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30 August 2018

## **THE MARINE (SCOTLAND) ACT 2010**

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

#### **DECISION NOTICE - MARINE LICENCE FOR THE OPERATION AND MAINTENANCE OF THE LEVENMOUTH DEMONSTRATION TURBINE (FORMERLY KNOWN AS THE FIFE ENERGY PARK OFFSHORE DEMONSTRATION WIND TURBINE)**

##### **1. Application and Description of the Development**

On 8th February 2018, Offshore Renewable Energy Catapult having its registered offices at Offshore House, Albert Street, Blyth, Northumberland, NE24 1LZ and registered in Scotland having its registered number as 4659351 (“the Company”), submitted to the Scottish Ministers an application for:

- A marine licence (under the Marine (Scotland) Act 2010 to operate The Levenmouth Demonstration Turbine (formerly known as The Fife Energy Park Offshore Demonstration Wind Turbine) (“the Development”). The said application is hereinafter referred to as “the Application”.

In addition to the Application, the Company has also applied for:

- A variation to their consent under section 36 (“s.36”) of the Electricity Act 1989 to extend the operational life of the Development from five (5) to fifteen (15) years, i.e. an extension for ten (10) years.

A separate decision notice will be issued in respect of any s.36 variation granted.

The Application is for the operation of a demonstration offshore energy generating station, with a total generating capacity of approximately 7 MW and comprising up to 1 wind-powered electricity generating station, including:

1. not more than 1, three-bladed demonstration wind turbine generator (“WTGs”), with:
  - a) up to 7 MW generating capacity;
  - b) a maximum blade tip height of 196.2 metres (measured from mean sea level (“MSL”));
2. A personnel bridge, which allows access to the turbine substructure from the Fife Energy Park (“FEP”);
3. An onshore crane pad within the FEP; and
4. An onshore control compound which controls operation of the turbine.
5. The location and boundary of the site is shown in Figure 1.

**This decision notice contains the Scottish Ministers’ decision, required under regulation 23 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended), to grant the marine licence for the Development as described above.**

## **2. Summary of environmental information**

The environmental information provided by the Company was:

- An EIA report that provided an assessment of the impact on a range of receptors.

2.1 A summary of the environmental information provided in the EIA report on the impacts of the Development on a range of receptors is given below.

### *Seascape, landscape and visual*

2.2 The main impacts identified were in respect of dwellings facing the LDT within approximately 5 km, where it was considered that the movement of the turbine would generate an ongoing and continuous visual effect to the extent that this would be considered significant.

### *Noise*

2.3 The main impacts identified were that depending on the levels of background noise, the satisfaction of the ETSU-R-97 derived noise limits could lead to a situation whereby, at some locations under some wind conditions and for a certain proportion of the time, wind turbine noise may be audible. Nonetheless, if predicted noise levels are within the ETSU-R-97 criteria, operational noise is considered acceptable and not a significant effect; if predicted noise levels are above the ETSU-R-97 criteria, operational noise is considered as a significant effect. These significant effects require mitigation and is achieved through measures placed on the operation of the LDT.

### *Ornithology*

2.4 The main impact was associated with the potential for displacement of wintering sea ducks during operation of the LDT.

## *Socio-economics*

2.5 Positive socio-economic effects were identified with the increased operational life of the turbine. Without the continued operation of the LDT, economic effects such as the removal of barriers in the UK industrialisation of offshore wind; local industrial and academic collaboration; progress in integrated system technology for offshore wind and facilitation of growth and development of the industry, development of industry process, workforce skills and industry culture in the Fife area; and the raising of Fife's profile internationally would be lost.

## *Carbon balance and climate change*

2.6 Positive environmental effects were identified with the increased operational life of the turbine. Without the LDT, positive environmental effects would be lost such as 71,000 Megawatt hours (MWh) of electricity generated which is equivalent to approximately 6,150 tonnes of oil.

### **3. Consultation**

3.1 In accordance with the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 MW Regulations"), advertisement of the Application and EIA Report was made in the local and national press and the application website. Notices were placed in the public domain, and the opportunity given for those wishing to make representations to do so.

3.2 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 post consent.

Document	Date received	Dates of consultation
EIA report	8 <sup>th</sup> February 2018	East Fife Mail on 21 <sup>st</sup> and 28 <sup>th</sup> February 2018 The Scotsman on 20 <sup>th</sup> February 2018 Edinburgh Gazette on 20 <sup>th</sup> February 2018 Fishing News on 22 <sup>nd</sup> February 2018 Lloyd's List on 20 <sup>th</sup> February 2018

3.3 A summary of the responses received is set out at sections 4, 5 and 6. A full set of responses is available to view on <http://marine.gov.scot/ml/fife-energy-park-offshore-demonstration-wind-turbine>

### **4. Summary of statutory Consultee responses**

Under the 2017 MW Regulations Scottish Natural Heritage ("SNH"), the Scottish Environmental Protection Agency ("SEPA"), Historic Environment Scotland ("HES"), any relevant local planning authority and any relevant authority require to be consulted. Under the Marine (Scotland) Act 2010 the Maritime & Coastguard Agency ("MCA") and the Northern Lighthouse Board ("NLB") also require to be consulted.

4.1 **Historic Environment Scotland (“HES”)** was content and had no comments other than advice should also be sought from Fife Council’s archaeology and conservation advisors for matters including unscheduled archaeology and category B and C-listed buildings.

4.2 **Fife Council** confirmed in a follow up email of 16th May 2018 that its archaeologist and environment, coastal protection, and environmental health colleagues had been consulted on the application and had no comments to make.

4.3 **Maritime and Coastguard Agency (“MCA”)** considered it unlikely that the variation to extend the operational phase of the Development will have significant effects on navigational safety but did request that a consent condition advising that an Emergency Response Cooperation Plan (“ERCoP”) must receive written approval in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues".

The Company replied that the guidance note referenced is not mandatory and is more relevant to schemes not yet constructed and that as the turbine is already operational therefore the aspect of the requested condition relating to prior to commencement is not relevant.

The Company also suggested that should MS-LOT include the additional licence condition this should be re-worded to focus only on operational and decommissioning emergencies as an ERCoP was previously submitted and approved for construction of the turbine.

4.4 **Northern Lighthouse Board (“NLB”)** had no objections.

4.5 **Scottish Environment Protection Agency (“SEPA”)** advised that it had no comments to make.

4.6 **Scottish Natural Heritage (“SNH”)** considered that the operation of the Development can continue without serious adverse effects on natural heritage interests. SNH advised that its advice has been informed by the nature of the application, the fact that the turbine is already constructed and operating and the assessments within the EIA Report.

SNH noted that the ornithology assessment considers the effects of the Development alone and in-combination regarding the qualifying interests of the Forth Islands Special Protection Area (“SPA”), the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex proposed SPA (“pSPA”). The EIA Update Report correctly identifies that the key potential impact is displacement of wintering sea ducks during operation of the Development. SNH agreed with the conclusion that the Development will not have an adverse effect on site integrity for these Natura sites both alone and in combination with relevant consented projects.

SNH also advised that future monitoring requirements for the proposal should be agreed with Marine Scotland and key stakeholders, taking into account of the proximity of the relevant projects, overlapping designations and receptor pathways to inform consent conditions.

Finally, SNH noted the work undertaken and presented in the EIA report on seascape/landscape and visual assessment. As this turbine is already built and operating, SNH agreed with the conclusion reached and has no additional comments to make.

The Company agreed that future monitoring requirements for the proposal should be agreed with Marine Scotland and key stakeholders.

**4.7 East Lothian Council** objected based on a lack of information on the potential for cumulative visual impact and advised that if further cumulative information is provided, it would withdraw its objection provided the information does not show that there are cumulative adverse visual effects.

In its response to the original application in 2012, East Lothian Council were concerned that the turbine would become a new focal point in views over the Forth towards the Lomonds, though East Lothian Council advised in their current response that the Development does not appear to form a focal point.

East Lothian Council also advised that while it agreed that the EIA Update Report has identified the visual impact from Gullane to have minor/moderate effect rather than the previous negligible effect, it disagreed with the assessment for other East Lothian viewpoints as being of a negligible level of change as the turbine creates a small/very small level of change which although not significant, is not negligible.

East Lothian Council also advised that the baseline since construction of the Development has changed. East Lothian Council advised that although of similar height and rotor diameter, the Forthwind Ltd ("FW") wind turbine generators ("WTG")'s are designed differently to the Development and is likely to create a discord of turbine types within views from East Lothian. East Lothian Council was not consulted on the application for the two Forthwind Ltd turbines and therefore did not provide comments at the consenting stage for that application. East Lothian Council also advised that consent for the FW turbines would overlap with the extension of time applied for by the Development by over seven years.

MS-LOT note that Forthwind Ltd ("FW") were granted s.36 consent in 2016 for two wind turbine generators ("WTG")'s in close proximity to the Development, with a further seven having gone through the Scoping process in 2017, though this project is not yet built. There is a potential for cumulative noise impacts between FW and the Development which has been addressed through conditions on both consents.

MS-LOT replied to East Lothian Council on 24th April 2018 advising that as neither Edinburgh City Council, Fife Council or SNH had raised any issue with cumulative visual impact, and East Lothian Council had not raised these issues during the scoping exercise for the Development, then additional information would not be requested from the Company and that East Lothian Council's objection would be maintained. MS-LOT do not consider that there is sufficient information on the larger seven turbine FW proposal to include it in a meaningful cumulative assessment. If an application is forthcoming then that project will be required to consider the cumulative effects with the Development.

**4.8 Edinburgh City Council** did not raise any objection to the application to extend the life of the Development as any environmental effects arising from the Development

are already in existence, and the variation would simply extend the duration, rather than introduce any new effects. In assessing the consented development no significant adverse landscape and visual effects were predicted on Edinburgh City's backdrop of the Firth of Forth, from Calton Hill within the World Heritage Site. As the variation makes no change to the built development this view still stands.

4.9 **Fife Council** had no adverse comment to make on the proposal. One of Fife Council's local members offered general support for the proposal, whilst Fife Council's economic development section commented that both the turbine and the Company has become integral to the Fife Energy Park offering future opportunities at the Park.

## 5. Summary of Non Statutory Consultee responses

5.1 **Ministry of Defence ("MoD")** raised no objections but advised that if the application is altered in any way it must be consulted again as even the slightest change could unacceptably affect it.

5.2 **Forthwind Ltd ("FW")** were granted s.36 consent in 2016 for a two WTG development ("FW consent") in close proximity to the Development. Scoping has been completed for an additional seven WTGs for a total of nine WTGs ("FW Array"). There has been the potential for cumulative noise impacts between FW and the Company and this has been addressed by conditions relating to cumulative noise on both the FW consent and the current s.36 consent held by the Company. FW, in their response, advised that it had requested that its s.36 condition for the FW consent relating to noise be closed out some time ago, as the FW construction timeline no longer overlaps with the current consented operational lifetime of the Development. FW advised that this may have a material impact on the argument put forth by the Development with regards to the cumulative noise impact. FW advised that until it understands the outcome of its proposed s.36 application to Marine Scotland it retains the right to comment on the Development.

The Company responded by advising that despite its repeated requests for noise data for the FW Array, FW had been unable to provide this. Previously published EIA data for the Forthwind consent had been considered in the cumulative assessment, but the lack of robust data has prevented analysis of cumulative effects relating to the potential future FW Array. This approach is in line with best practice, which requires the cumulative noise assessment to include consented and in planning development (i.e. developments for which an application has been submitted). Therefore, in line with good practice, the Forthwind Array will be required to consider the Development at such a time as its application is submitted.

Marine Scotland is satisfied that the original noise condition imposed on the FW consent to deal with the cumulative impact between the Company and FW should now apply to the Development (if the Forthwind array is to be built under its current consent).

5.3 **Scottish Fishermen's Federation ("SFF")** had no comments.

5.4 **National Air Traffic Service ("NATS")** had no objections.

5.5 **RYA Scotland ("RYA")** had no comment to make on the Application.

5.6 **Transport Scotland (“TS”)** advised it had no objection.

5.7 **Whale and Dolphin Conservation (“WDC”)** had no comments on the Application.

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

There were no representations from other organisations or members of the public.

## **7. Advice from 3rd Parties**

There was no advice received from third parties.

## **8. The Scottish Ministers’ Considerations and Main Determinative Issues**

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 national marine plan and relevant local development plans,
- the significant effects of the Development on the environment, which are in summary:
  - ornithological impacts,
  - seascape, landscape and visual impact,
  - noise
  - socio-economics
  - carbon balance and climate change
- the renewable energy benefits of the Development

The extent to which the Development accords with policy, and the renewable energy benefits are fully described in the decision notice for the corresponding s.36 consent decision (available at <http://marine.gov.scot/ml/fife-energy-park-offshore-demonstration-wind-turbine>). The environmental matters are considered further below.

### *Environmental Matters*

8.1 The 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 proposed Development have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.

8.2 The Scottish Ministers have considered fully and carefully the Application, EIA Report and all relevant responses from consultees.

### *Possible Effects on European Protected Sites and Ornithological Impacts*

8.3 The Conservation of Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“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.

8.4 Owing to the view of SNH that the Development is likely to have a significant effect on the qualifying interests of the Firth of Forth Special Protection Area (“SPA”) and the Outer Firth of Forth and St Andrews Bay Complex proposed Special Protection Area (“pSPA”). MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, were required to carry out an Appropriate Assessment (“AA”). Having had regard to the representations made by SNH it can be ascertained that the Development will not adversely affect the integrity of the SPAs. Having determined that the project will not adversely affect the integrity of the sites, and having regard to the reasons for which they were designated and the associated conservation objectives, MS-LOT concludes that the project will not, on its own or in combination with other projects, adversely affect the integrity of the Firth of Forth Special Protection Area (“SPA”) and the Outer Firth of Forth and St Andrews Bay Complex proposed Special Protection Area (“pSPA”).

8.5 A full explanation of the ornithology issues and justification for decisions regarding site integrity is provided in the AA (available at <http://marine.gov.scot/ml/fife-energy-park-offshore-demonstration-wind-turbine>). SNH agreed with all conclusions reached in the AA.

## **9. The Scottish Ministers’ Determination and Reasoned Conclusion**

9.1 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.

9.2 The 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. Ministers have undertaken this exercise in the context of national and local policies.

9.3 Ministers have considered the extent to which the development accords with and is supported by Scottish Government policy, the terms of the national marine plan and local development plans and the environmental impacts of the development in the Firth of Forth Special Protection Area and the Outer Firth of Forth and St Andrews Bay Complex proposed Special Protection Area. Ministers have also considered the renewable energy benefits made by the development.

9.4 Ministers are satisfied that many of the environmental issues have been appropriately addressed by way of the design of the proposal and mitigation, and that the issues which remain are, on balance, outweighed by the benefits of the proposal. In particular Ministers are satisfied that the proposal will not adversely affect the integrity of the Firth of Forth SPA and Outer Firth of Forth and St Andrews Bay Complex pSPA either in isolation or in combination with other plans or projects.

9.5 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.

9.6 In their consideration of the environmental impacts of the Development, Ministers have identified conditions to be attached to the marine licence/s.36 consent to reduce and monitor environmental impacts. These include requirements for operational monitoring of noise; an Operational Maintenance Plan (OMP) and a Project Environmental Monitoring Programme (PEMP).

9.7 Scottish Ministers have concluded that the Company has had regard to the potential interference of recognised sea lanes essential to international and national navigation. Any obstruction or danger to navigation has been addressed through specific consent conditions attached below.

9.8 Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is still up to date.

9.9 The Scottish Ministers grant consent under Part 4 of the Marine (Scotland) Act 2010 operation of the Levenmouth Demonstration Turbine subject to conditions attached to the marine licence and corresponding s.36 consent. The marine licence with conditions is attached at Annex 1. The s.36 consent granted with conditions is available on the Marine Scotland website at <https://www.gov.scot/Topics/marine/Licensing/marine/scoping/FifeEnergyPark>

9.10 The embedded mitigation and any additional mitigation identified in the EIA Report has been incorporated into the conditions of the marine licence and/or corresponding s.36 consent. The conditions also capture monitoring measures required under Regulation 24 of the 2017 MW Regulations.

9.11 In accordance with the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the Company must publicise notice of this determination and how 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.

9.12 Copies of this letter have been sent to the bodies consulted on the application including the relevant planning authorities, SNH, SEPA and HES, MCA and NLB. This letter has also been published on Marine Scotland's website at <http://marine.gov.scot/ml/fife-energy-park-offshore-demonstration-wind-turbine>

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 website of the Scottish Courts – <http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

**ZOE CRUTCHFIELD**

**Head of Marine Scotland Licensing Operations Team  
A member of the staff of the Scottish Ministers  
30 August 2018**