

From: Nicola Bain
Marine Scotland Planning & Policy

02 February 2018

Minister for Business, Innovation and Energy

Inch Cape Offshore Windfarm and Neart na Gaoithe Wind Farm – Extensions to Commencement of Development dates

Purpose

1. To seek your approval to extend the period for the commencement of development for both the Inch Cape Offshore Wind Farm and the Neart na Gaoithe Offshore Wind Farm.

Priority

2. Routine, but an early response would be appreciated as Neart na Gaoithe Offshore Windfarm Limited have indicated they require a response by mid-February 2018 for commercial reasons.

Background

3. Inch Cape Offshore Windfarm was consented by the Scottish Ministers on 10 October 2014 under section 36 of the Electricity Act 1989 (the “Act”). Inch Cape Offshore Limited (“ICOL”) received consent to construct and operate the Inch Cape Offshore Wind Farm generating station, comprising of up to 110 wind turbine generators, with a combined maximum generating capacity of up to 784 MW.
4. Neart na Gaoithe Offshore Windfarm was also consented by the Scottish Ministers on 10 October 2014 under section 36 of the Electricity Act 1989. Neart na Gaoithe Offshore Wind Limited (“NnGOWL”) received consent to construct and operate the Neart na Gaoithe Offshore Windfarm generating station, comprising of up to 75 wind turbine generators, with a combined maximum generating capacity of up to 450 MW. A variation under section 36C of the Act was granted by the Scottish Ministers on 21 March 2016.
5. ICOL intend to submit a new application and NnGOWL submitted a new application on 23 December 2017 for section 36 consents in order to take advantage of advances in technology resulting from delays in the projects due to the recent judicial review (“JR”) proceedings brought by the RSPB.

Issue

6. Condition 2 of both the ICOL and NnGOWL consents reads as follows;

“The Commencement of the Development must be no later than 5 years from the date the consent is granted, or such other date from the date of the granting of this consent as the Scottish Ministers may hereafter direct in writing.

Reason: To ensure the Commencement of Development is undertaken within a reasonable timeframe after consent is granted.”

7. Despite progressing new applications, both NnGOWL and ICOL wish to extend the period for commencement of development associated with their existing consents. This would keep the existing consents valid as there is no guarantee that consents for the new applications will be granted, or granted in time to meet certain milestones. Both NnGOWL and ICOL would build out either their existing consents or new consents if granted but not both.
8. On 29 August 2017 ICOL submitted a formal request for an extension of the time constraint included in condition 2 of their section 36 consent from 5 years to 7 years. On 15 December 2017 ICOL submitted further information regarding the reasons behind their request, stating that the extension will allow ICOL to re-commence development in achievable timescales to compete in the next CfD competition and will contribute to ensuring that the ICOL project can remain deliverable.
9. ICOL consider there is some urgency around a decision on the request due to uncertainty for investors. In addition, if the decision is delayed then ICOL would be required to start discharging the conditions from the existing consent now in order to be in a position to rely on the existing consent in any way. This would result in additional workload for Marine Scotland staff and key stakeholders at a time when new applications in the Forth and Tay and Moray Firth are also being considered.
10. On 03 August 2017 NnGOWL submitted a formal request for an extension of the time constraint included in condition 2 of their section 36 consent from 5 years to 8 years to reflect the delay caused by the JR which was entirely outwith NnGOWL's control. On 24 November NnGOWL submitted a further letter regarding the reasons behind their request. Although a new application has been submitted, there is no guarantee that consent will be granted within a timescale that would allow NnGOWL to develop the project under the new consent and so it is critical that the existing consent remains valid and capable of being implemented.
11. NnGOWL have advised that a decision by mid-February 2018 would be required as the company is currently inviting bids for the consent and this decision would allow for due diligence to be completed prior to sale.
12. For awareness, we are expecting a similar request for extension to condition 2 from Seagreen in relation to the Seagreen Alpha and Seagreen Bravo section 36 consents which were also granted on 10 October 2014 and have been subject to the same delays due to JR proceedings. However we do not wish to await this application and delay a decision on the current requests made by ICOL and NnGOWL.

Consultation with statutory bodies

13. The following statutory bodies were consulted on both requests: Angus Council, Dundee City Council, East Lothian Council ("ELC"), Fife Council, Historic Environment Scotland ("HES"), Scottish Environment Protection Agency ("SEPA"), Scottish Borders Council and Scottish Natural Heritage ("SNH").
14. Consultation responses were received from all consultees and a summary of the views of individual consultees is set out below;
 - i. Angus Council had no substantive comments to make on either application;
 - ii. Dundee City Council confirmed that the requests from ICOL and NnGOWL raised no new planning concerns;

- iii. Fife Council stated that, in light of the delay caused by the judicial process around the ICOL and NnGOWL marine licences, they had no adverse comments to make on the requests;
- iv. Historic Environment Scotland stated that they do not consider that an extension of the period for the 'Commencement of Development' to seven years for the Inch Cape Offshore Windfarm will give rise to additional impacts on their historic environment interests further to those identified in the Environmental Statement. They stated they were content with for the extension of the Commencement Period and that they had no further comments. HES noted that the conclusions and the assessments within the Environmental Statement for Neart na Gaoithe Offshore Wind Farm would remain unchanged and, on that basis, stated that HES was content for the extension of the Commencement Period and that HES had no further comments to make on the application;
- v. Scottish Borders Council confirmed that they had no objections or substantive comments to make on either request;
- vi. SEPA advised that they only comment on proposals for works above Mean Low Water Springs ("MLWS") which fall under the appropriate Town and Country Planning (Scotland) Act 1997 and referred Marine Scotland to their standing guidance for DECC and Marine Scotland on marine consultations;
- vii. SNH had no substantive comments to make on either application;
- viii. East Lothian Council's responses to both requests raised the following issues:-
 - ELC have queried whether the requests to extend the time periods should be classed as multi stage consent under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (hereafter "the 2017 Regulations"), as the Commencement of the Developments cannot start after 10 October 2019 without this further approval.
 - If these requests are classed as multi stage consents, thus requiring decision notices, ELC asked whether supplementary environmental information is required under Regulation 25(2)(a) of the 2017 Regulations, as the application to which the multi stage consent relates may have significant effects on the environment, which have not previously been identified. This would then require Scottish Ministers to seek supplementary information from the developers under Regulation 19(2), as the Scottish Ministers must have regard to current knowledge and methods of assessment when reaching a reasoned conclusion regarding the significant effects on the development on the environment.
 - ELC highlight a number of receptors in both requests as significant, where current knowledge and methods of assessment are not included in the Environmental Statements prepared and submitted in support of the applications for consent. These include the following topics:
 - (i) Onshore works – these were not included in the previous Environmental Statement for ICOL but are integral to the works. ICOL's planning consent for onshore works has now lapsed. With regard to NnGOWL, while development for the onshore works has commenced, Scottish Ministers should consider whether or not

the environmental impacts of the onshore part of the project should be considered together with the offshore works.

(ii) Landscape and visual assessment – neither ICOL or NnGOWL have been assessed using SNH's updated guidelines concerning "Visual Representation of Windfarms" (2017), as these guidelines were published subsequently to the assessments. Additionally, the original Environmental Statement for ICOL did not include all viewpoints that East Lothian Council "considered could have usefully been included".

(iii) Baseline and policy changes – including the proposed designation of the Outer Firth of Forth and Tay Bay Complex as an Special Protection Area ("SPA"), the proposed East Lothian Local Development Plan (currently at examination stage) – which includes proposed Special Landscape Areas and site specific policy relevant to the Onshore Transmission Works. ELC also highlight issues around cumulative impact assessment amongst the proposed offshore windfarms in the region and the possibility of inconsistency of assessment methodologies for all proposals due to capacity limitations.

(iv) Advice from statutory consultees – advice from statutory consultees may have changed from the original consultation exercise.

- ELC also state that they consider revised environmental information and advice from statutory consultees should be taken into account for both requests, regardless of whether the request is considered under the 2017 Regulations or through the existing process. They also highlight that further consideration should be given to the level of public consultation on this request, given the environmental implications of the decision.

Marine Scotland's consideration of East Lothian Council's comments

The 2017 Regulations introduced new requirements for consent procedures involving more than one stage (multi-stage consents), for example a first stage requiring a principal decision and subsequent stages requiring the approval (through the discharge of consent conditions) of associated plans by the Scottish Ministers. The 2017 Regulations define application for multi-stage consent as follows: "*an application for approval, consent or agreement required by a condition included in an Electricity Act consent where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun*" (as per Regulation 2(1)).

MS-LOT do not consider that the approval for extending the commencement date falls under the multi-stage consent definition within the 2017 Regulations. Condition 2 is not a pre-commencement condition which gives rise to an "implementing decision"; it does not require an application before the development may be begun in terms of the definition of "application for multi-stage consent" under the 2017 Regulations. MS-LOT do not consider that either NnGOWL or ICOL should be required to submit additional environmental information under the 2017 Regulations or through the existing process as suggested by ELC.

Both the NnGOWL and ICOL section 36 consents have several conditions attached which do fall under the multi-stage provisions and when these are discharged this will be done having considered current knowledge and methods of assessment. The

power to vary the commencement period is entirely within the discretion of the Scottish Ministers due to the wording of the condition.

ELC advise that neither ICOL or NnGOWL have been assessed using SNH's updated guidelines on Seascape Landscape and Visual Impacts Assessment (SLVIA); however, SNH raised no concerns regarding this.

The point which ELC makes regarding the onshore elements does not seem relevant here. MS-LOT have had separate correspondence on this subject from ELC through the scoping process for the new applications and this has been dealt with through that process.

ELC points at a change in the baseline in relation to the Outer Firth of Forth and Tay Bay Complex as an SPA, this site is currently at the proposed stage and is known as a pSPA. The Conservation of Habitats and Species Regulations 2017 require that any consent where a project may have a likely significant effect on a designated site be reviewed following the designation of that site. This review will be undertaken at the appropriate time.

ELC raise issues regarding cumulative impact assessment methodologies, again MS-LOT do not see the relevance of this in relation to extending the commencement of development date. ELC suggest that statutory consultee advice may have changed, however other statutory consultees are content with the proposals.

Officials held discussions with ELC. ELC emphasised that their response was not an objection but some points which they thought that Scottish Ministers should consider when coming to a decision. We have considered all their points fully and arrived at the conclusions above.

Recommendation

15. That you approve the request from ICOL for an extension to condition 2 of its Section 36 consent, thereby extending the period for commencement of development from 5 years to 7 years. And that you approve the request from NnGOWL for an extension to condition 2 to its Section 36 consent, thereby extending the period for commencement of development from 5 years to 8 years. We do not anticipate any new environmental implications will arise as a result of the extensions of time being granted and expect the original conditions to be applicable thereafter. The letters at Annexes 1 and 2 shall be issued to each developer should these requests be approved.

Nicola Bain
Marine Scotland Planning and Policy
Ext: 43836

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constituency Interest	General Awareness
Cabinet Secretary for Economy, Jobs and Fair Work				X	X
Cabinet Secretary for the Environment, Climate Change and Land Reform			X		
Minister for Business, Innovation and Energy	X	X	X		
DG Economy Frances Pacitti, Energy Graham Black, Marine Scotland Helena Gray, Marine Scotland David Palmer, Marine Scotland Jim McKie, Marine Scotland Gayle Holland, Marine Scotland Mark Christie, Marine Scotland Joanna Dingwall, SGLD David Miller, Special Advisor					

Annex 1

Andrew Donaldson
Inch Cape Project Director
Inch Cape Offshore Limited
5th Floor, 40 Princes Street
Edinburgh
EH2 2BY

Our Ref: 005/OW/SER - 10

12th February 2018

Dear Mr Donaldson,

ELECTRICITY ACT 1989

Inch Cape Offshore Limited (“ICOL”) Section 36 consent – Condition 2: Inch Cape Offshore Windfarm

Thank you for your correspondence dated 29 August 2017 on behalf of Inch Cape Offshore Ltd, who were awarded a Section 36 Consent on 10 October 2014.

Condition 2 of the Section 36 consent is set out as follows:

“The Commencement of the Development must be a date no later than 5 years from the date the consent is granted, or such later date from the date of the granting of this consent as the Scottish Ministers may hereafter direct in writing.”

In your correspondence you requested that the Scottish Ministers give their written approval that the timeframe for Condition 2 (Commencement of the Development) of the section 36 consent is delayed beyond the five (5) years set out in Condition 2, to seven (7) years.

Marine Scotland Licensing Operations Team, on behalf of the Scottish Ministers, have consulted with Angus Council, Dundee City Council, East Lothian Council, Fife Council, Historic Environment Scotland, Scottish Borders Council, Scottish Environment Protection Agency and Scottish Natural Heritage and have no objection to your requested extension from five (5) to seven (7) years.

The Scottish Ministers see no disadvantage in extending the Commencement of Development timeframe by an additional 2 years and hereby direct that Commencement of Development under Condition 2 in the original Inch Cape section 36 consent must be a date no later than 7 years from the date the consent was granted. Therefore, Commencement of the Development (as defined in the original section 36 consent), must be no later than 10 October 2021, or such other period as the Scottish Ministers may direct in writing.

Yours sincerely,

Nicola Bain
Marine Scotland Licensing Operations Team

Annex 2

Ewan Walker
Environment and Consents Manager
Nearth na Gaoithe Offshore Wind Farm Ltd
c/o Mainstream Renewable Power
3rd Floor
2 West Regent Street
Glasgow
G2 1RW

Our Ref: 029/OW/MainS - 10

12th February 2018

Dear Mr Walker,

ELECTRICITY ACT 1989

Nearth na Gaoithe Offshore Wind Limited (“NnGOWL”) Section 36 consent – Condition 2: Nearth na Gaoithe Wind Farm

Thank you for your correspondence dated 03 August 2017 on behalf of Nearth na Gaoithe Offshore Wind Limited, who were awarded a Section 36 Consent on 10 October 2014.

Condition 2 of the Section 36 consent is set out as follows:

“The Commencement of the Development must be a date no later than 5 years from the date the consent is granted, or such later date from the date of the granting of this consent as the Scottish Ministers may hereafter direct in writing.”

In your correspondence you requested that the Scottish Ministers give their written approval that the timeframe for Condition 2 (Commencement of the Development) of the section 36 consent is delayed beyond the five (5) years set out in Condition 2, to eight (8) years.

Marine Scotland Licensing Operations Team, on behalf of the Scottish Ministers, have consulted with Angus Council, Dundee City Council, East Lothian Council, Fife Council, Historic Environment Scotland, Scottish Borders Council, Scottish Environment Protection Agency and Scottish Natural Heritage and have no objection to your requested extension from five (5) to eight (8).

The Scottish Ministers see no disadvantage in extending the Commencement of Development timeframe by an additional 3 years and hereby direct that Commencement of Development under Condition 2 in the original Nearth na Gaoithe section 36 consent must be a date no later than 8 years from the date the consent was granted. Therefore, Commencement of the Development (as defined in the original section 36 consent), must be no later than 10 October 2022, or such other period as the Scottish Ministers may direct in writing.

Yours sincerely,

Nicola Bain
Marine Scotland Licensing Operations Team