

Mr David Taaffe
Director for Project Delivery
MeyGen Limited
4th Floor, Edinburgh Quay 2
139 Fountainbridge
Edinburgh
EH3 9QG

29 August 2019

Dear Mr Taaffe,

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 (AS AMENDED) TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 (AS AMENDED) ON 16 SEPTEMBER 2013 TO CONSTRUCT AND OPERATE THE MEYGEN TIDAL ENERGY PROJECT PHASE 1 ELECTRICITY GENERATING STATION LOCATED BETWEEN THE ISLAND OF STROMA AND THE SCOTTISH MAINLAND IN THE INNER SOUND OF THE PENTLAND FIRTH, APPROXIMATELY 3 KILOMETERS NORTH-WEST OF JOHN O'GROATS

I refer to the application to vary the consent for the MeyGen Tidal Energy Project Phase 1 Electricity Generating Station (“the Development”). This application (“the Variation Application”) was made by MeyGen Limited (“the Company”) on 11 June 2018 for:

- a variation under section 36C of the Electricity Act 1989 (as amended) (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act on 16 September 2013 (“the Existing Consent”) for the construction and operation of the Development, located between the Island of Stroma and the Scottish mainland in the Inner Sound of the Pentland Firth, approximately 3 kilometers north-west of John O’Groats.

This letter contains the Scottish Ministers’ decision to grant the application to vary the Existing Consent.

1 Nature of the Variation Sought

1.1 The Variation Application seeks to amend Annex 3 of the Existing Consent to allow the following variation:

- Amendment of the Phase 1 area for turbine deployment (as delineated by the solid red line in Annex 3 (Phase 1 area for turbine and potential cable deployment

("the Site") of the Existing Consent) to include an additional area to the north-west of the Site and to remove a similar sized area from the eastern side of the Site.

2 Environmental Impacts

- 2.1 The Scottish Ministers are satisfied with the information provided in support of the Variation Application which showed no increase in impact upon the environmental receptors of concern above those concluded in the Environmental Impact Assessment ("EIA"), Habitats Regulations Appraisal and associated Appropriate Assessment ("AA") (herein collectively referred to as "the Environmental Assessments") supporting the original July 2012 s.36 consent application ("the Original Application").
- 2.2 In addition to the amendment to the boundary of the Existing Consent requested by the Company, Marine Scotland - Licensing Operations Team ("MS-LOT") would like to take this opportunity to rectify the error by removing reference to inter-array cabling on the Existing Consent. Inter-array cabling was not applied for in the Original Application and had been included erroneously. MS-LOT is of the opinion that the inter-array cabling aspect will be controlled through the associated marine licence.
- 2.3 The Scottish Ministers have considered regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 ("the 1994 Habitats Regulations") and regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the 2017 Habitats Regulations"), the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended) ("the Variation Regulations"), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 EW Regulations").
- 2.4 Although the proposed amendment of the Site to include an additional area to the north-west of the Site and to remove a similar sized area from the eastern side of the Site involves changes to the physical parameters of the Development, the Scottish Ministers do not consider these changes to influence the Environmental Assessments supporting the Original Application.
- 2.5 On this basis, in accordance with the 2017 EW Regulations, the Scottish Ministers do not deem it necessary for a new EIA report to be submitted in support of the Variation Application. Taking into consideration the requirements of the 1994 Habitats Regulations and 2017 Habitats Regulations, the Scottish Ministers are also content that the conclusions of the AA (dated 11 September 2013) remain valid.

3 Consultation

- 3.1 Regulation 4 of the Variation Regulations provides that an applicant must publish a variation application relating to an offshore generating station on a website, serve a copy of the variation application on the planning authority, and also advertise by public notices in specified publications. These requirements have been met. Public notices were placed in the Press and Journal for two weeks and for one week each in the Edinburgh Gazette, The Herald, Lloyd's List and the Fishing News. The same planning authorities were served copies of the Variation

Application as those who were served copies of the Original Application, in this case the Highland Council and Orkney Islands Council.

- 3.2 MS-LOT on behalf of the Scottish Ministers, consulted a wide range of relevant organisations in respect of the Variation Application and placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing Consent documentation. Most of the consultees confirmed that they had no comments to make or did not provide a response to the consultation invitation. In the case of no response, MS-LOT notified the relevant consultees that “nil returns” would be assumed.
- 3.3 No objections to the Variation Application were raised by any of the consultees.
- 3.4 Historic Environment Scotland advised that it had considered the Variation Application in terms of its historic environment remit and did not have any comments to make.
- 3.5 The Northern Lighthouse Board confirmed it had no concerns regarding the Variation Application.
- 3.6 The Maritime and Coastguard Agency advised that, on the understanding the UK Hydrographic Office is made aware of the variation for the update of nautical charts and publications, it had no further comments to make.
- 3.7 Scottish Environment Protection Agency did not consider the deployment of infrastructure components outwith the Existing Consent boundary likely to have greater environmental impacts on matters within its remit than those already assessed; and therefore it had no objection to the Variation Application.
- 3.8 Scottish Natural Heritage (“SNH”) agreed that there would be no additional environmental impacts as a result of components of the Phase 1a infrastructure being located to the west of the Existing Consent boundary and the proposed variation to the boundary. Highlighting harbour seal as the key species to consider for impact assessment, SNH advised that the risk to the harbour seal population is no greater than it would be if the infrastructure was within the Existing Consent boundary.
- 3.9 The UK Chamber of Shipping confirmed that it had no comments.
- 3.10 Gills Harbour Ltd advised that it was content for the proposed variation to be granted.
- 3.11 Royal Yachting Association Scotland confirmed that it had no comments.
- 3.12 Transport Scotland - Roads Directorate confirmed that it did not consider the proposed change to the Site to have any impact on the trunk road network or its adjacent receptors and therefore it had no objection to the Variation Application.

4 Public Representations

- 4.1 No representations were received from members of the public in relation to the Variation Application.

5 The Scottish Ministers' Determination

- 5.1 The Scottish Ministers have considered the Variation Application documentation and all responses from consultees. Having granted consent to the Development on 16 September 2013 and provided their reasons for doing so in the decision letter associated with that consent, and being satisfied that the changes proposed in the Variation Application do not fundamentally alter the character or scale of the Development, the Scottish Ministers are content to grant the proposed variation.
- 5.2 The Scottish Ministers consider that the amended s.36 consent is both reasonable and enforceable.
- 5.3 Accordingly, the Scottish Ministers **hereby vary the s.36 consent as set out in the table below.**

Annex or Condition	Amendment
Annex 1 Description of the Development	<p>In ANNEX 1, for:</p> <p>The Development, as shown in the Figure in ANNEX 3 to this consent, shall have a permitted generating capacity not exceeding 86 MW and shall comprise, subject to condition 2 in Annex 2 to this consent, a tidal-powered electricity generating station in the Inner Sound of the Pentland Firth, between the north coast of Scotland and the Island of Stroma including:</p> <ol style="list-style-type: none">1. not more than 61 three-bladed single rotor horizontal axis turbines each with a rotor diameter of no less than 16 metres and no more than 20 metres;2. all foundations and scour protection;3. inter array cabling and export cables to the shore; and <p>all as specified in the Application, Environmental Statement and Supplementary Environmental Information Statement. The references in this consent shall be construed accordingly.</p> <p>substitute:</p> <p>The Development, as shown in the Figure in ANNEX 3a to this consent, shall have a permitted generating capacity of approximately 86 MW and shall comprise, subject to condition 2 in ANNEX 2 to this consent, a tidal-powered electricity generating station located between the Island of Stroma and the Scottish mainland in the Inner Sound of the</p>

Pentland Firth, approximately 3 km north-west of John O'Groats including:

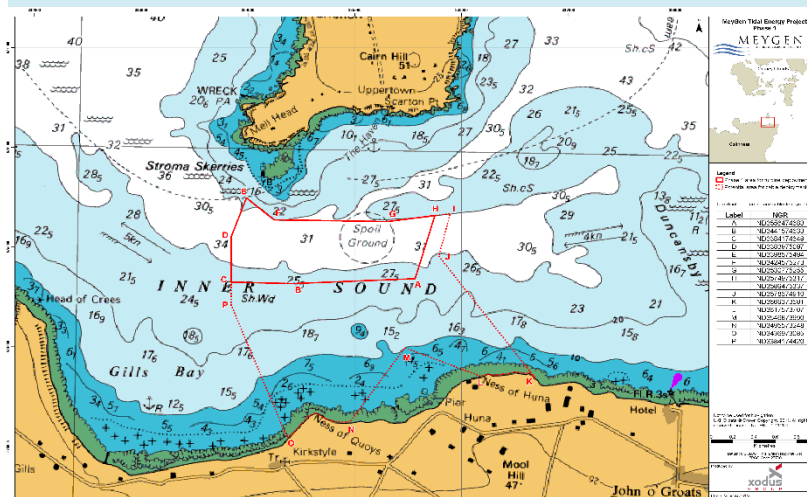
1. not more than 61 three-bladed single rotor horizontal axis turbines each with a rotor diameter of no less than 16 metres and no more than 20 metres;
2. all foundations and scour protection; and
3. export cables to the shore.

all as specified in the Application, Environmental Statement and Supplementary Environmental Information Statement. The references in this consent shall be construed accordingly.

In ANNEX 3, for:

ANNEX 3
LOCATION OF PROJECT

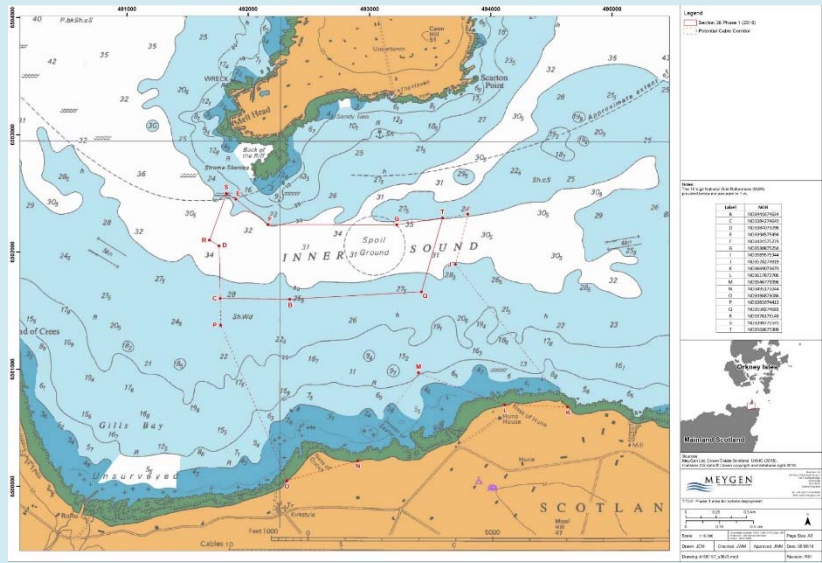
Annex 3
Location of
Project



Phase 1 area for turbine and potential cable deployment.

substitute:

ANNEX 3a
LOCATION OF PROJECT



Phase 1 area for turbine and potential cable deployment.

- 5.4 For illustrative purposes a consolidated version of the varied s.36 consent is attached with the relevant amendments shown in tracked changes for ease of reference.
- 5.5 Copies of this letter have been sent to the nearest onshore planning authorities: the Highland Council and Orkney Islands Council. This letter has also been published on the [Marine Scotland Information](#) website.
- 5.6 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for variation of a s.36 consent.
- 5.7 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 Government

DEFINITIONS AND GLOSSARY OF TERMS

- “AA” means Appropriate Assessment;
- “the Company” means MeyGen Limited having its registered address at 4th Floor Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, United Kingdom, EH3 9QG and Company registration number SC347501;
- “the Development” means the MeyGen Tidal Energy Project Phase 1 Electricity Generating Station;
- “EIA” means Environmental Impact Assessment;
- “the Electricity Act” means the Electricity Act 1989 (as amended);
- “the Existing Consent” means the existing s.36 consent granted on 16 September 2013;
- “MS-LOT” means Marine Scotland – Licensing Operations Team;
- “the Original Application” means the original application for s.36 consent and supporting documentation submitted on 6 July 2012;
- “s.36” means section 36 of the Electricity Act 1989 (as amended);
- “the Site” means the Phase 1 area for turbine deployment (as delineated by the solid red line in Annex 3 (Phase 1 area for turbine and potential cable deployment of the Existing Consent));
- “SNH” means Scottish Natural Heritage;
- “the Variation Application” means the application and section 36 Variation report submitted by the company on 5 October 2018;
- “the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (as amended);
- “the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017;
- “the 1994 Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994; and
- “the 2017 Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017.