

Mr Kevin Jones
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7 January 2020

Dear Mr Jones,

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 26 MARCH 2013 TO CONSTRUCT AND OPERATE THE EUROPEAN OFFSHORE WIND DEPLOYMENT CENTRE ELECTRICITY GENERATING STATION, ABERDEEN BAY, APPROXIMATELY TWO KILOMETRES (“km”) EAST OF BLACKDOG, ABERDEENSHIRE.

I refer to the application to vary the consent for the European Offshore Wind Deployment Centre (“EOWDC” or “the Development”). This Application (“the Variation Application”) was made by Aberdeen Offshore Wind Farm Limited (“the Company”) on 11 April 2019 for:

- a) 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 26 March 2013 (“the Existing s.36 Consent”) for the construction, operation and maintenance of the Development, located approximately two km East of Blackdog, Aberdeenshire.

This letter contains the Scottish Ministers’ decision to grant the Variation Application and to vary the Existing s.36 Consent.

1.1 Nature of the Variation Sought

1.1.1 The Variation Application seeks to amend Annex 2 of the Existing s.36 Consent granted on the 26 March 2013 to allow the following variation:

1. The amendment of condition 1 within Annex 2 of the Existing s.36 Consent, to extend the duration from 22 to 25 years (excluding decommissioning), in order to align with the design life of the wind farm assets.

1.2 Environmental Impacts

- 1.2.1 The Scottish Ministers are satisfied that the Variation Application will not have significant adverse effects on the environment.
- 1.2.2 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”).
- 1.2.3 In the screening opinion issued on 11 December 2018 in respect to the screening request received on 10 September 2018, the Scottish Ministers considered that the proposed extension to the Existing s.36 Consent falls under Schedule 2 of the 2017 EW Regulations and that it may have significant effects on the environment. However, having assessed criteria such as the characteristics of the development, the location of the development and the characteristics of the potential impacts as they are described in Schedule 3 of the 2017 EW Regulations, the Scottish Ministers concluded that the proposed extension to the Existing s.36 Consent will not have a significant adverse effect on the environment and is not an Environmental Impact Assessment (“EIA”) development.
- 1.2.4 The Scottish Ministers do not consider that the proposed changes will change the conclusions of the Environmental Statement (“ES”) and the Supplementary Environmental Impact Statement (“SEIS”) (collectively referred to as the “Environmental Assessments”) supporting the application for s.36 consent in August 2011 (“the Original Application”).
- 1.2.5 In accordance with the 2017 EW Regulations, the Scottish Ministers did 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 the 2017 Habitats Regulations, the Scottish Ministers are content, having considered the consultation responses, that the conclusions of the Appropriate Assessment (“AA”) (dated 26 February 2013) remain valid. An AA validation has been completed.

1.3 Consultation

- 1.3.1 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 & Journal, Fishing News, Lloyd’s List and the Edinburgh Gazette,

for two weeks and for one week in the Herald. The same planning authorities were served copies of the Variation Application as those who were served copies of the Original Application, in this case Aberdeenshire Council and Aberdeen City Council.

- 1.3.2 Marine Scotland - Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Variation Application including: Aberdeenshire Council, Aberdeen City Council, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”), the Maritime and Coastguard Agency, Historic Environment Scotland (“HES”) and the Northern Lighthouse Board. Scottish Ministers also placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 Consent. Most of the consultees did not object 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.
- 1.3.3 No objections to the Variation Application were raised by any of the statutory consultees.
- 1.3.4 **HES** did not object to the Variation Application but stated that this decision should not be taken as a support for the proposals and commented that the Variation Application should be determined in accordance with national and local policy on development affecting the historic environment along with related policy guidance.
- 1.3.5 The Scottish Ministers noted the comment of HES and can confirm that all the national and local policies have been taken into consideration at the time the Existing s.36 Consent was granted.
- 1.3.6 **The Northern Lighthouse Board** had no objection to the Variation Application.
- 1.3.7 **The Maritime and Coastguard Agency** had no objection to the Variation Application.
- 1.3.8 **SEPA** had no objection to the Variation Application.
- 1.3.9 **SNH** had no objection to the Variation Application.
- 1.3.10 **Aberdeen City Council** had no comments to make on the Variation Application.
- 1.3.11 **Aberdeenshire Council** noted that the survey work would remain relevant and would not become outdated or erroneous as a result of the three-year time extension and that all relevant mitigation measures would be adhered to throughout the duration of the s.36 consent. As such, Aberdeenshire Council confirmed the proposed amendment is considered to be appropriate in order to maximise the capacity for the Development.

In addition, it advised that the Aberdeenshire Local Development Plan (“LDP”) 2012 has been superseded by the Aberdeenshire LDP 2017 and requested that in any future correspondence the Company should refer to the current LDP.

- 1.3.12 **Blackdog Salmon Fishing Ltd (“BSFL”)** maintained its objection to the Variation Application stating that there were insufficient scientific studies of the effects of the Development on marine life, in particular but not restricted to, salmon, trout and silver fish. BSLF stated that a five year study was supposed to be carried out before any further permissions to extend the Development’s life was considered. BSFL added that there were also complaints currently lodged with Police Scotland, SEPA and other parties regarding various alleged irregularities and unlawful conduct of the Company.
- 1.3.13 BSFL also stated that a complaint was submitted to the Crown Office and Procurator Fiscal Service in respect of alleged perjury and noted that it would update the objection when further information was received. However, these matters are not relevant to the current Variation Application and no update to the objection was received.
- 1.3.14 In its response to BSFL on 17 July 2019, the Company stated that the potential impacts of the Development on all relevant receptors were assessed within the Environmental Assessments supporting the Original Application. The Company confirmed that the assessment was based on the most up to date knowledge of the Aberdeenshire coastline and immediate offshore area, the environmental baseline survey data and industry wide knowledge of the effects of offshore wind farms around the United Kingdom. The Company noted that this was presented within the Environmental Assessments and the relative AA associated with the Existing s.36 Consent. The Company stated that the results of the aforementioned studies indicated that no significant impacts on marine life were predicted to occur. In addition, the Company stated that during the screening stage of the Variation Application it had conducted an assessment of the ES against the 2017 EW Regulations and confirmed that no additional impacts were anticipated if the duration of the consent was extended by three years and referred to SNH’s response to the Variation Application.
- 1.3.15 The Company reiterated that no condition was imposed by the Scottish Ministers to undertake a long term monitoring study, however condition 15 of the Existing s.36 Consent required the establishment of a Research and Monitoring Programme, informed by an expert panel. The expert panel’s initial meeting was held 19 September 2013, condition 15 was discharged and the Company continues to meet its monitoring objectives. The Company stated that in the Existing s.36 Consent there was no commitment, preventing the grant of an extension to the duration of the Existing s.36 Consent.

- 1.3.16 Finally, in regards to the comments related to the allegations and complaints, the Company reiterated that this part of the objection was yet to be concluded and considered it inappropriate to comment on it at the current time.
- 1.3.17 The Scottish Ministers, having reviewed the evidence submitted by both parties, the approved Offshore Environmental Management Plan that includes monitoring commitments of the Company and the Environmental Assessments, are satisfied with the Company's response and the Company has appropriately addressed the issues raised.
- 1.3.18 **Defence Infrastructure Organisation on behalf of Ministry of Defence** had no objection to the Variation Application.
- 1.3.19 **Joint Radio Company** had no concerns in respect to the Variation Application.
- 1.3.20 **Royal Yachting Association** had no objection to the Variation Application.
- 1.3.21 **The Royal Society for the Protection of Birds Scotland** confirmed that it did not wish to submit comments on the Variation Application.
- 1.3.22 **Transport Scotland** confirmed that the Variation Application does not result in any significant environmental impacts on the trunk road network and, consequently, it had no objection to the Variation Application.
- 1.3.23 **Visit Scotland ("VS")** submitted a response noting the importance of scenery to tourism and referred to VS Visitor Experience Survey conducted from 2015 to 2016 to justify that VS recommend any potential detrimental impact of the proposed development on tourism to be identified and considered in full. VS supported the advice of the Scottish Government that the importance of tourism impact statements should not be diminished, and that for each site considered, an independent tourism impact assessment should be carried out and highlighted that this assessment should be geographically sensitive and should consider the potential impact on any tourism offerings in the vicinity. VS urged consideration of the aforementioned concerns upon the impact that any perceived proliferation of developments may have on the local tourism industry and local economy.
- 1.3.24 The Company submitted a written response to the above objection to address the comments on 16 August 2019, confirming that visual impacts, and impacts on socioeconomics, recreation and tourism were fully assessed within the ES in 2011. The Company reiterated that the purpose of the Variation Application was to extend the duration of the Existing s.36 Consent from 22 to 25 years, that the Variation Application was not for a new development, or an expansion of the existing Development's turbine number, height or rotor diameter, and that the outcome of the screening stage of the Variation Application was that the extension of the duration of

the consent would not change any of the inputs to the Environmental Assessments or the associated AA. In addition, the Company stated that as part of its commitment to monitoring potential impacts of the Development, the Company is undertaking a socio-economic study through its Research and Monitoring Programme.

- 1.3.25 The Company confirmed that it has developed innovation opportunities with Offshore Renewable Energy Catapult to give innovators the opportunity to test and demonstrate new technology in real-world operating conditions within the Development area; it continuously works on local community benefits from the Development and is committed to invest £150,000 annually in a community benefit scheme for the lifetime of the Development.
- 1.3.26 Following the above response, VS confirmed that it is satisfied with the Company's response to the concerns raised.
- 1.3.27 The Scottish Ministers are satisfied that the Company has properly addressed the comments from VS.

1.4 Public Representations

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

1.5 The Scottish Minister's Determination

- 1.5.1 The Scottish Ministers have considered the Variation Application documentation and all responses from consultees. Having granted consent for the Development on 26 March 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.
- 1.5.2 The Scottish Ministers consider that the varied s.36 consent is both reasonable and enforceable.
- 1.5.3 Accordingly, the Scottish Ministers **hereby vary the s.36 consent as set out in the table below.**

Annex Condition	or Amendment
In Annex 2	In ANNEX 2, for: The consent granted under section 36 of the Electricity Act 1989 is subject to the following conditions: 1. The consent is for a period from the date the consent is granted until the date occurring 22 years after the Final Commissioning of the

Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.

Reason: To define the duration of the consent.

Substitute:

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

1. The consent is for a period from the date the consent is granted until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development must be provided by the Company to the Scottish Ministers, Planning Authorities and SNH no later than one calendar month after the Final Commissioning of the Development.

Reason: To define the duration of the consent

- 1.5.4 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 ([Annex E](#)).
- 1.5.5 Copies of this letter have been sent to the nearest onshore planning authorities: Aberdeenshire Council and Aberdeen City Council. This letter has also been published on the [Marine Scotland Information website](#).
- 1.5.6 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.
- 1.5.7 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;

“BSFL” means Blackdog Salmon Fishing Ltd;

“EIA” means Environmental Impact Assessment;

“Environmental Assessments” means the Environmental Statement submitted in July 2011 and the Supplementary Environmental Impact Statement submitted in June 2012 to support the Existing s.36 Consent;

“EOWDC” means European Offshore Wind Deployment Centre;

“ES” means Environmental Statement;

“HES” means Historic Environment Scotland;

“km” mean kilometers;

“LDP” means Local Development Plan;

“MS-LOT” means Marine Scotland Licensing Operations Team;

“s.36” means section 36;

“SEIS” means Supplementary Environmental Impact Assessment;

“SEPA” means Scottish Environment Protection Agency;

“SNH” means Scottish Natural Heritage;

“the 1994 Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994;

“the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended);

“the 2017 Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017;

“the Company” means Aberdeen Offshore Wind Farm Limited, The Tun Building, 4 Jacksons Entry, 8 Holyrood Road, Edinburgh, Scotland, EH8 8PJ Company Registration No. SC278869;

“the Development” means the European Offshore Wind Deployment Centre (“EOWDC”) electricity generating station in Aberdeen Bay, approximately two kilometres east of Blackdog, Aberdeenshire;

“the Electricity Act” means the Electricity Act 1989 (as amended);

“the Existing s.36 Consent” means the s.36 consent granted by the Scottish Ministers in favour of the Company on 26 March 2013;

“the Original Application” means the application submitted to the Scottish Ministers on 1 August 2011 for a s.36 consent by the Company;

“the Variation Application” means the application to vary the Existing s.36 Consent submitted to the Scottish Ministers on 11 April 2019 by the Company;

“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended);

“VS” means Visit Scotland; and

“WTG” means wind turbine generator.