

The Scottish Ministers Marine Planning Process

OBJECTION

by

The Trump Organisation and Trump International Golf Links Scotland (together 'TIGLS')

to a

DRAFT DESIGN STATEMENT presented by Aberdeen Offshore Wind Farm Ltd ('AOWFL')

in respect of the European Offshore Wind Development Centre ('EOWDC')

1 Preliminary

This objection follows the submission by AOWFL of a draft Design Statement in respect of the EOWDC on 24 March 2016. Although dated 24 March 2016, it was not posted to the Marine Scotland Website nor advised to counsel for TIGLS until Thursday 10 June 2016.

This objection to the draft Design Statement is submitted at the first available opportunity.

The Design Statement submitted by the applicant must either be accepted, or declined.

2 Introduction

The Environmental Statement published in July 2011 sets out (in Vol 2, §§ 21 ff) a description of a wind turbine testing centre (to be known as the European Offshore Wind Development Centre, or EOWDC) to be located in Aberdeen Bay. Table 1.2 pages 5 and 6 of the Introduction) sets the parameters of the proposed development as follows

TABLE 1.2

Key Project Characteristics

Maximum Capacity 100 MW

Maximum Number of Wind Turbines 11

Lease Boundary Area 20 km²

Approximate Distance to Shore 2.4 km

Water Depth across the Wind Turbine Locations 20 – 30 m below Lowest

Astronomical Tide

Individual Wind Turbine Capacity 4 to 10 MW

Maximum Rotor Diameter 150 m

Maximum Hub Height 120 m

Maximum Tip Height 195 m

Minimum Clearance Above Sea Level 22 m above mean high water springs level (MHWS)

Indicative Spacing between Wind Turbines Between 790 m and 1050 m

Foundation Types Potential foundations include monopiles, jackets, tripods, gravity base structure, suction caisson/buckets

Inter-array Cables Maximum number of 12. Total length of 13 km.

Export Cables Maximum number of 4 would run from the wind turbine array back to Mean

High Water Spring (MHWS) Total length of 26 km

The Vision of the project was stated in Chapter 3.1 to be

“To deploy new equipment, systems, processes, and initiate R&D to improve the competitiveness of offshore wind energy production, whilst generating environmentally sound, marketable electricity and to increase the supply chain capabilities in Scotland, the wider UK and Europe.”

The ES of 2011, in §1.1 (2) stated that

“The proposed project would combine a small commercially operated wind farm with a test and research centre, allowing manufacturers to test “first of run” wind turbines and innovative foundation solutions along with related operation and maintenance access logistics” and

ES § 1.4.1 (15) stated that

“As well as delivering renewable electricity to the National Grid, the Deployment Centre would allow supply chain companies to test a variety of products and applications in a real time offshore environment before commercial deployment, with the aim of reducing large scale development risks and capital costs to industry’.

ES paragraph 1.43 (20) described the ‘Project Vision’ as

‘...the EOWDC would provide a platform to deploy and demonstrate new concepts, products and services in offshore wind whilst enabling research in this new sector – ideal for a partnership with Europe’s renewables industry, academia and research

community’.

3 The reason for the project

Scottish Ministers consent dated 26 March 2013 (“the Consent”) stated (on page 21) that the chosen location would allow for research and training, and suit its (i.e. the project’s) use as a demonstration site. The project (page 22) was said to cost €260.4m, and has attracted very substantial EU funding (of the order of €40m, or >15%) *because* it was proposed to be used as an experimental and demonstration wind power generation site, to “*test new technology and trouble shoot existing problems*”. Quite clearly, the proposal is not proposed as a conventional wind powered generating station. Had it been so, it would have been tested against different policy considerations at the time of the Consent.

4 Environmental issues

Scottish Ministers state in the Consent that they have taken into account the extent to which any environmental effects would be modified and mitigated by measures the (applicant) would agree to take. They have determined that environmental issues can be appropriately addressed “*by way of mitigation*”. On page 24, in explaining their decision to grant the Consent, the Scottish Ministers refer *inter alia* at point 4 to the

“specific benefits of the Development being the first Demonstrator wind turbine to be used by several companies which would provide a facility for testing in real conditions and assist in driving down the costs of developing wind turbines.”

It is therefore clear that the fundamental ratio for the consent of 23 March 2013 was to provide the “wind industry” with a test bed location for electricity generating hardware.

5 Condition 14 attached to the Consent reads as follows

14. Prior to the Commencement of the Development, a detailed Design Statement must be submitted by the Company to the Scottish Ministers for their written approval, after consultation by the Scottish Ministers with SNH, Marine and Coastguard Agency, Northern Lighthouse Board, National Air Traffic Services and any such other advisors as may be required at the discretion of the Scottish Ministers. The Design Statement must provide guiding principles for the

deployment of the wind turbines. This plan must detail:

- (a) Layout location for each phase and each turbine; and*
- (b) Turbine height, finishes, blade diameter and rotation speed across each phase, rows and individual turbine locations; and*
- (c) Lighting requirements (navigation and aviation) for each turbine / row, or, as the case may be, phase including any anemometer mast; and*
- (d) further detailed assessment of visual impacts to inform the detailed layout and design of each location and phase of the deployment centre from selected viewpoints to be agreed with the Scottish Ministers and any such other advisors as may be required at their discretion.*

Reason: To set out design principles to mitigate, as far as possible, the visual impact of the turbines. (underlining added)

6 Advisor status

TIGLS has applied to be nominated as an advisor. It is the nearest large scale neighbour of the proposal, has a direct interest in its final appearance, and has consistently opposed or commented upon it through all proper channels, at every stage of its development. TIGLS is known to Scottish Ministers to have informed views on the ultimate design of the proposal. It is well qualified to provide coherent commentary, by itself and through its retained experts. Its commentary has been informed, professional, detached and comprehensive. In this submission, it does not seek to rerun points already taken in opposition, nor to re-litigate issues which have been before the Courts of Scotland and the United Kingdom.

Scottish Ministers have refused to nominate TIGLS as an advisor, despite a formal reasoned request. It gave no reason, beyond preferring the “official” status of such bodies as SNH. TIGLS has a direct interest in the final design of the proposals, which it opposed throughout the consenting process. Its opposition, notwithstanding the Consent, is not a sufficient reason for not recognising its credentials to advise on the draft Design Statement.

7 SUBMISSION

The objector’s Conclusion is that the documents now produced to Scottish Ministers do not constitute a Design Statement. It should be rejected, and returned to the applicant with an instruction to comply with Condition 14.

8 What is a Design Statement?

According to Scottish Government guidance on the topic, a Design Statement should consider and set out the design *principles* that determine the design and layout of the development proposal. A Design Statement should enable an applicant to explain why the *selected* design solution is the most suitable in the circumstances. The submitted draft Design Statement does not achieve those objectives.

9 The submitted draft Design Statement

The document submitted is a 14 page document which contains only one short paragraph on design (§6.3) entitled 'Design Process' (sic). It concludes that the "*decision to deploy 11 similar wind turbines and foundations has "mitigated" the need to carry out an interactive visual design process.*" In other words, there was no process.

That paragraph is not a Design Statement, because

First, the turbines to be deployed are not "similar". They are identical.

Second, the paragraph is a self serving justification for what is now put forward. What it means, read properly and in full, is that there has been no attempt to design anything whatsoever; and that the applicants have in reality, nothing to say about "guiding principles" of design nor, more importantly, possibilities for mitigation of the effects or impacts of 11 identical wind turbines in a near offshore location, other than noting the precise congruity of the turbine type.

Third, the 11 turbines have been proposed at precisely equidistant locations on a triangular grid in three rows within a prescribed notional parallelogram which owes nothing to submarine topography. No application of any principle is evident. The layout appears to have no relationship to its context other than proximity to the coast and Aberdeen Harbour. That is not "design", even read charitably. The proposed turbine positions, as now shown, do not appear to achieve *any* mitigation of the views from the Menie Estate and Golf Course.

Fourth, that draft layout has been achieved *without* any inspection having been carried out

from Menie, so as, for example, to test sightlines, or gauge impact on the Menie Golf Course or buildings, even subjectively. No request for access has been made, and of course none has been refused. Menie is the 'nationally important' shoreline golf course property which, along with the other golf courses and the villages of Balmedie and Blackdog have the greatest interest in securing any effective mitigation of this development, which is acknowledged by the applicant to have significant and adverse visual and seascape impacts. The layout now proposed has therefore been achieved without any recorded observation from the most affected neighbour's property and resort. That is a material omission. Effective design cannot occur without detailed observational assessment. A competent designer would not deliberately seek to achieve such a result.

10 Foundations

Part of the supposed rationale for the proposal as it now appears, and the use of a "Rochdale Envelope" in granting the Consent was to enable a series of "experiments" with different turbine foundations and turbine footings to be carried out. Yet the Design Statement states (§3.2) that the foundations of the proposed turbines will *all* be the same platform and lattice structure. Once in place, foundations would appear unlikely to be changed. The Design Statement does not support the proposition that the proposal might support or be used for experimentation or the testing of wind generation technology of any type.

11 Dimensions

As to the above-water part of the proposals, the Design Statement discloses that a reduction in the hub height has now been proposed from the consented 120m, to 108.5m, and the overall blade tip height has been reduced from 198.5m to 190.5m. That alteration might suggest a lessening of impact. However, the opposite is the case.

The draft Design Statement does not paint a true picture. **It fails to highlight that with these alterations the fact that the proposed rotor *diameter* has been increased from the consented 150m, to 164m overall, is a feature of significance.**

That is an increase in diameter of 14m, and therefore an increase in radius or blade length of

7m. The increase in the overall swept area of one turbine is therefore 3454m, or just over 19.5%.

It is strongly submitted that a properly prepared Design Statement might reasonably have been expected to assess and comment on an increase in each turbine's swept area of just over 19.5%¹ - just under one fifth increase in area.

Moreover, 11 (the number of turbines) times the increase in swept sky area is 37,994 sq m, which in another context equates to very nearly 4 football pitches in area.² That additional amount of skyscape is now blocked from a clear view, or at any rate occluded by rotating blades.

These changes all amount to a marked difference in the proposed appearance from that expected and envisaged by the ES.

12 Expectation

It is submitted that these increases simply must be explained and justified, according to the requirements of Condition 14, since they are not only at the very heart of the proposed development, but also understanding them properly is central to the assessment of the impact the proposed development will have on all its neighbours. The extent of that impact depends on the concluded Design Statement. In short, the applicant has plainly failed to comply with Condition 14.

13 Clearance above water

Yet there is more. The consented EOWDC (ES, Vol 2 page 8, Table 1.2) proposes a minimum clearance above High Water Level of 22m. In the proposal in the Design Statement, the hub height has been reduced to 108m, but (as shown above) the blade length has increased. The proportions of the devices have therefore changed, and with them the overall appearance and balance, or proportions and massing of the components in the development. The hubs

¹ Swept area of consented turbine diameter of $150/2 = 75^2 \times \pi = 17,678.57$ sq m

Swept area of proposed turbine diameter of $164/2 = 82^2 \times \pi = 21,132.57$

Difference is 3454 sq m, or 19.5%

² About 10,000 sq m each

are now lower, yet with longer blades, while previously they were higher, with shorter blades. They have been changed from tall, slim structures, to more squat, broader structures. They present a different appearance on an otherwise blank seascape than the appearance foreshadowed, and, critically, upon which the Consent was based.

These dimensions are facts. Any gauge or measure of appearance and “fit”, or proportion are recognizably subjective matters, perhaps even matters of opinion. But, inescapably, they are also questions of design, and they must be explained, as Condition 14 requires. Put shortly, their appearance will not be what was consented, and neither will it be what was expected to emerge. The applicant must know that. Yet the draft Design Statement is silent on this question.

It is not for those who have to live with the turbines to which they have objected to design, or to suggest designs for either the layout, the turbines’ locations or the “best” proportions among a group of turbines. Condition 14 requires that of the applicant. There is no absolute. And there will be a range of opinions. But it is submitted that the experienced design team, who now eschew the need for *any* iterative design process, must be asked to explain and justify these choices. That is what the Condition requires, and no less.

What benefits (or otherwise) are said to flow from shorter, squatter turbines with longer blades? Why has this different approach been taken? The draft Design Statement is silent.

If the choices now made are market driven, rather than driven by design, it is plainly relevant for Scottish Ministers, as well as those who will receive an impact each and every day, to know that. If that be the case, it will underline the absence of design input to the proposal now advanced.

15 Graphic material

The remainder of the draft Design Statement consists of a turbine location plan and a number of photomontages. The impacts are obvious, and the absence of any attempt to mitigate is clear. The montages illustrate the document. They are of good quality, but they do nothing to explain the design principles that have been employed (if any), as required by Condition 14.

16 Conclusion about the Design Statement and the true nature of the development

In short, this document is not a Design Statement. It is an apparently innocent recital of facts, short on critical detail, and devoid of any explanation of principle or precept. By its very banality, it appears from the documentation made available by the applicant to omit an important and material change in the true character of this project from a wind turbine test bed, to a small 11 turbine wind farm, destined to provide power to the National Grid at the proposed onshore Blackdog substation.

17 The authenticity of the Consent

This must raise the question of whether the Consent for this location has actually been obtained by a simulation of the need for “testbed” research, thinly disguised as an “ordinary” windfarm. If this is the case, then it will important to establish whether the location of the proposed development was determined by its potential status as a “test and research centre” (for example, its relatively easy accessibility from Aberdeen) and the degree to which its status as a “deployment centre” influenced the Scottish Ministers’ decision to grant the Consent in March 2013.

18 Consultation responses

Scottish National Heritage

The draft Design Statement paragraph 6.1 refers to ‘*SNH advice note on Offshore Wind Farm Design Statements (SNH, February 2016)*’. This document is not on the SNH website but has kindly been made available by SNH. SNH has agreed the proposed methodology, yet inexplicably, the following issues arise from a study of this guidance, using chapter headings therein.

- Background

There is a specific reference to the ‘choice of turbine’. This is not explained in the Design Statement;

- Purpose of a Design Statement for offshore wind

The Design Statement does not ‘...clearly and simply explain the changes in design...’ (i.e. why are all the turbines the same model and why are they different from the candidates in the ES;

The Design Statement does not set out ‘key criteria’ that have informed the turbine selection;

The Design Statement does not ‘...indicate how any landscape and visual impacts (identified through project assessment at application stage) have been addressed and mitigated...’; and

The Design Statement does not ‘...illustrate the final wind farm design and layout...’ from ‘...key viewpoints...’ within the Menie Estate.

- Use of Viewpoints and Visualisations

‘...the relevant Local Authority...’ requested a viewpoint within the Menie Estate. However this was not included in the DS.

- Content of the Design Statement

Design Aims: The Design Statement does not state ‘...the ‘design intent’ or ‘design aims’ for the project’;

- Communications:

The Design Statement section 6.2 summarises the ‘consultation’; however it is noted that LDA Design concluded that a viewpoint within the Menie Estate ‘...would not add to the narrative of the DS’. There is no confirmation as to whether Aberdeen Council agreed;

- Project Parameters:

These are set out in Design Statement section 2, 3, 4 and 5;

- Design Process:

Whilst the Design Statement section 6.5 appraises the ‘design attributes’ it does not ‘...provide a clear (or any) explanation of the design process...’;

The Design Statement does not confirm that agreement was reached with ‘...*the relevant local authority on viewpoint selection...*’; and

- Sign Off:

The Design Statement section 6 confirms that the ‘Visual Appraisal and Layout Design’ section ‘...was approved by Mr William Wheeler, a Director at LDA Design...’

Aberdeen Council

The draft Design Statement paragraph 6.2 confirms that Aberdeen Council “...suggested a further two viewpoints at Bennachie and the Menie Estate” and goes on to state that

‘LDA Design reviewed the additional viewpoints suggested by AC and concluded that they would not add to the narrative of the DS. In summary: Bennachie lies 35 km from the scheme and the original assessment for this location was for low-negligible effects; and, the Menie Estate is private land and viewpoints 01 and 09 are in close proximity and are therefore representative of views from this area.’

However views from private land *are* relevant. Menie is a publicly accessible golf course and resort. About 15,000 people played golf there in 2015. Furthermore, ES Viewpoint 1: Balmedie Beach is ~2.5km from Menie House and ES Viewpoint 9: Forvie Nature Reserve is ~7.25km from Menie House. Neither is in “close proximity” nor properly representative of views from the Menie Estate (particularly from its elevated locations). It follows that the draft Design Statement has been submitted without consideration of views from within the confines of an important receptor. That is to omit a material matter from the draft Design Statement. For Scottish Ministers to reach an affirmative conclusion upon the draft Design Statement without such consideration would render any such decision liable to challenge.

19 Visualisation Material

The draft Design Statement (§6.4) confirms that ‘*All the figures provided have been prepared in accordance with the requirements of SNH 2014 guidance...*’ TIGLS has no issue with the quality of the photographic material.

20 Viewpoint Design Appraisal

The draft Design Statement (§ 6.5.1) confirms that this section ‘...considers the design attributes of the Development from the nine agreed viewpoints’. TIGLS repeats that the Viewpoints were not agreed with it, and that there is no viewpoint from within the Menie Estate, which would have informed the draft Design Statement, if one had been carried out properly. As it stands, this is a material omission.

The draft Design Statement (§6.6) concludes that ‘Having carried out the nine visual appraisals, LDA Design concluded that the wind farm design described in this DS will have very similar effects to that (sic) assessed within the Environmental Statement’. That is an opinion with which TIGLS disagrees, and which is predicated on inaccurate information. . Different candidate turbines, in different locations were assessed within the ES. The expression “very similar effects” has no technical meaning.

In addition, TIGLS does not agree with the following detailed aspects of the Viewpoint Appraisal in the Design Statement, at § 6.5.3:

Viewpoint 1:

- the turbines will not ‘...be seen against an active marine backcloth’;
- the turbines will not ‘...relate comfortably to the expansive seaward views and the simple receiving environment within which they are located’;
- the turbines will not ‘...relate well to the simple receiving environment of expansive sea and sky and a broad simple coastal edge’; and
- the turbines will not sit ‘...comfortably within the seascape’.

Viewpoint 2:

- the turbines will not be ‘...visually comfortable in the view’;
- the turbines will not ‘...sit comfortably in the background’;
- the scale of the turbines does not ‘complement’ or ‘relate’ to ‘...the coastal plateau landform, the expansive skies and the simple marine palette’; and
- the turbines will not sit ‘...comfortably within the seascape’.

Viewpoint 4:

- the scale of the turbines does not sit ‘...comfortably with the existing landform and features within the view...’ due to ‘... their more regimented layout when viewed from this location’; and
- the proposed turbines will not ‘...sit comfortably within the simple landscape and coastal edge’.

Viewpoint 5:

- the turbines will not be ‘...visually comfortable in the view’;
- the turbines will not provide ‘...a visual link between the Girdleness headland in the south and visible coast to Peterhead in the north’; and
- the turbines will not sit ‘...comfortably within the active seascape’.

Viewpoint 7:

- the turbines will not ‘...sit comfortably within the open sea/outer bay’;
- the turbines will not ‘...have a comfortable relationship with the foreground lighthouse...’; and
- the turbines will not sit ‘...comfortably within the active seascape’.

Viewpoint 9:

- the proposed turbines will not ‘...sit comfortably with the coastal landform...’;
- the proposed turbines will not ‘...sit comfortably within the relatively simple view...’; and
- the turbines will not sit ‘...comfortably within the seascape’.

Viewpoint 12:

- the proposed turbines will not be ‘...visually comfortable’;
- the turbines will not ‘...be seen against an active marine backcloth’; and
- the turbines will not sit ‘...comfortably within the expansive and active seascape’.

Viewpoint 13:

- the proposed turbines will not ‘...sit comfortably within the broadly flat and expansive coastal landscape’.

Viewpoint 15:

- the proposed turbines will not sit ‘...comfortably with the extensive north-south aligned coastline and the seascape views’; and
- the turbines will not sit ‘...comfortably within the active seascape’.

22 Procedural issue

By a letter addressed to the applicants dated 6 June 2016, Marine Scotland stated that

“should (the applicant) take account of the consultee responses received, and address points made in a letter of 3 June 2016, then (the writer) would be confident that Scottish Ministers will be able to discharge condition 14.”

That formulation extends beyond optimism and amounts to premature and pre-emptive decisionmaking. It appears on the face of the latter to indicate that a decision to discharge Condition 14 in the event of compliance with consultee requests had already been made by

Marine Scotland, in name of the Scottish Ministers, by 3 June 2016, and that no representation by any member of the public such as TIGLS could affect that outcome. The public was not advised of the existence of the draft Design Statement until the week beginning 6 June 2016.

TIGLS has a legitimate expectation that its lawful representations will be properly received, considered, evaluated and determined before any decision to discharge Condition 14 is made. In the event that any such determination is made before consideration of the TIGLS representations herein contained, that determination would be subject to judicial challenge.

23 Overall Conclusions

- This objection is by a significant neighbour of the proposed development, with a proper legal interest in the content of the Design Statement prescribed by (Condition 14) in response to items posted by Marine Scotland during the week beginning 6 June.
- The draft Design Statement does not offer consideration of any design principles.
- The draft Design Statement does not follow published guidance.
- The draft Design Statement does not propose any mitigation for the assessed impact of the proposed development.
- There has been no design process.
- The draft Design Statement proceeds upon a number of obviously opinions posing as formal assessments of seascape and visual impact.
- The draft Design Statement appears to suggest that the nature and purpose of the EOWDC has changed from a testing and deployment centre, to that of a windfarm.

- The Scottish Ministers appear to have pre-determined that the draft Design Statement can be “signed off” as being sufficient to discharge Condition 14 if consultee requests are met, but without waiting for any public comment.
- The draft Design Statement does not meet the basic requirements of Condition 14, nor of any reasonable expectation of affected members of the public. Condition 14 has therefore not been discharged.
- The draft Design Statement should therefore be rejected.

JDCQC

On the instructions of The Trump Organisation
13 June 2016