

European Offshore Wind Deployment Centre Environmental Statement

Appendix 1.3: Statutory and Regulatory Framework and Policies



STATUTORY AND REGULATORY FRAMEWORK

The construction and operation of the EOWDC will require a consent under Section 36 of the Electricity Act 1989 (as amended). The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 requires Section 36 consent for the installation of any generating station with a permitted capacity of 1MW or above. Section 36A enables the Scottish Ministers when granting consent also to make declarations extinguishing rights of navigation.

Section 57(2) of the Town and Country Planning (Scotland) Act 1997 provides that the Scottish Ministers can direct that planning permission for development of the section 36 application or ancillary development can be deemed to be granted. The requirement for planning permission may apply to only a small portion of the export cable.

In formulating an application for a Section 36 consent the applicant is obliged to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and in protecting sites, buildings and objects or architectural, historic or archaeological interest. Furthermore the applicant is obliged to do what he reasonably can to mitigate any effects which the proposal would have on such matters. In considering any proposals the Scottish Ministers are obliged to have regard to the desirability of preserving the list of assets and also the extent to which the applicant has complied with their duty reasonably to mitigate any effects. The applicant is also obliged to avoid so far as possible causing injury to fisheries or to the stock of fish in any waters.

In addition to a Section 36 Consent the EOWDC will also require a marine licence in terms of the Marine (Scotland) Act 2010. This Act imposes a number of duties upon the Scottish Ministers in respect of the grant of any marine licence. It includes an obligation under Section 3 to act in a way which is best calculated to further the achievement of sustainable development, including the protection or where appropriate the enhancement of the health of that area. Furthermore in terms of Section 4 the Scottish Ministers are obliged to act in a way best calculated to mitigate, and adapt to, climate change so far as consistent with the purpose of the function concerned. In terms of Section 15 all public authorities are obliged to take authorisation decisions in accordance with appropriate marine plans unless relevant considerations indicate otherwise. Furthermore, in the determination of a marine licence application, Section 27 implies certain statutory requirements on the determination process. The Scottish Ministers must have regard to the need to protect the environment, human health and prevent interference with legitimate uses of the sea and such other matters as the Scottish Ministers consider relevant. These are all matters which have been considered and assessed within the Environmental Statement. The construction of EOWDC will constitute the construction of works within the Scottish marine area both in and over the sea and on and under the seabed. The Scottish Ministers must have regard to the effects of any use intended to be made of the works after they have been constructed.

Decommissioning

The decommissioning of the EOWDC has been considered and assessed within the Environmental Statement. The Energy Act 2004 only applies to decommissioning the EOWDC beyond the mean low water mark. The marine licensing regime will therefore deal with the intertidal decommissioning issues.

ENERGY POLICY

European Policy

Renewable Energy Directive (Directive 2009/28/EC)

The Renewable Energy Directive (Directive 2009/28/EC) is the primary guidance in respect of European Union renewable energy policy. The Directive: (1) establishes a common framework for the promotion of renewable energy throughout the European Union; and (2) sets legally binding targets on member states for the use of renewable energy, in particular requiring 20% of the overall energy consumption in the European Union to come from renewable sources by 2020 (Article 3 and Annex I). Unsurprisingly, wind power is explicitly stated to be a renewable energy source (Article 2(a)).

The Directive's policy of setting legally binding targets means that the UK must achieve 15% of its energy needs by renewable sources by 2020, from a base level in 2005 of 1.3% (Annex I). This is an ambitious target which will require a broad spectrum of renewable technologies, including a significant contribution from offshore wind power. Indeed, a European Union communication¹ takes the view that, "while land-based wind energy will remain dominant in the immediate future, installations at sea will become increasingly important."

UK Government Policy

Climate Change Act 2008

The Climate Change Act 2008 is legislation which legally binds the UK Government to ensure that net emissions of greenhouse gases in the UK are reduced by at least 80% by 2050 (from 1990 emission levels). By 2020, the 2008 Act requires a reduction of at least 34% from 1990 emission levels.

National Renewable Energy Action Plan for the UK

In response to Article 4 of the Renewable Energy Directive, the UK Government produced the *National Renewable Energy Action Plan for the UK* ("Renewable Energy Action Plan"). The Renewable Energy Action Plan seeks to outline the UK Government's strategy to meet its legally binding target of 15% of total energy needs being met by renewables by 2020. At page 7, the Renewable Energy Action Plan states:

"Offshore wind is a key area for development. We will work to develop an offshore electricity grid to support our continuing commitment to being world leaders in this technology. This new generation of offshore wind power will play a key role in meeting our 2020 target."

Further, at page 87, the Renewable Energy Action Plan states:

"The scale of the offshore wind potential around the UK strengthens the economic, policy and security of supply arguments for working to maximise this offshore renewable potential..."

A Prevailing Wind: Advancing UK Offshore Wind Deployment

In June 2009, the UK Government published *A Prevailing Wind: Advancing UK Offshore Wind Deployment* ("A Prevailing Wind"). This policy document outlines the UK Government's policies in respect of offshore wind. The UK government expects an offshore contribution of some 25GW by 2020. A Prevailing Wind notes, however, that "there is a need for new renewable energy infrastructure to meet the [UK] Government's climate change mitigation and energy objectives. That need is sufficiently great and urgent that it should be given substantial weight in determining an application which contributes to meeting the [UK] Government's climate change mitigation and energy objectives."²

Further, A Prevailing Wind pragmatically adopts the policy that "[t]here will by their nature be significant impacts from offshore wind farms wherever they are located, but these may be positive impacts and, where they are adverse they may be acceptable when weighed against the national need for new energy infrastructure."³

Scottish Government Policy

Notwithstanding that energy policy is a matter reserved to the UK Government, the Scottish Government has brought forward ambitious legislation (Climate Change (Scotland) Act 2009) and policies to advance renewable energy in Scotland, working closely with the UK Government to do so.

Climate Change (Scotland) Act 2009

The Climate Change (Scotland) Act 2009 is legislation which legally binds the Scottish Ministers to ensure that net emissions of Scottish greenhouse gases are reduced by at least

¹ Offshore Wind Energy: Action needed to deliver on the Energy Policy Objectives for 2020 and beyond, published 13 November 2008, COM (2008) 768 final

² *A Prevailing Wind*, ch 2.5

³ *supra*, ch 2.7

80% by 2050 (from 1990 emission levels). By 2020, the 2009 Act requires a reduction of at least 42% from 1990 emission levels.

In addition to the targets set in the 2009 Act, on 18 May 2011 the First Minister announced a commitment to generating the equivalent of 100% of Scotland's own electricity demand from renewable resources by 2020, with offshore wind playing a key role in achieving this ambitious target.

Renewables Action Plan

In June 2009, the Scottish Government published its *Renewables Action Plan* ("RAP"), containing the Scottish Government's various policies towards renewable energy. According to the RAP, the Scottish Government expects offshore wind:

"To make a significant contribution to 2020 renewables targets and beyond. To maximise economic benefits to the Scottish Economy, and enable a young industry to establish, whilst working in harmony with the marine environment."

Additionally, the RAP highlights the Scottish Government's ambition "to drive the success of the Scottish offshore wind industry, and facilitate the timely development and installation of offshore wind projects within the Scottish Territorial Waters..." and "to build Scotland's position as a key base for the offshore wind, innovation, manufacturing and installation, leveraging its oil and gas experience."

Blue Seas – Green Energy: A Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters

Further to the RAP, in March 2011 the Scottish Government published its policy document aimed specifically at offshore wind energy, entitled *Blue Seas – Green Energy* ("Green Energy Plan"). The Green Energy Plan recognises offshore wind as an integral element in Scotland's contribution towards action on climate change and seeks to maximise the contribution that offshore wind energy makes to renewable energy generation in Scotland, whilst recognising that Scotland must compete with the rest of Europe and globally to maximise its share of the renewable energy market.

Green Energy Plan – Specific policies in/around North East waters

Policy recommendations of the Green Energy Plan for North East waters towards offshore wind energy development in the North East of Scotland include:

1. Recognition that the North East is a suitable location to progress the development of offshore wind; and
2. The development of the short term [offshore wind] option should be taken forward.

Renewables Road Map

On 2 June 2011, during a Scottish Government debate, Energy Minister Fergus Ewing announced to MSPs that the Scottish Government would publish a "renewables road map" in due course.

MARINE POLICY

UK Marine Policy Statement

The UK Marine Policy Statement (MPS) sets out the framework for preparing subsequent Marine Plans and taking decisions that will affect the marine environment. Consistent throughout the MPS is the intention that the marine planning system will help to promote the economic and social benefits intrinsically linked to proposed marine developments by placing a presumption in favour of sustainable development.⁴

Underlying the MPS are a number of key objectives, including a desire to "*achieve a sustainable marine economy and ensure a strong, healthy and just society*".⁵ The policies can be read together, as by maximising sustainable marine economy, greater prosperity and opportunities will develop.

The MPS stipulates that any enforcement or authorisation decisions that directly, or which could potentially, affect the UK marine area must be made within the context of the relevant marine policy documents.⁶ For the time being, this is limited predominantly to the MPS, as the national marine plans have still to be adopted.⁷

Continuing with the concurrent policies of economic and social prosperity, the MPS emphasises that a sustainable and affordable supply of energy is paramount to these key objectives and particularly that the marine environment will be at the forefront of sustainable solutions to the UK's energy supply and distribution.⁸ Consequently, sustainable offshore development, whilst still considering relevant environmental protections, will be a priority for marine planning.⁹ Offshore wind is noted as being integral to this strategy, as it is seen as currently the most mature of the offshore renewable energy technologies, and has the potential to have the most significant impact on security of energy supply, which in turn will mitigate the impact of climate change.¹⁰

Separately, the MPS draws attention to the potential impact of the ancillary electronic networks linked to offshore infrastructure and accepts that there is an inevitable environmental impact associated with underwater cables. However, the MPS notes that the impact from cable installations on the seabed is low and mainly a result of physical disturbance linked to their initial placement. As such, they tend to be of short duration with a relatively small area being affected.¹¹

Draft Scotland National Marine Plan Statement

The draft National Marine Plan (NMP) sets out the policies for sustainable development of Scotland's seas and includes economic, social and marine ecosystems objectives. Included within the core objectives is the "*need to develop the marine sector to deliver both economic activity in Scotland and to assist the delivery of Scotland's climate change objectives*"¹². As such, the Scottish Government's view is that there should be a presumption in favour of marine development.¹³

Particular to the offshore wind context, the NMP sets out that "*the continued exploitation of energy sectors will remain essential for the future growth of the Scottish economy and for our way of life*".¹⁴ The Scottish Government intends to maximise the potential of the described benefits through exploitation of its marine energy resources, particularly through the development of onshore and offshore grid connection to both the UK and Europe. However, the draft also seeks to reach a balance by looking to limit as far as possible the

⁴ MPS, para 2.5.2

⁵ *supra*, Chapter 2, Box 1, pg 11

⁶ s15 Marine (Scotland) Act 2010

⁷ MPS, para 2.3.2.1

⁸ *supra*, para 3.3.1

⁹ *supra*

¹⁰ *supra*, para, 3.3.16

¹¹ *supra*, para 3.3.30

¹² Draft NMP, pg 13

¹³ Draft NMP, pg 26, para 9.2

¹⁴ *supra*, pg 59

cost to the Scottish marine environment.¹⁵ This balance will still enable Scotland to capitalise on its wind energy potential to assist with the climate change objectives, which will in turn generate new economic activity and consequently benefit Scotland socially.¹⁶

This referenced economic and social benefit underlies the NMP's declaration that the Scottish Government is committed to promoting the increased use of offshore renewable energy sources, with the expectation that the development of offshore wind (and marine and tidal energy) can trigger significant economic growth in Scotland, including the creation of 30,000 jobs by 2020.¹⁷

Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters

The Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters (the "Plan") is a strategic planning document for the development of offshore wind energy in Scottish Territorial Waters. It represents the vision for the delivery of energy from offshore wind resources, and contains proposals for offshore wind development at regional level up to 2020 and beyond. It is to be interpreted in the context of both the National and Regional Marine Plans, whilst being integrated into and used to advise the emerging marine planning framework.

Specific to the North East Region (Moray Firth), the Plan finds that there are favourable conditions and significant potential for the development of offshore wind both within Scottish Territorial Waters and beyond into Scottish Offshore Waters.¹⁸ It highlights the significant issues relevant to offshore development in the Region as those relating to fishing and the environment, with shipping appearing to be less significant. However, it qualifies the findings by noting that on the current evidence available, those issues highlighted could be addressed and mitigated during project planning.¹⁹

No doubt referencing the MPS and NMP, the Plan notes that the scale of development of offshore wind represents one of the biggest opportunities for sustainable economic growth within Scotland for a generation, with potential investment of £7.1 billion over the next decade and the creation of upwards of 28,000 direct jobs in Scotland by 2020,²⁰ a figure consistent with the NMP. The Plan also recognises that the infrastructure in place through the available ports and harbours offer viable locations to service the associated construction and maintenance activities. It further highlights that appropriate marine development could lead to Scotland capturing one-third of the UK energy supply market, which would in turn potentially secure an additional £100bn of investment.²¹

As well as the potential stake in the UK market, the Plan also highlights that Scotland could realise up to 25% of Europe's wind potential, and from an environmental perspective, the Plan expressly refers to offshore wind as an integral element in Scotland's ambitious contribution towards climate change.²²

¹⁵ *supra*, pg 60

¹⁶ *supra*, pg 61

¹⁷ *supra*, pg 70

¹⁸ Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters, pg 7

¹⁹ *supra*, pg 7

²⁰ *supra*, pg 11

²¹ UK Renewable Energy Strategy (2009)

²² Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters, pg 10

PLANNING POLICY

NATIONAL POLICY

National Planning Framework for Scotland – NPF2

The NPF2 reinforces the need for a sustainable economic growth together with sustainable development and climate change. Energy forms a key focus of the document and that is reflected in paragraphs 144 to 165. Renewable energy and in particular offshore wind is specifically supported. In addition technical constraints, such as upgrades to the electricity grid, have been given priority in respect of delivery. Paragraphs 204 and 205 identify the specific challenges and opportunities facing Aberdeen and Aberdeenshire. The concept of a global energy hub is supported, including building existing offshore strengths into new renewable and clean energy technologies.

SCOTTISH PLANNING POLICY – FEBRUARY 2010

The SPP replaced all existing Scottish Planning Policy documents and provides a comprehensive national policy context. At the outset the SPP identifies that the central purpose of the planning system is to achieve increasing sustainable economic growth. It identifies the importance of development plans in delivering this objective. This is further explained in paragraph 33 which seeks to encourage the planning system to enable growth whilst at the same time protecting and enhancing the quality of the natural and built environment. The SPP also identifies the importance of sustainable development in formulating the National Planning Framework and Development Plans. Climate change is also specifically recognised as an issue in paragraphs 40 to 44. Coastal Planning is dealt with in paragraphs 98 to 103. Paragraph 101 explicitly identifies that one of the activities to be taken into account in coastal planning is land based development associated with offshore renewable energy generation. The paragraphs also recognise the importance of the coastal area for recreation and from a conservation perspective. The policy relating to the Historic Environment is contained in paragraphs 110 to 124. The importance of Landscape and Natural Heritage to Scotland is reflected in paragraphs 125 to 164. This provides National Policy in relation to both landscape and nature conservation. In terms of renewable energy paragraphs 182 to 195 provide policy guidance. Offshore renewable generation is specifically considered in paragraph 192. National Policy supports the development of renewable energy but the document pre-dates subsequent increases in the targets for electricity to be generated from renewable sources (see Energy Policy above).

DEVELOPMENT PLANS

The development plan for the area includes:-

- The Aberdeen City and Shire Structure Plan, approved on 14 August 2009.
- The Aberdeenshire Local Plan adopted in June 2006.
- The City of Aberdeen Local Plan adopted in June 2008.

The currently adopted Local Plans were both drafted to conform to the former Structure Plan, North East Scotland Together, which was approved in June 2002. There are currently two proposed Local Plans which will replace the currently adopted Local Plans. The Development Plan Policy will only be directly relevant in respect of a small element of the offshore proposal relating to the export cables between the mean low water mark up until the mean high water spring tide level. In that regard the most relevant policies in that respect are likely to be those relating to coastal zones and also those relating to landscape, visual, cultural heritage and access and leisure. In addition, a number of the effects of the EOWDC will occur onshore and planning policy has been referred to in assessing some of the receptors within the Environmental Statement. These are documented in the individual technical reports.

THE ABERDEEN CITY AND SHIRE STRUCTURE PLAN

The Aberdeen City and Shire Structure Plan was drafted to be a more strategic document than the traditional Structure Plan and reflected the approach being introduced through

planning reform. It is, therefore a document which adopts a strategic approach and which seeks to guide development up to 2030.

The plan provides the vision and aims. The aims include:-

- To grow and diversify the regional economy.
- Take on the urgent challenges of sustainable development and climate change.
- To protect and improve valued assets and resources including the built and natural environment and cultural heritage.

The spatial strategy moves away from that formerly advocated in the previous Structure Plan and there is a new focus on three key growth areas. These include Aberdeen City and a strategic area from Aberdeen to Peterhead, along the A90. Within the Aberdeen to Peterhead growth area the value of the development of the Menie Estate is recognised. The area is also to host the "Energetica" initiative which seeks to develop and diversify the economy with a strong focus on energy.

After setting out the spatial strategy the Structure Plan goes on to provide objectives. Those of most relevance include economic growth, sustainable development and climate change and the quality of the environment. In terms of economic growth there is a strong desire to continue to grow the Aberdeen City and Shire economies. The Energetica initiative is again specifically referred to in paragraph 4.3.

In respect of sustainable development and climate change the Structure Plan incorporates a target:-

"For the City region's electricity needs to be met from renewable resources by 2020".

There is strong support for the technology which can help to contribute to the supply of renewable energy. The quality of the environment objective identifies the importance of both built, natural and cultural heritage assets.

ADOPTED LOCAL PLANS

Both adopted Local Plans deploy strategies which were incorporated within the former Structure Plan and which have been altered by the new Structure Plan. The weight to the strategic context is therefore reduced. Both Local Plans however include development control policies which are potentially of relevance.

THE ABERDEENSHIRE LOCAL PLAN

In respect of the Aberdeenshire Local Plan the policies of most relevance are likely to include:-

- Policy Env 1, Env 2 and Env 3 provide applicable policies relating to Onshore Conservation Sites ranging from international to local sites.
- Policy Env 5A – the policy relevant to the protection of National Scenic Areas.
- Policy Env 5B – deals with areas of Landscape Significance (It should be noted that the coastal areas from the development plan boundary north of Aberdeen up to north of Collieston is designated as an area of landscape significance).
- Policy Env 6 deals with Coastal Development. This policy deals with specific criteria for considering proposals on the developed coast and also the undeveloped coast. This will potentially be relevant to certain of the onshore infrastructure associated with EOWDC.
- Policy Env 17 – Conservation Areas.
- Policy Env 18 – Listed Buildings.
- Policy Env 19 – Archaeological Sites and Ancient Monuments.
- Policy Env 20 – Historic Gardens and Design Landscapes.
- Policies Emp 9 and Emp 10 provide policies in relation to tourist facilities and accommodation and support leisure and recreation.

- Policy NF 7 provides policy relating to onshore renewable energy facilities for onshore wind. It adopts a tiered approach to identification of suitable locations. This is no longer consistent with national policy.
- The plan also includes general development policies which relate to all land based development. This includes policies such as Gen 1 and Gen 2 which are of general application.

CITY OF ABERDEEN LOCAL PLAN

The adopted Local Plan also adopts a strategic context from the former Structure Plan but at the same time also provides development control policies which would potentially be of relevance. These are as follows:-

- Policy 22 – Onshore Renewables. This adopts a similar tiered approach which is no longer consistent with national policy.
- Policy 26 – Coastal Management. This has specific policies on the developed coastal zone and applies specific criteria to the undeveloped zone.
- Policy 29 – provides a framework and Policy 31 provides a landscape protection policy.
- Policy 16 – Archaeology.
- Policy 32 – Historic Gardens.
- Policy 34 – Natural Heritage generally.
- Policy 35 – Access and Recreational Areas.
- Policy 81 – Aberdeen Harbour.

PROPOSED LOCAL PLANS

THE ABERDEENSHIRE PROPOSED LOCAL DEVELOPMENT PLAN

The Aberdeenshire Proposed Local Development Plan picks up the Structure Plan spatial strategy at Section 4 including the identification of the specific developments associated with the strategic growth area between Aberdeen and Peterhead. It includes a major extension to Ellon at Cromleybank, and other business land, a major extension to Peterhead and a major extension to the community of Blackdog. The plan thereafter sets out more general development control policies which are to be supplemented by supplemental planning guidance. The relevant policies are likely to include:-

- Policy 1 – Business Development. This specifically identifies the "Energetica" initiative as a key development. The general policy is going to be supported by supplemental planning guidance on the development of employment land. (SGbus1)
- Tourist Facilities and Accommodation. (SGbus4)
- Policy 4 – Special Types of Rural Land. This policy heading also includes Aberdeenshire Coastal Zone and it is intended that there will be supplemental guidance dealing with development in the Coastal Zone. (SG STRL Type 1 Development on the Coastal Zone).
- Policy 11 – Natural Heritage.
- Policy 12 – Landscape Conservation.
- Policy 13 – Protecting, Improving and Conserving the Historic Environment.

ABERDEEN PROPOSED LOCAL DEVELOPMENT PLAN

The Proposed Aberdeen Local Development Plan is primarily a map based one supporting the development strategy for the city. Within the draft Local Plan there is a substantial housing and longer term business proposal to the northeast of the city at Dubford & Murcar. Significant development is also proposed further up the Don Valley at Grandhome. The Local Plan also provides updated development control policies including:-

- D5 – Built Heritage.
- D6 – Landscape.

- B14 – Aberdeen Airport and Aberdeen Harbour.
- NE7 – Coastal Planning. This again draws the distinction between developed coastal areas and undeveloped coastal areas.
- NE8 – Natural Heritage. The River Dee is a Special Area of Conservation (SAC) is specifically referred to in the text above.
- NE9 – Access and Informal Recreation.
- R8 – Renewable and low carbon energy developments.