

From: Sophie Humphries
Marine Scotland Planning & Policy

27 March 2018

Minister for Business, Innovation and Energy

Seagreen Alpha and Seagreen Bravo Offshore Windfarms – Extensions to Commencement of Development dates

Purpose

1. To seek your approval to extend the period for the Commencement of Development for both the Seagreen Alpha and Seagreen Bravo Offshore Wind Farms.

Priority

2. Routine.

Background

3. Seagreen Alpha and Seagreen Bravo Offshore Windfarms were consented by the Scottish Ministers on 10 October 2014 under section 36 of the Electricity Act 1989 (“the Act”). Seagreen Wind Energy Limited (“SWEL”) received consent to construct and operate the Seagreen Alpha and Seagreen Bravo Offshore Windfarms, each comprising of up to 75 wind turbine generators and a maximum generating capacity of 525 MW, with a combined maximum generating capacity of up to 1050 MW.
4. On 20 March 2018 SWEL submitted capacity variations to remove the maximum capacity from the consents. SWEL also intend to submit applications to incorporate changes to the physical turbine parameters, in order to take advantage of the developments in wind turbine generator technology since the section 36 consents were granted in 2014. These changes are felt necessary by SWEL due to delays in the projects as a result of the recent judicial review proceedings brought by the RSPB and for competitive bidding in the next CfD auction.

Issue

5. Condition 2 of both 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 later 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.”

6. SWEL wish to extend the period for commencement of development associated with their existing consents to ensure that it is possible to progress both projects.
7. On 19 February 2018 SWEL submitted a formal request for an extension of the time constraint included in condition 2 of both of the section 36 consents for Seagreen Alpha and Seagreen Bravo from 5 years to 8 years.
8. SWEL did not consider it commercially appropriate to progress the projects during the judicial review proceedings. SWEL intend to use the section 36 consents for

Seagreen Alpha and Seagreen Bravo to meet the planning pre-qualification criteria for the forthcoming Contract for Difference (“CfD”) auction planned for Spring 2019. SWEL state that an extension of three years would ensure alignment with the CfD auction timetable.

9. For awareness, similar requests for Inch Cape Offshore Windfarm and Neart na Gaoithe received Ministerial approval in February 2018 for extensions to the period for commencement of the development of 2 and 3 years respectively.

Consultation with statutory bodies

10. The following statutory bodies were consulted on both requests: Angus Council, Dundee City Council, East Lothian Council, Fife Council, Historic Environment Scotland, Scottish Environment Protection Agency (“SEPA”), Scottish Borders Council and Scottish Natural Heritage (“SNH”).
11. 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 request;
 - ii. Dundee City Council had no substantive comments to make on either request;
 - iii. Fife Council stated that, in light of the delay caused by the judicial process around the Seagreen Alpha and Seagreen Bravo consents, they had no adverse comments to make on the requests;
 - iv. Historic Environment Scotland confirmed that they had no objections or substantive comments to make on either request;
 - v. Scottish Borders Council confirmed that they had no objections or substantive comments to make on either request;
 - vi. SEPA had no substantive comments to make on either request;
 - vii. SNH had no substantive comments to make on either request;
 - viii. East Lothian Council stated that they did not object to either request but they recommend that the Scottish Ministers carefully consider whether further environmental information is required prior to approving this request. East Lothian Council raised similar concerns in response to recent requests for extending the time periods for commencement of the development for the Inch Cape and Neart na Gaoithe Offshore Windfarms, which received Ministerial approval on 12 February 2018.

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

East Lothian Council's recommendation, that the Scottish Ministers carefully consider whether further environmental information is requested, has been fully considered by MS-LOT.

East Lothian Council submitted detailed responses to the recent requests by Neart na Gaoithe Offshore Wind Limited and Inch Cape Offshore Limited for extensions to Condition 2 of their Section 36 consents, stating that the approval would trigger the need for multi-stage consent under the terms of the Electricity Works

(Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (hereinafter “the 2017 Regulations”).

MS-LOT gave full consideration to the issues raised by East Lothian Council and stated that they do not consider that the approval for extending the commencement date falls under the multi-stage consent definition under the terms of the 2017 Regulations, as Condition 2 is not a pre-commencement condition which requires an application before the development may begin, (referred to as an “implementing decision” within the 2017 Regulations) which would trigger the need for “multi-stage consent”. We consider that the same reasoning applies to SWEL’s requests.

Both of the Section 36 consents for Seagreen Alpha and Seagreen Bravo have several conditions attached which fall under the multi-stage consent provisions of the 2017 Regulations. The 2017 Regulations require that the discharge of the consent conditions must be completed following consideration of current environmental knowledge and methods of assessment.

Should any new or additional environmental impacts be identified at this point, then this information would be fully considered within MS-LOT’s reasoned conclusion at that stage.

Due to the wording of the Condition 2 of both Section 36 consents, the power to vary the commencement period is entirely within the discretion of the Scottish Ministers.

We have considered the recommendation provided by East Lothian Council and MS-LOT do not consider that the approval for extending the commencement dates for Seagreen Alpha or Seagreen Bravo requires the submission of further environmental information.

Recommendation

12. That you approve the request from SWEL for an extension to condition 2 of its Section 36 consent for Seagreen Alpha, thereby extending the period of commencement of development for 5 years to 8 years. That you also approve the request from SWEL for an extension to condition 2 of its Section 36 consent for Seagreen Bravo, thereby extending the period for commencement of development from 5 years to 8 years.
13. We do not anticipate that 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 letter at Annex 1 shall be issued to SWEL should these requests be approved.

Sophie Humphries
Marine Scotland Planning and Policy
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| 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 Graham Black, Marine Scotland Helena Gray, Marine Scotland Jim McKie, Marine Scotland Gayle Holland, Marine Scotland Mark Christie, Marine Scotland Joanna Dingwall, SGLD David Miller, Special Advisor | | | | | |

Allan Ralston
Project Director
Seagreen Wind Energy Limited
c/o SSE Renewables
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Our Ref: 051/OW/SG1 - 10

XX MONTH 2018

Dear Mr Ralston,

ELECTRICITY ACT 1989

Seagreen Wind Energy Limited (“SWEL”)

Section 36 consent – Condition 2: Seagreen Alpha and Seagreen Bravo Offshore Windfarms

Thank you for your correspondence dated 19 February 2018 on behalf of Seagreen Wind Energy Limited who were awarded Section 36 Consents for Seagreen Alpha and Seagreen Bravo Offshore Windfarms on 10 October 2014.

Condition 2 of the Section 36 consents are set out as follows:

“The Commencement of the Development must be 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, 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) years.

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 Seagreen Alpha and Seagreen Bravo section 36 consents 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