSPA, the conservation objectives are currently in draft form; the conservation objectives will be finalised at the point at which the site is designated). If the conservation objectives, site boundary and qualifying features do not change when the site becomes designated, then a further AA may not be required as the effects of the Development have been fully considered in the current AA.
- 9.4.1.16 Conditions requiring the Company to prepare, consult on and adhere to a DP, CMS, EMP, PS, VMP, and CaP have been attached to the s.36 consent to mitigate these concerns.
- 9.4.1.17 Scottish Ministers consider that, having taken into account the information provided by the Company, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Development on marine mammals, seabirds, European sites or European offshore marine sites which would require consent to be withheld.

## 9.5 *Impacts on commercial fisheries*

- 9.5.1 Minor and negligible significant effects were identified by the Company on several commercial fisheries throughout the lifespan of the Development.
- 9.5.2 SFF responded on behalf of its members, objecting to the Development. SFF objected to aspects of the assessment presented in the EIA Report, in relation to loss of access to fishing grounds during all phases of the works, the socio-economic assessment of impacts of potential losses to the fishing



industry, the absence of a cable plan, restoration of the seabed post development, the impacts on squid and scallop fishing and spawning grounds for herring. In response to the EIA Addendum Report, SFF maintained its objection stating that the removal of the Model 4 WTG from the design had a negative effect as it allowed the Company to install 85 WTGs instead of 62 WTGs.

9.5.3 Conditions requiring the Company to prepare, consult and adhere to a FMMS and PEMP, which will include monitoring in relation to commercial fisheries, and to participate in the Moray Firth Commercial Fisheries Working Group ("MFCFWG"), as well as the requirement for a CBRA have been attached to the s.36 consent to mitigate these concerns.

9.5.4 Scottish Ministers have taken account of the terms of the NMP in relation to SFF's concerns. Conditions requiring the Company to prepare, consult on and adhere to a FMMS and PEMP (to include monitoring of commercial fisheries) and CaP will be attached to the s.36 consent and marine licences. A condition requiring a Fisheries Liaison Officer ("FLO") to establish and maintain effective communications between the Company, its contractors and sub-contractors, and fishermen and other users of the sea during the construction of the Development will be added to the s.36 consent. Conditions to require the Company to participate in the MFCFWG, and the ScotMER, will also be attached to the s.36 consent and marine licences to mitigate concerns regarding commercial fisheries.

## 9.6 *Impacts on seascape, landscape and visual amenity*

9.6.1 SLVIA was undertaken for the Development and in-combination with the Moray Firth Developments. The Development, in isolation, identified low to moderate significant impacts on the coastal character of Caithness, north east Sutherland and the Highlands, spanning a section of coast roughly 60km in length. Low to medium significant impacts resulting from aviation and navigation lighting on visual amenity were assessed as concentrated on the coastal areas between Wick and Navidale, largely due to the relatively dark coastal landscape and sea skyline. Low to medium significant cumulative impacts were identified within the Highlands and in some instances the A9/A99, where, when visibility is very good or excellent, the Development can be seen in context of the Moray Firth Developments. Along the Moray Coast, low to medium significant impacts were identified where visibility is excellent.

9.6.2 SNH objected to the Development due to the cumulative impacts on sensitive landscape and in particular the distinctive landscape character of the East Sutherland coast, including both day time and night time impacts. SNH advised that the proposed reduction in turbine height (by the removal of the largest turbine design), creates some improvement with respect to cumulative visual effects. SNH also welcomed the proposed alteration to the site boundary within the EIA Addendum Report to reduce linear extent of the Development. However, the Company has since withdrawn this proposal.

- 9.6.3 The Highland Council stated that the Development is likely to have visual impacts but raised no objection due to the likely positive effects on the local economy and jobs.
- 9.6.4 FSDCC objected to the Development with regards to the landfall area for the export cable which was originally to be sited at the Sandend beach area. The Company has removed Sandend Beach and all potential landfall locations to the west towards Findlater Castle from the design. Investigations for the final location are ongoing.
- 9.6.5 There were four objections from public representatives. Primary concerns raised included the location of cable landfall areas and the impact on the integrity of the sea cliff and risks to climbers at Redhythe Point. The Company will continue to engage with Mountaineering Scotland and the climbing community about the location of landfall and arrangements for access.
- 9.6.6 The Company has removed the largest wind turbine design to mitigate impacts on seascape, landscape and visual amenity.
- 9.6.7 Conditions requiring the Company to prepare and consult on and adhere to a DSLP, LMP, DS, PEMP, CoP and CMS have been added to the s.36 consent and OfTI marine licence to mitigate concerns regarding seascape, landscape and visual amenity.
- 9.6.8 Scottish Ministers consider that, having taken into account the information provided by the Company, the responses of the consultative bodies and the public representations, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Development on seascape, landscape and visual amenity which would require consent to be withheld.
- 9.7 *Impacts on cultural heritage*
- 9.7.1 Minor adverse effects on marine assets were identified as a result of the Development in isolation and were not considered significant in EIA terms.
- 9.7.2 Cumulative impacts on marine archaeology assets were considered in combination with the Beatrice Offshore Wind Farm export cable route and the Caithness Moray cable where there are spatial overlaps with the Development. Cumulative impacts were considered to be minor to negligible on marine archaeology assets.
- 9.7.3 The Highland Council did not raise any objection to the Development and no comment with regards to marine assets or cultural heritage was made.
- 9.7.4 HES did not raise an objection to the Development and was content that there are no assets within the Development Local Study Area that are subject to statutory protection. HES considered that, with the implementation of the

embedded mitigation measures, there would not be any adverse effects that would raise issues of national interest.

9.7.5 Conditions requiring the Company to prepare, consult on and adhere to a PAD have been added to the s.36 consent.

9.7.6 Scottish Ministers consider that, having taken into account the information provided by the Company, the responses of the consultative bodies and the public representations, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Development on cultural heritage which would require consent to be withheld.

## 9.8 *Impacts on aviation and defence*

9.8.1 The EIA Report concluded that there would be significant adverse impacts on military and aviation receptors as a result of the Development, in isolation, which would have major significant effects on NATS (En Route) Public Limited Company ("NERL"), Allanshill PSR and RAF Lossiemouth PSR. Helicopter approach procedures to offshore installations, Wick Airport approach procedures and minimum safe altitude requirements were also assessed as significant. Mitigation in the EIA Report, to be agreed in discussion with stakeholders, could reduce the effects so as to render them not significant. No further assessment with respect to cumulative effects was required, due to the conclusion that the impact on any aviation receptor is a standalone effect.

9.8.2 MOD submitted an objection to the Development due to unacceptable interference with ATC Radar at RAF Lossiemouth. MOD requested that the turbines should be fitted with aviation lighting in accordance with Article 219 of the Air Navigation Order and that MOD safeguarding should be consulted and notified about the progress of planning applications and submissions to verify that there would be no adverse effects to its interests. MOD maintained its objection in response to the EIA Addendum Report adding that the proposed variation of the site boundary would cause unacceptable interference with to the PAR located at RAF Lossiemouth. The Company subsequently withdrew the proposed variation to the site boundary and four consent conditions were agreed which enabled MOD to lift its objection.

9.8.3 NATS submitted an objection to the Development due to unacceptable impacts on aviation radar.

9.8.4 The Company held discussions with NATS and subsequently entered into an agreement regarding consent conditions which enabled NATS to withdraw its objection.

9.8.5 Conditions requiring the Company to prepare, consult on and adhere to the ATC Radar Mitigation Scheme, LMP, DSLP and MOD notification prior to commencement of works have been attached to the s.36 consent.

9.8.6 Scottish Ministers consider that, having taken into account the information provided by the Company, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Development on aviation and defence which would require consent to be withheld.

## 9.9 *Renewable energy generation and associated policy benefits*

9.9.1 The key environmental benefit of the Development is to offset GHG emissions that might otherwise be produced by other means of electricity generation. Over the lifetime of the Development, carbon emissions from fabrication, construction, operation and decommissioning will be offset by the net reduction in emissions through low carbon wind energy technology.

9.9.2 There are multiple benefits associated with the Development, including:

- a) The reduction in emissions of carbon dioxide, nitrogen oxides, and sulphur dioxide during the operational phase equivalent to the annual emissions of carbon dioxide, nitrogen oxides, and sulphur dioxide from traditional thermal generation sources;
- b) Improvements to the security of the UK's domestic energy supply through increased energy generation;
- c) Reduction in the reliance on fossil fuels; and
- d) Providing a contribution towards the ambitious Scottish, UK and European Union renewable energy targets.

9.9.3 The proposed installed capacity of the Development will be around 850MW however, the exact value is dependent on the nominal capacity and number of WTGs installed and cannot yet be confirmed. Based on the Scottish Government's published Renewable Electricity Output Calculator,<sup>1</sup> it is estimated that, depending on the fuel type displaced, up to 520,476 tonnes of carbon dioxide will be saved each year. It is estimated that the Development will generate enough electricity each year to meet the needs of the equivalent of 569,130 Scottish households per year.

## 9.10 *Economic benefits*

9.10.1 SPP advises that economic benefits are material issues which must be taken into account as part of the determination process. SPP also confirms the Scottish Ministers' aim of achieving a thriving renewables industry in Scotland. Further, national policy and strategies, such as NPF3 and The Scottish Energy Strategy: The Future of Energy in Scotland (Scottish Government, 2017), support the role of renewable energy development in

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<sup>1</sup> <https://www.gov.scot/Topics/Statistics/Browse/Business/Energy/onlinetools/ElecCalc> (Last accessed: 9 May 2019).

achieving socio-economics benefits and supporting the growth of the low carbon economy. The EIA Report reported that the Development would support the development of the domestic renewable energy industry and offset GHG emissions.

- 9.10.2 Whilst impacts on tourism were scoped out of the EIA Report, the Company assessed socio-economic impacts related to the offshore elements of the Development Local Study Area and across Scotland.
- 9.10.3 The Company has estimated that net additional employment from the Development is estimated to be between 220 FTE ("Full Time Equivalent") and 840 FTE direct and indirect and induced construction jobs at a Local Study Area level, dependant on the impact scenario considered. For the rest of Scotland, net additional employment from the Development was estimated to be between 1080 FTE and 3080 FTE direct, indirect and induced construction jobs. The Company estimates levels of between ten million pounds and £50 million direct and indirect GVA per annum at a Local Study Area level, and between £50 million and £180 million for Scotland.
- 9.10.4 During the operation and maintenance phase, the Company estimates that the net additional employment from the Development would represent a new GVA at a Local Study Area of ten million pounds per annum under both low and high scenarios, and between £50 million and £180 million per annum for Scotland as a whole. The Company estimates that between 30 and 60 FTE jobs would be supported in total within the Local Study Area and between 100 and 160 FTE jobs for Scotland.
- 9.10.5 The Company estimates that during the decommissioning phase the number of jobs will be equal to or less than those estimated for the construction phase.
- 9.10.6 The Highland Council stated that despite detrimental impact on the open and panoramic sea views recognised in the assessment of Highlands SLAs the economic benefits offered, namely the positive effects on the local economy and the amount of jobs to be created by the Development, outweighed any adverse impacts.
- 9.10.7 In its consultation response, SFF stated that the EIA Report did not fully consider the potential negative socio-economic impacts on commercial fisheries and disagreed this would have only minor impacts and contended this given the potential length of disturbance to and displacement of fishing grounds.
- 9.10.8 MAU advised that the socio-economic assessment provided a comprehensive baseline. However, the assessment lacked evidence of the effects of the Development and failed to provide evidence for estimates for employment and GVA presented. The Company responded to MAU and provided commercially sensitive data which enabled MAU to have more confidence in agreeing with the results provided in the EIA Report.

- 9.10.9 The Scottish Ministers consider that there is sufficient information regarding the socio-economic impacts of the Development to inform their decision.

## **10 The Scottish Ministers' Determination**

- 10.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the Application have been followed.
- 10.2 When formulating proposals for the construction of the proposed generating station, the Company must comply with paragraph 3 of Schedule 9 to the Electricity Act 1989. Paragraph 3(1)(a) of Schedule 9 requires the Company in formulating such proposals 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. Paragraph 3(1)(b) requires the Company to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects. Under paragraph 3(3) of that Schedule, the Company must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.
- 10.3 Under paragraph 3(2) of Schedule 9, the Scottish Ministers must have regard to the desirability of the matters mentioned in paragraph 3(1)(a) of that Schedule and the extent to which the Company has complied with its duty under paragraph 3(1)(b). Under paragraph 3(3) the Scottish Ministers must avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.
- 10.4 In considering the Application, the Scottish Ministers have had regard to the desirability of the matters mentioned in paragraph 3(1)(a) of Schedule 9 and the extent to which the Company has complied with its duty under paragraph 3(1)(b). Ministers consider that the Company has done what it reasonably can to mitigate the effect of the proposed Development on the matters mentioned in paragraph 3(1)(a). The Scottish Ministers are content that the requirements of paragraph 3 of Schedule 9 are satisfied.
- 10.5 Scottish Ministers have weighed the impacts of the proposed Development, and the degree to which these can be mitigated, against the economic and renewable energy benefits which would be realised. Scottish Ministers have undertaken this exercise in the context of national and local policies.
- 10.6 Scottish Ministers have considered the extent to which the Development accords with and is supported by Scottish Government policy, the terms of the SPP, the NMP, local development plans and the environmental impacts of the Development, in particular: impacts on seabirds and marine mammals (including impacts on European sites and European offshore marine sites), impacts on benthic communities, impacts on seascape, landscape and visual

amenity, impacts on commercial fisheries, impacts on cultural heritage and impacts on aviation and defence. Scottish Ministers have also considered the estimated contribution made by the Development to reducing carbon dioxide emissions and the socio-economic and the renewable energy benefits of the Development.

- 10.7 Scottish Ministers are satisfied that the environmental issues have been appropriately addressed by way of the design of the Development and through mitigation measures, and that the issues which remain are, on balance, outweighed by the benefits of the Development. In particular, Scottish Ministers are satisfied that the proposal will not adversely affect the integrity of the Moray Firth, Dornoch Firth and Morrich More SACs, East Caithness Cliffs and North Caithness Cliffs SPAs, the Buchan Ness to Collieston Coast SPA, the Troup, Pennan and Lion's Head SPA and the Moray Firth pSPA.
- 10.8 Scottish Ministers have had regard to the requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.
- 10.9 In their consideration of the environmental impacts of the Development, Scottish Ministers have identified conditions to be attached to the s.36 consent to reduce and monitor environmental impacts. These include requirements for pre-construction, construction and operational monitoring of birds, marine mammals and benthic communities, CMS, an EMP, Operation and Maintenance Programme ("OMP") and a VMP.
- 10.10 A condition requiring the appointment of an Environmental Clerk of Works ("ECoW") and defining the terms of the ECoW's appointment has been attached to the s.36 consent. The ECoW will be required to monitor and report on compliance with all consent conditions, monitor that the Development is being constructed in accordance with plans and the terms of the Application, the s.36 consent and all relevant regulations and legislation. The ECoW will also be required to provide quality assurance on the final draft versions of any plans and programmes required under the s.36 consent.
- 10.11 Under section 36B of the Electricity Act 1989, the Scottish Ministers may not grant a consent in relation to any particular offshore generating activities if they consider that interference with the use of recognised sea lanes, essential to international navigation is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on. The Scottish Ministers, when determining whether to give consent for any particular offshore generating activities, and considering the conditions to be included in such consent, must have regard to the extent and nature of any obstruction of or danger to navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried

on. In determining this consent, the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of the activities in question and such other offshore generating activities which are either already the subject of section 36 consent or activities for which it appears likely that such consents will be granted. You can be satisfied that appropriate consultation was carried out on the Application. Consultation responses were received from MCA, NLB, SFF, Wick Harbour and RYA. Concerns were raised around safety and navigation in the vicinity of the Development, and access to fishing grounds, during each phase of the Development. Any potential obstruction or danger to navigation has been addressed through specific consent conditions attached to the s.36 consent. Scottish Ministers have concluded that the Company has had regard to the potential interference of recognised sea lanes essential to international and national navigation and has discharged its responsibilities in terms of section 36B to the Electricity Act 1989.

- 10.12 Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion, as required under the 2017 EW Regulations, is valid.
- 10.13 Subject to the conditions set out in Annex 2, Scottish Ministers grant consent under s.36 of the Electricity Act 1989 for the construction and operation of the Moray West Offshore Wind Farm (as described in Annex 1).
- 10.14 The embedded mitigation and any additional mitigation identified in the EIA Report has been incorporated into the conditions of this s.36 consent and/or any marine licence(s) granted. The conditions also capture monitoring measures required under Regulation 22 of the 2017 EW Regulations.
- 10.15 In accordance with the 2017 EW Regulations, the Company must publicise notice of this determination and provide that a copy of this decision letter may be inspected on the Application website, in the Edinburgh Gazette and a newspaper circulating in the locality to which the Application relates is situated. The Company must provide copies of the public notices to the Scottish Ministers.
- 10.16 Copies of this letter have been sent to the public bodies consulted on the Application, including the relevant planning authorities, SNH, SEPA and HES. This letter has also been published on the [Marine Scotland Information website](#).
- 10.17 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on [the Scottish Courts and Tribunals website](#).



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

Yours sincerely,

**Zoe Crutchfield**

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

14 June 2019

## **Annex 1 – DESCRIPTION OF THE DEVELOPMENT**

The Application is for the construction and operation of an offshore energy generating station, within a maximum generating capacity of around 850 megawatts ("MW"). The offshore generating station shall comprise either:

1. No more than 85 three-bladed horizontal axis Wind Turbine Generators (WTG) each with either:

- a. a maximum rotor tip height of 230 metres (measured from HAT);
- b. a maximum rotor diameter of 195 metres;
- c. a maximum hub height of 132.5 metres (measured from HAT);
- d. a minimum blade tip clearance of 35 metres (measured from HAT);
- e. blade width of up to 6 metres; and
- f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind.

**or**

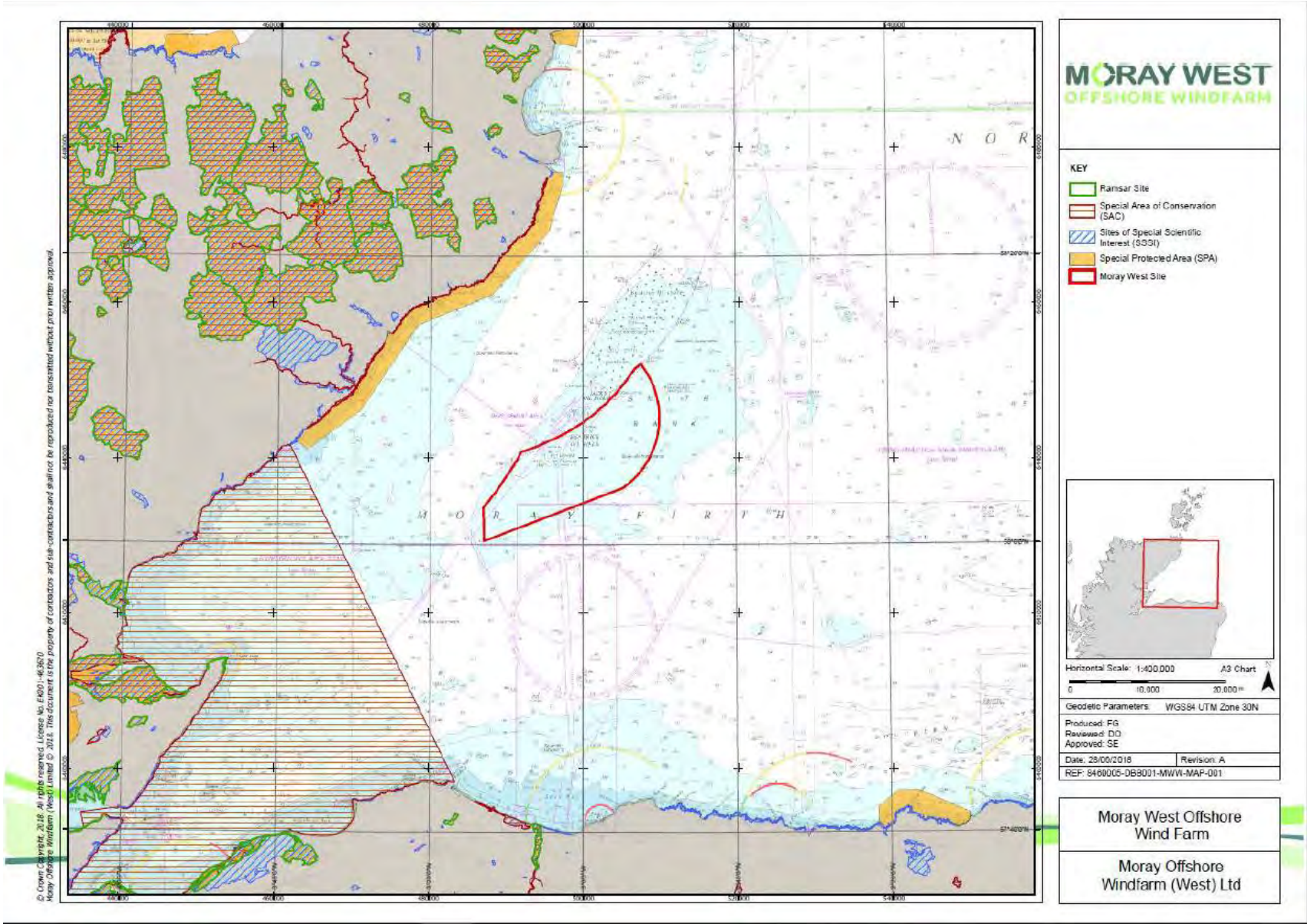
If the rotor tip height of the WTGs exceeds 230 metres (measured from HAT), no more than 72 WTGs each with:

- a. a maximum rotor tip height of 265 metres (measured from HAT);
- b. a maximum rotor diameter of 230 metres;
- c. a maximum hub height of 150 metres (measured from HAT);
- d. a minimum blade tip clearance of 35 metres (measured from HAT);
- e. blade width of up to 6 metres; and
- f. a minimum spacing of 1,050 metres crosswind and 1,200m downwind

- 2. No more than 275km of inter-array cable;
- 3. Monitoring equipment, such as metocean buoys;
- 4. Up to 85 foundations and substructures, and associated fixtures, fittings and protections;
- 5. Scour and inter-array cable protection; and
- 6. The design of the WTG substructure will be chosen from the following options:
  - i. Gravity base;
  - ii. Monopile;
  - iii. Jacket Foundation;
  - iv. Suction Caisson;

All as described in the Application.

Figure 1 Moray West Offshore Windfarm Site



## **ANNEX 2 – SECTION 36 CONSENT CONDITIONS**

**The consent granted under Section 36 of the Electricity Act 1989 is subject to the following conditions:**

The Company must submit the requested plans as detailed in the conditions prior to the Commencement of the Development, where required, 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. Commencement of the Development cannot take place until such approvals are granted.

The Development must, at all times, be constructed 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 itself 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 construction, operation and maintenance activities.

### **Part 1 – Conditions Attached to Section 36 Consent**

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

The consent is for a period of 25 years from the date of Final Commissioning of the Development.

Written confirmation of the dates of First Commissioning of the Development and Final Commissioning of the Development must be provided by the Company to the Scottish Ministers and to Aberdeenshire Council, Moray Council, the Highland Council and Scottish Ministers no later than one calendar month after these respective dates.

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

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

The Commencement of the Development must be no later than five years from the date of this consent, or in substitution such other later period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of the Development to the Scottish Ministers and to Aberdeenshire Council, Moray Council and the Highland Council no later than one calendar month before that date.

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

### 3. Decommissioning

There must be no Commencement of the Development unless a Decommissioning Programme (“DP”) has been submitted to and approved in writing by the Scottish Ministers. Such approval may only be granted following consultation by the Scottish Ministers with Scottish Environmental Protection Agency (“SEPA”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The DP must outline measures for the decommissioning of the Development, proposals for the removal of the Development, the management and timing of the works and, environmental management provisions.

The Development must be decommissioned in accordance with the approved DP, unless otherwise agreed in writing in advance with the Scottish Ministers.

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

### 4. Assignment

This consent must not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent (with or without conditions) 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 assignment procedure as directed by Scottish Ministers.

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

### 5. Redundant wind turbine generators

If one or more Wind Turbine Generator (“WTG”) fails to generate electricity for a continuous period of 12 months, then unless otherwise agreed in writing by the Scottish Ministers, the Company must: (i) by no later than the date of expiration of the 12 month period, submit a scheme to the Scottish Ministers setting out the manner in which the relevant WTG(s) and associated infrastructure will be removed from the site and the sea bed restored; and (ii) implement the approved scheme within six months of the date of its approval, or such other date as agreed in writing by the Scottish Ministers, all to the satisfaction of the Scottish Ministers.

**Reason:** *To ensure that any redundant WTG(s) is/are removed from the site, in the interests of safety, amenity and environmental protection.*

**6. Incident Reporting**

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

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

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

Except as otherwise required by the terms of this consent, the Development must be constructed and operated in accordance with the Application and any other supplementary and supporting information lodged in support of the Application (such as the additional environmental information (“EIA Addendum Report”), submitted by the Company on 23 November 2018, the Population Viability Analysis Report (“PVA Report”) submitted by the Company on 31 August 2018 and “the Information to Inform HRA - Great Black-Backed Gull” Report (“GBBG Report”), submitted on 18 March 2019).

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

**8. Transportation for site inspections**

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

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

**9. Construction Programme**

The Company must, no later than six months prior to the Commencement of the Development, submit a Construction Programme (“CoP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Scottish Natural Heritage (“SNH”), Aberdeenshire Council, Scottish Fishermen’s Federation (“SFF”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted. The CoP must set out:

- a) The proposed date for Commencement of the Development;

## Annex 2 – Section 36 Consent Conditions

- 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 final CoP must be sent to Aberdeenshire Council, Maritime and Coastguard Agency (“MCA”), Northern Lighthouse Board (“NLB”), Moray Council and the Highland Council for information only.

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

### 10. Construction Method Statement

The Company must, no later than six months prior to the Commencement of the Development submit a Construction Method Statement (“CMS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, NLB, SFF, Aberdeenshire Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

The CMS must include, but not be limited to:

- a) Methods of construction as they relate to all aspects of the Development.
- b) Details of the commencement dates, duration and phasing for the key elements of construction, the working areas, the construction procedures and good working practices for installing the Development.
- c) 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.
- d) Details of the manner in which the construction related mitigation steps proposed in the Application are to be delivered.

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

The final CMS must be sent to Moray Council and the Highland Council for information only.

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

## 11. Piling Strategy

The Company must, no later than six months prior to the Commencement of the Development, submit a Piling Strategy (“PS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH and any such other advisors as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

The PS must include, but not be limited to:

- a) Details of expected noise levels from pile-drilling/driving in order to inform point d below;
- b) Full details of the proposed method and anticipated duration of piling to be carried out at all locations;
- c) Details of soft-start piling procedures and anticipated maximum piling energy required at each pile location; and
- d) Details of any mitigation such as Passive Acoustic Monitoring (“PAM”), Marine Mammal Observers (“MMO”), use of Acoustic Deterrent Devices (“ADD”) and monitoring to be employed during pile-driving, as agreed by the Scottish Ministers.

The PS must be in accordance with the Application and must also reflect any relevant monitoring or data collection carried out after submission of the Application. The PS must demonstrate the means by which the exposure to and/or the effects of underwater noise have been mitigated in respect to harbour porpoise, minke whale, bottlenose dolphin, harbour seal, grey seal and Atlantic salmon.

The PS must, so far as is reasonably practicable, be consistent with the EMP, the Project Environmental Monitoring Programme (“PEMP”) and the CMS.

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

## 12. Development Specification and Layout Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Development Specification and Layout Plan (“DSLPP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, Royal Yachting Association Scotland (“RYA”), MCA, NLB, Ministry of Defence (“MOD”), Civil Aviation Authority (“CAA”), SFF, Aberdeenshire Council, Moray Council, the Highland Council, Joint Radio Company (“JRC”) and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

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

- a) A plan showing the location of each individual WTG (subject to any required micro-siting), including information on WTG spacing, WTG identification/numbering, seabed conditions, bathymetry, confirmed foundation type for each WTG and any key constraints recorded on the site;



- b) A list of latitude and longitude co-ordinates accurate to three decimal places of minutes of arc for each WTG. This should also be provided as a Geographic Information System shape file using 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 output of each WTG used on the site (Figure 1) and a confirmed generating output for the site overall;
- e) The finishes for each WTG (see condition **20** on WTG lighting and marking); and
- f) The length and proposed arrangements on the seabed of all inter-array cables.

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

### 13. **Design Statement**

The Company must, no later than six months prior to the Commencement of the Development, 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 Aberdeenshire Council, Moray Council, the Highland Council, SNH, MCA 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.*

### 14. **Environmental Management Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit an Environmental Management Plan ("EMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

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

- a) All construction as required to be undertaken before the Final Commissioning of the Development; and

- b) The operational lifespan of the Development from the Final Commissioning of the Development until the cessation of electricity generation (environmental management during decommissioning is addressed by the Decommissioning Programme provided for by condition 3).

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

- a) Mitigation measures to prevent significant adverse impacts to environmental interests, as identified in the Application and pre-consent and pre-construction monitoring or data collection, and include reference to relevant parts of the CMS (refer to condition 10);
- b) Marine Pollution and Contingency Plan (“MPCP”);
- 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, reuse and recycle should be encouraged; and
- e) The reporting mechanisms that will be used to provide the Scottish Ministers and relevant stakeholders with regular updates on construction activity, including any environmental issues that have been encountered and the way in which these have been addressed.

The EMP must be regularly reviewed by the Company and the Scottish Ministers or Moray Firth Regional Advisory Group (“MFRAG”), at intervals agreed by the Scottish Ministers. Reviews must include, but not be limited to, the reviews of updated information on construction methods and operations of the Development and updated working practices.

The EMP must be informed, so far as is reasonably practicable, by the baseline monitoring or data collection undertaken as part of the Application and the PEMP.

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

## 15. Vessel Management Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Vessel Management Plan (“VMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following

## Annex 2 – Section 36 Consent Conditions

consultation by the Scottish Ministers with SNH, MCA, RYA, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

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

- a) The number, types and specification of vessels required;
- b) How vessel management will be coordinated, particularly during construction but also during operation;
- c) Location of working port(s), the routes of passage, the frequency with which 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; and

The confirmed individual vessel details must be notified to the Scottish Ministers in writing no later than 14 days prior to the Commencement of the Development, and thereafter, any changes to the details supplied must be notified 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 CMS, the EMP, the PEMP, the NSP, and the LMP.

**Reason: To mitigate the impact of vessels.**

### 16. **Operation and Maintenance Programme**

The Company must, no later than three months prior to the Commissioning of the first WTG, submit an Operation and Maintenance Programme ("OMP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, Aberdeenshire Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The OMP must set out the procedures and good working practices for operations and the maintenance of the WTG's, substructures, and inter-array cable network of the Development. Environmental sensitivities which may affect the timing of the operation and maintenance activities must be considered in the OMP.

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

The final OMP must be sent to MCA and the Highland Council for information only.

**Reason: To safeguard environmental interests during operation and maintenance of the Development.**

### 17. **Navigational Safety Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit a Navigational Safety Plan ("NSP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following

consultation by the Scottish Ministers with MCA, NLB, RYA, SFF and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

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

- a) Navigational safety measures;
- b) Construction exclusion zones;
- c) Notice(s) to mariners and radio navigation warnings;
- d) Anchoring areas;
- e) Temporary construction lighting and marking; and
- f) 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 (“MGN”) 543, and its annexes that may be appropriate to the Development, or any other relevant document which may supersede this guidance prior to approval of the NSP.

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

#### **18. Emergency Response Co-operation Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit an Emergency Response Co-operation Plan (“ERCoP”) for the construction, operation, maintenance and decommissioning phases of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with the MCA and any other navigational advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted. The ERCoP should follow the MCA [template and guidance](#). The ERCoP must be developed in discussion with the MCA.

**Reason:** *For emergency response planning relating to the Development and requirements for Search And Rescue (“SAR”) helicopter operations.*

#### **19. Inter Array Cable Plan**

The Company must, no later than six months prior to the Commencement of the Development, submit an Cable Plan (“CaP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, SFF and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted. The CaP must be in accordance with the Application.

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

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- a) The vessel types, location, duration and cable laying techniques for the inter array cables;
- b) The results of monitoring or data collection work (including geophysical, geotechnical and benthic surveys) which will help inform inter array cable routing;
- c) Technical specification of inter array cables, including a desk based assessment of attenuation of electro-magnetic field strengths and shielding;
- d) A Cable Burial Risk Assessment (“CBRA”) to ascertain burial depths and where necessary alternative protection measures;
- e) Methodologies for post construction and operational surveys (e.g. over trawl) of the inter array cables where mechanical protection of cables laid on the sea bed is deployed; and
- f) Methodologies for inter array cable inspection with measures to address and report to the Scottish Ministers any exposure of inter array cables.

Any consented cable protection works must ensure existing and future safe navigation is not compromised. The Scottish Ministers will accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum. Any greater reduction in depth must be agreed in writing by the Scottish Ministers.

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

### 20. Lighting and Marking Plan

The Company must, no later than six months prior to the Commencement of the Development, submit a Lighting and Marking Plan (“LMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, MCA, NLB, CAA, MOD, RYA, Aberdeenshire Council, the Highland Council, Moray Council and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

The LMP must provide that the Development be lit and marked in accordance with the current CAA and MOD aviation lighting policy and guidance that is in place as at the date of the Scottish Ministers approval of the LMP, or any such other documents that may supersede this guidance prior to the approval of the LMP. The LMP must also detail the navigational lighting requirements detailed in the International Association of Marine Aids to Navigation and Lighthouse Authorities (“IALA”) Recommendation O-139 or any other documents that may supersede this guidance prior to approval of the LMP.

**Reason:** *To ensure navigational safety and the safe marking and lighting of the Development.*

### 21. Aviation Radar

The Company must, prior to the Commencement of the Development, submit an Air Traffic Control Radar Mitigation Scheme (“ATC Scheme”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation on the ATC Scheme with the Ministry of Defence (“MOD”). Commencement of the Development cannot take place until such approval is granted.

The ATC Scheme is a scheme designed to mitigate the impact of the Development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth (“the Radar”) and the air traffic control operations of the MOD, which is reliant upon the Radar. The approved ATC Scheme must be in place for the operational life of the Development provided the Radar remains in operation.

No WTGs forming part of the Development may become operational, unless and until all those measures required by the approved ATC Scheme to be implemented prior to the operation of the turbines, have been implemented, and the Scottish Ministers have confirmed this in writing. The Development must thereafter be operated fully in accordance with the approved ATC Scheme.

**Reason:** *To mitigate the adverse impacts of the Development on the Air Traffic Control Radar.*

## **22. MOD Notification**

The Company must notify MOD, at least 14 days prior to the Commencement of the Development, in writing of the following information:

- a) the earliest date of the Commencement of the Development;
- b) the earliest date any WTGs are brought into use;
- c) the maximum height of any construction equipment 50 metres or greater in height above mean sea level, to be used; and
- d) the maximum heights of any WTG, offshore platforms or other, temporary or permanent, offshore structures 50 metres or greater in height, above mean sea level, to be deployed or constructed.

**Reason:** *For aviation safety.*

## **23. Primary Radar Mitigation Scheme**

No part of any WTG shall be erected above mean sea level until a Primary Radar Mitigation Scheme (“PRMS”) has been submitted to and approved in writing by the Scottish Ministers following consultation with NATS (En Route) Public Limited Company (“NERL”). Commencement of the Development cannot take place until such approval is granted.

No blades shall be fitted to any WTG until the technical mitigation measures set out in the approved PRMS have been implemented in accordance with its terms and the Development must thereafter be operated fully in accordance with such approved Primary Radar Mitigation Scheme.

**Reason: To mitigate adverse impact to the Allanshill radar and associated air traffic operations.**

**24. Charting requirements**

The Company must, prior to the Commencement of the Development, and following confirmation of the approved DSLP by the Scottish Ministers (refer to condition **12**), provide the positions and maximum heights of the WTGs, and construction equipment to the United Kingdom Hydrographic Office (“UKHO”), MOD and Defence Geographic Centre for aviation and nautical charting purposes. The Company must, within one month of the Final Commissioning of the Development, provide the coordinates accurate to three decimal places of minutes of arc for each WTG, position and maximum height of the WTGs to UKHO, MOD and Defence Geographic Centre for aviation and nautical charting purposes.

**Reason: For aviation and navigational safety.**

**25. Project Environmental Monitoring Programme**

The Company must, no later than six months prior to the Commencement of the Development, submit a Project Environmental Monitoring Programme (“PEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SFF, the Highland Council and any other environmental advisors or organisations as required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted. The PEMP must be in accordance with the Application as it relates to environmental monitoring.

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

The Scottish Ministers must approve all initial methodologies for the above monitoring, in writing and, where appropriate, in consultation with the Highland Council for the socio-economic receptor and MFRAG referred to in condition **26** of this consent in respect to all the other receptors listed in point a).

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. In the event that further potential adverse environmental effects are identified, for which no predictions were made in the Application, the Scottish Ministers may require the Company to undertake additional monitoring.

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

- a) Pre-construction, construction and post-construction (if considered appropriate by the Scottish Ministers) monitoring or data collection as

## Annex 2 – Section 36 Consent Conditions

relevant in terms of the Application, and any subsequent monitoring or data collection for impacts on the following receptors:

1. Birds, including the pre-construction monitoring of the great black-backed gull of the East Caithness SPA;
2. Marine Mammals;
3. Commercial Fisheries;
4. Socio-economic; and
5. Benthic communities.

- b) The participation by the Company to contribute to data collection or monitoring of wider strategic relevance, identified and agreed by the Scottish Ministers.

Due consideration must be given to the Scottish Marine Energy Research (“ScotMER”) programme, or any successor programme formed to facilitate these research interests.

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 the MFRAG require the Company to amend the PEMP and submit such an amended PEMP, in writing, to the Scottish Ministers, for their written approval. Such approval may only be granted following consultation with the MFRAG and any other environmental, or such other advisors as may be required at the discretion of the Scottish Ministers.

The Company must submit written reports and associated raw and processed data of such monitoring or data collection to the Scottish Ministers at timescales to be determined by them. Consideration should be given to data storage, analysis and reporting and be to Marine Environmental Data and Information Network (“MEDIN”) standards.

Subject to any legal restrictions regarding the treatment of the information, the results are to be made publicly available by the Scottish Ministers, or by such other party appointed at their discretion.

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

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

### 26. Regional Advisory Group

The Company must participate in the Moray Firth Regional Advisory Group (“MFRAG”) or any successor group, established by the Scottish Ministers for the purpose of advising the Scottish Ministers on research, monitoring and mitigation programmes for, but not limited to, ornithology, marine mammals, and commercial fish. The extent



and nature of the Company's participation in the Regional Advisory Group is to be agreed by the Scottish Ministers.

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

## **27. Fisheries Management and Mitigation Strategy**

The Company must no later than six months prior to the Commencement of the Development, submit a Fisheries Management and Mitigation Strategy ("FMMS"), in writing, to the Scottish Ministers for their written approval, in consultation with SFF and other fisheries representatives. Commencement of the Development cannot take place until such approval is granted. The FMMS must be defined and finalised in consultation with the Moray Firth Commercial Fisheries Working Group ("MFCFWG").

In order to inform the production of the FMMS, the Company must monitor or collect data as relevant and agreed with Scottish Ministers.

The FMMS must include a transit plan, which must lay out guidelines to address potential interactions with fishing activity, for vessels operating in and around the Development and transiting to the Development.

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 any contractors, or sub-contractors working for the Company must implement the mitigation measures committed to be carried out by the Company within the FMMS. The Company must participate in and remain a member of the MFCFWG or any successor group formed to facilitate commercial fisheries dialogue.

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

## **28. Environmental Clerk of Works**

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

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

- a) Quality assurance of final draft versions of all plans and programmes required under this consent;
- b) Responsible for the monitoring and reporting of compliance with the consent conditions and the environmental mitigation measures for all wind farm infrastructure;

## Annex 2 – Section 36 Consent Conditions

- 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 and the implementation of the CMS, the EMP, the PEMP, the PS, the CaP and the VMP;
- d) Provision of reports on point b & c above to the Scottish Ministers at timescales to be determined by the Scottish Ministers;
- e) Induction and toolbox talks to onsite construction teams on environmental policy and procedures, including temporary stops and keeping a record of these;
- f) Monitoring that the Development is being constructed in accordance with the plans and this consent, the Application and in compliance with all relevant regulations and legislation;
- g) Reviewing and reporting incidents/near misses and reporting any changes in procedures as a result to the Scottish Ministers; 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.*

### 29. 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 and the MFCFWG). 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 EMP (referred to in condition 14). The FLO must establish and maintain effective communications between the Company, any contractors or sub-contractors, fishermen and other users of the sea during the construction of the Development, and ensure compliance with best practice guidelines whilst doing so.

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

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

**Reason:** *To facilitate engagement with the commercial fishing industry.*

**30. Protocol for Archaeological Discoveries**

The Company must, no later than six months prior to the Commencement of the Development, submit a Protocol for Archaeological Discoveries (“PAD”) and a Written Scheme of Investigation (“WSI”) which sets out what the Company must do on discovering any marine archaeology during the construction, operation, maintenance and monitoring of the Development, in writing, to the Scottish Ministers for their written approval. Such approval may be given only following consultation by the Scottish Ministers with Historic Environment Scotland (“HES”) and any such advisors as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted. The Reporting Protocol must be implemented in full, at all times, by the Company.

The final PAD and WSI must be sent to Aberdeenshire Council for information only.

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

**31. Construction Traffic Management Plan**

In the event that major offshore components require onshore abnormal load transport, the Company must, no later than six months prior to the Commencement of the Development, submit a Construction Traffic Management Plan (“CTMP”) in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with Transport Scotland and any such other advisors as may be required at the discretion of the Scottish Ministers. Commencement of the Development cannot take place until such approval is granted.

The CTMP must include:

- a) A mitigation strategy for the abnormal loads on the trunk road network including any accommodation measures required, incorporating the removal of street furniture, junction widening, or traffic management of road based traffic and transportation associated with the construction of the Development. All construction traffic associated with the Development must conform to the approved CTMP; and
- b) Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered as a result of the Development.

**Reason:** *To maintain the free flow and safety of the trunk road network.*

## DEFINITIONS AND GLOSSARY OF TERMS

- “AA” means the Appropriate Assessment;
- “ADD” means Acoustic Deterrent Devices;
- “Application” means the EIA Report, HRA Report and supporting documents submitted by the Company on 5 July 2018 to construct and operate an offshore generating station and transmission works, it also includes the PVA Report submitted on 31 August 2018, the EIA Addendum Report submitted on 23 November 2018 and the GBBG Report submitted on 18 March 2019;
- “ATC” means Air Traffic Control;
- “Commencement of the Development” means the date on which the first construction activity occurs in accordance with the EIA Report submitted by the Company on 5 July 2018;
- “CRM” means collision risk modelling;
- “Development” means the Moray West Offshore Wind Farm, approximately 22.5km southeast off the Caithness coastline;
- “dSPA” means draft Special Protection Area;
- “ECOW” means Environmental Clerk of Works;
- “EIA Addendum Report” means the Environmental Impact Assessment Addendum Report submitted by the Company on 23 November 2018;
- “EIA Report” means Environmental Impact Assessment Report;
- “EIA” means Environmental Impact Assessment;
- “EPS” means European Protected Species;
- “Final Commissioning of the Development” means the date on which the last wind turbine generator constructed forming the Development has supplied electricity on a commercial basis to the National Grid, or such earlier date as the Scottish Ministers deem the Development to be complete;
- “First Commissioning of the Development” means the date on which the first wind turbine generator constructed forming the Development has supplied electricity on a commercial basis to the National Grid;
- “FLO” means Fisheries Liaison Officer;
- “FTE” means full-time equivalent;
- “GBBG Report” means the Information to Inform HRA – Great Black-backed Gull Report submitted on 18 March 2019;
- “GBBG” means great black-backed gulls;
- “GHG” means greenhouse gas;
- “GVA” means Gross Value Added;
- “HAT” means Highest Astronomical Tide;
- “HDD” means Horizontal Directional Drilling;
- “HRA Report” means Habitats Regulations Appraisal Report;
- “HRA” means Habitats Regulations Appraisal;
- “IALA” means International Association of Marine Aids to Navigation and Lighthouse Authorities;
- “Local Study Area” means the combined local authorities of Highlands, Moray, Aberdeenshire & Aberdeen City;
- “LSE” means Likely Significant Effect;

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- “MMO” means Marine Mammal Observer;
- “Moray Firth Developments” means combinations of existing consents for the Moray East Offshore Wind Farm (granted in March 2014 and varied in March 2018) and the Beatrice Offshore Wind Farm (granted in March 2014);
- “MW” means megawatt;
- “OEC” means Offshore Export Cable;
- “OfTI” means Offshore Transmission Infrastructure;
- “PAM” means passive acoustic monitoring;
- “PLI” means Public Local Inquiry;
- “pMPA” means Proposed Marine Protected Area;
- “pSPA” means Proposed Special Protection Areas;
- “PSR” means Primary Surveillance Radar;
- “PVA Report” means the Population Viability Analysis Report submitted on 31 August 2018;
- “PVA” means Population Viability Analysis;
- “RIAA” means Report to Inform the Appropriate Assessment;
- “s.36” means section 36 of the Electricity Act 1989 (as amended);
- “SAC” means Special Area of Conservation;
- “SAR” means Search and Rescue;
- “ScotMER” means Scottish Marine Energy Research Programme;
- “SIDS” means Standard Instrument Departures;
- “SLA” means Special Landscape Area;
- “SLVIA” means Seascape, Landscape and Visual Impact Assessment;
- “SNCBs” means the Statutory Nature Conservation Bodies;
- “SPA” means Special Protection Area;
- “SSC” means Suspended Sediment Concentration;
- “SSSI” means Site of Special Scientific Interest;
- “the Company” means Moray Offshore Windfarm (West) Limited (Company Number 10515140) registered at Condor House, 10 St. Paul’s Churchyard, London EC4M 8AL;
- “the EIA Addendum Consultation” mean the consultation on the EIA Addendum Report;
- “the GBBG Report Consultation” means consultation on the GBBG Report;
- “the Original Consultation” means consultation on the Application for s.36 consent, EIA Report and RIAA;
- “the Radar” means the Primary Surveillance Radar at Leuchars Airfield; and
- “WTG” means wind turbine generators.

### Organisations and Companies

- “SNH” means Scottish Natural Heritage;
- “BT” means BT Radio Network Protection;
- “CAA” means the Civil Aviation Authority;
- “CFWG” means Commercial Fisheries Working Group;
- “FMS” means Fisheries Management Scotland;

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- “FSDCC” means Fordyce, Sandend and District Community Council;
- “HES” means Historic Environment Scotland;
- “HIE” means Highlands and Islands Enterprise;
- “IHO” means International Hydrographic Office;
- “JNCC” means Joint Nature Conservation Committee;
- “JRC” means Joint Radio Company Limited;
- “MAU” means Marine Scotland Marine Analytical Unit;
- “MCA” means the Maritime and Coastguard Agency;
- “MFCFWG” means the Moray Firth Commercial Fisheries Working Group;
- “MFRAG” means Moray Firth Regional Advisory Group;
- “MOD” means the Ministry of Defence;
- “Moray East” means Moray Offshore Windfarm (East) Limited;
- “Moray West” means Moray Offshore Windfarm (West) Limited;
- “MS-LOT” means Marine Scotland Licensing Operations Team;
- “MSS” means Marine Scotland Science;
- “NATS” means National Air Traffic Service Safeguarding;
- “NERL” means NATS (En Route) Public Limited Company;
- “NLB” means the Northern Lighthouse Board;
- “RAF” means the Royal Air Force;
- “RAG” means Regional Advisory Group;
- “RSPB Scotland” means the Royal Society for the Protection of Birds Scotland;
- “RTC” means River Tweed Commission;
- “RYA” means the Royal Yachting Association Scotland;
- “SEPA” means the Scottish Environment Protection Agency;
- “SFF” means the Scottish Fishermen’s Federation; and
- “UKHO” means United Kingdom Hydrographic Office.

### Plans and Programmes

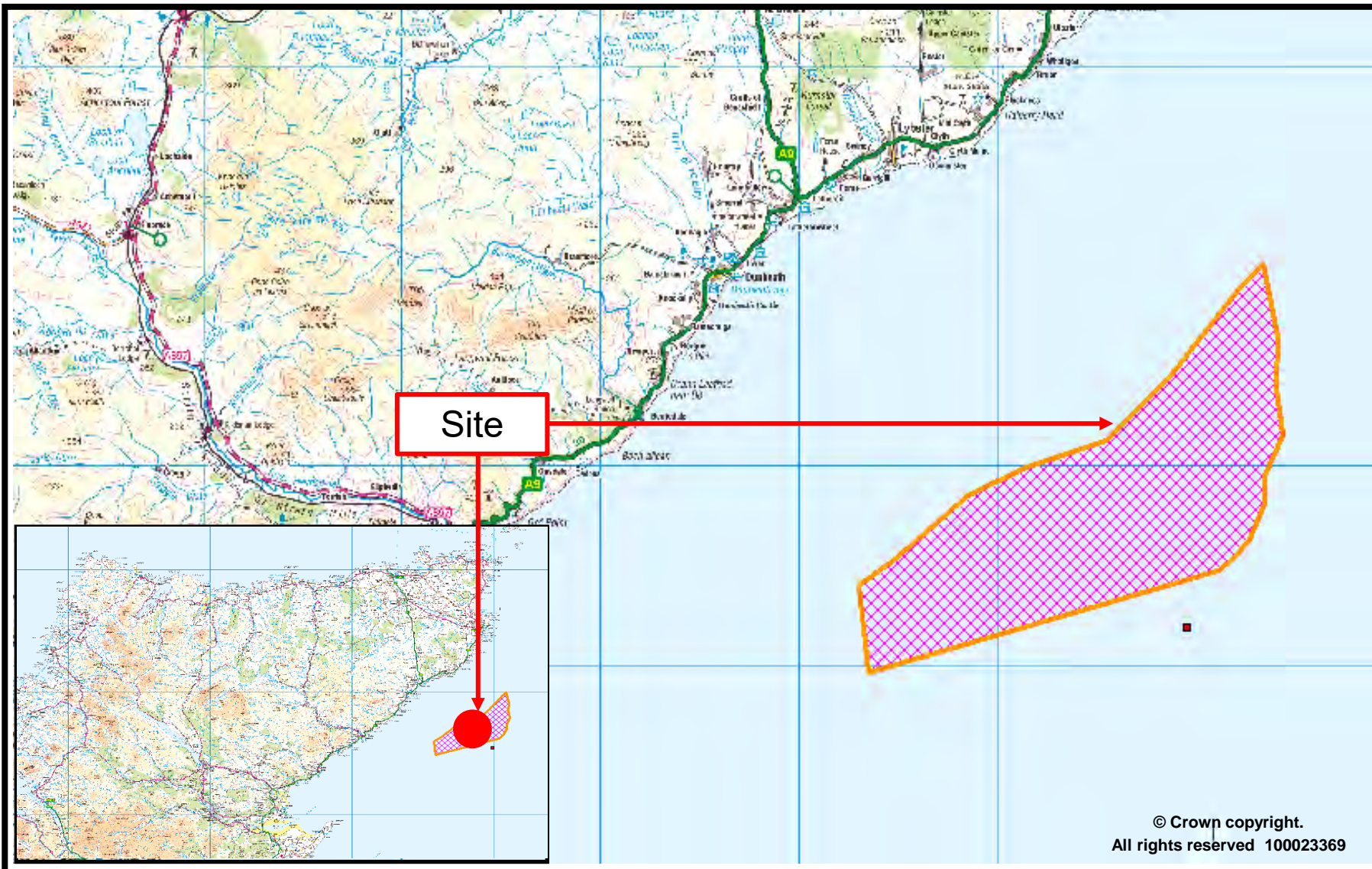
- “ATC Scheme” means Air Traffic Control Radar Mitigation Scheme;
- “CaP” means Inter Array Cable Plan;
- “CBRA” means Cable Burial Risk Assessment;
- “CMS” means Construction Method Statement;
- “CoP” means Construction Programme;
- “CTMP” means Construction Traffic Management Plan;
- “DP” means Decommissioning Programme;
- “DS” means the Design Statement;
- “DSL P” means Development Specification and Layout Plan;
- “EMP” means Environmental Management Plan;
- “ERCoP” means Emergency Response Co-operation Plan;
- “FMMS” means Fisheries Management and Mitigation Strategy;
- “LMP” means Lighting and Marking Plan;
- “MGN” means Marine Guidance Note;
- “MPCP” means Marine Pollution Contingency Plan;
- “NMP” means the National Marine Plan;

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- “NPF3” means Scotland’s National Planning Framework 3;
- “NRA” means Navigation Risk Assessment;
- “NRIP” means National Renewables Infrastructure Plan;
- “NSP” means Navigational Safety Plan;
- “OMP” means Operation and Maintenance Programme;
- “PAD” means Protocol for Archaeological Discoveries;
- “PEMP” means Project Environmental Monitoring Programme;
- “PRMS” means Primary Radar Mitigation Scheme;
- “PS” means Piling Strategy;
- “SPP” means Scottish Planning Policy 2014;
- “Transit Plan” means a plan which sets out measures to be taken to avoid or reduce the impact of vessel movement on the local fishing industry and to promote a sustainable coexistence. It will include indicative transit routes for vessels operating in and around the Development and transiting to the site from relevant ports;
- “VMP” means Vessel Management Plan; and
- “WSI” means Written Scheme of Investigation.

### Legislation

- “the 1994 Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended);
- “the 2009 Act” means the Marine and Coastal Access Act 2009.
- “the 2010 Act” means the Marine (Scotland) Act 2010;
- “the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended);
- “the Birds Directive” means Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended and as codified by Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009;
- “the Electricity Act” means the Electricity Act 1989 (as amended);
- “the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora (as amended); and
- “the Habitats Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).



Planning and  
Development Service

Location Plan  
21/03368/S36

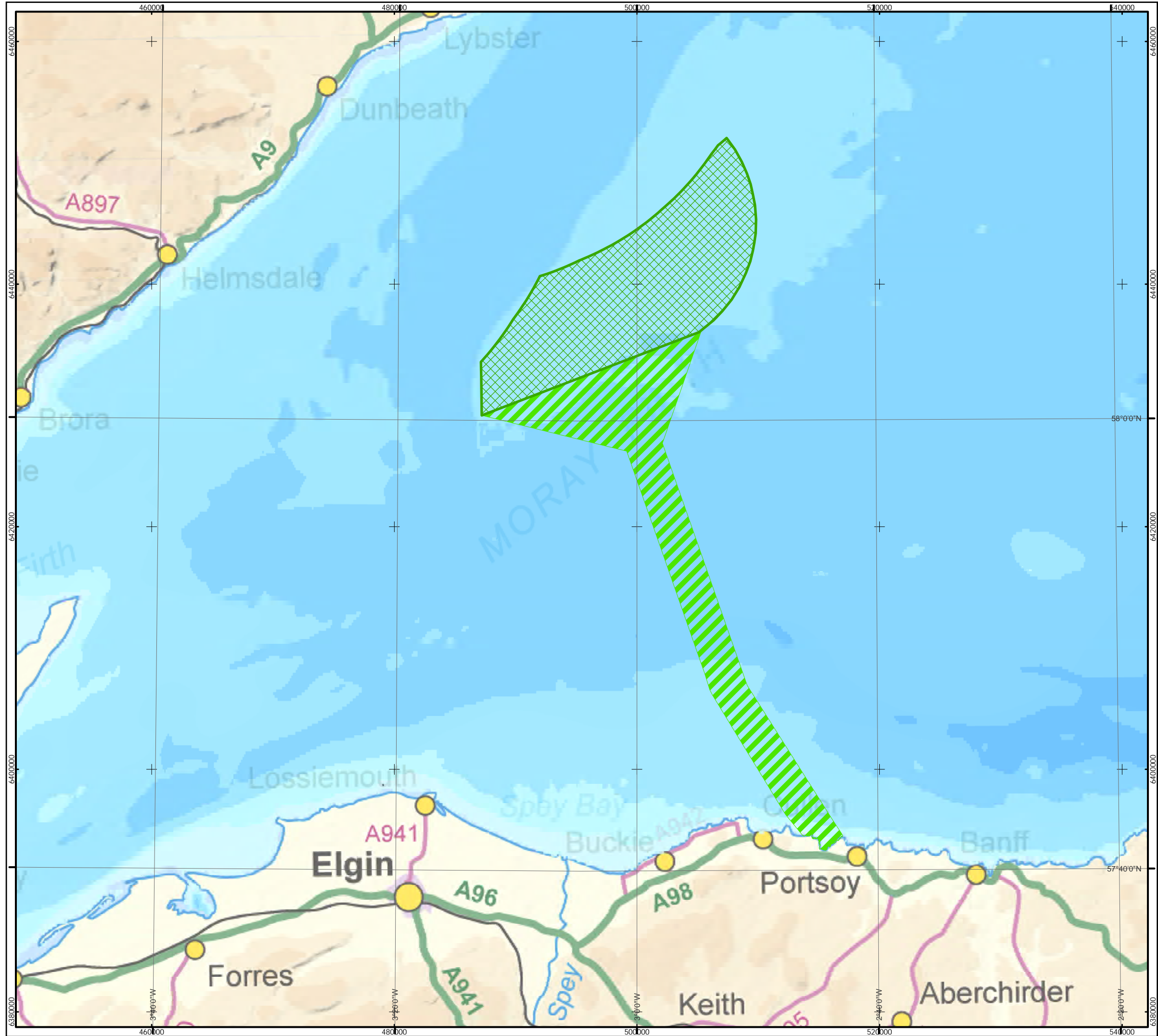
**Moray West Off-shore Wind Farm Variation - Application to increase turbine blade width from 6m to 6.6m and remove reference to the developments maximum generating capacity in the description of development**

14 September 2021

Scale:



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Digital bathymetry has been derived from the EMODnet Bathymetry portal (<http://www.emodnet-bathymetry.eu>)  
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#### KEY

- Moray West Site
- Offshore Export Cable Corridor

#### Bathymetry (m LAT)

- <=500
- <=100
- <=50
- <=20
- <=10

Horizontal Scale: 1:300,000

A3 Chart

0 5,000 10,000 Meters

Geodetic Parameters: WGS84 UTM Zone 30N

Produced: RC  
Reviewed: SM  
Approved: FG

Date: 01/09/2021

Revision: B

REF: 8460005-PPW0180-GOE-MAP-005

Figure 1.1:  
Development Boundary

Moray Offshore  
Windfarm (West) Ltd