

From: Jessica Malcolm  
Marine Directorate – Licensing Operations Team  
Marine Directorate  
6 July 2023

Minister for Energy and the Environment

## **INCH CAPE OFFSHORE WIND FARM – REQUEST TO EXTEND THE COMMENCEMENT OF THE DEVELOPMENT**

### **PRIORITY AND PURPOSE**

1. Routine priority
2. To seek your approval to extend the period in which commencement of development, for the Inch Cape Offshore Wind Farm located 15-22 kilometres off the Angus coastline (“the Development”), must take place from the date of the original consent.

### **RECOMMENDATION**

3. Recommends that you: agree to extend the period in which commencement of the Development must begin, from five years to seven years from the date the original consent was granted.

### **CONTEXT AND ISSUES**

4. On 17 June 2019 the Scottish Ministers granted consent under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of the Inch Cape Offshore Wind Farm located approximately 15-22 kilometres off the Angus coastline with a maximum generation capacity of around 700 megawatts (“MW”).
5. The s.36 consent granted on 17 June 2019 was subsequently varied, under section 36C(1) of the Electricity Act in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), on 16 July 2020 to increase the maximum generating capacity to 1000 MW. Consent was varied again on 22 July 2021, to remove the maximum generating capacity, and on 14 June 2023 to reduce the nominal turbine spacing (“the Existing s.36 Consent”).
6. Condition 2 of the Existing s.36 Consent reads as follows:

*“The Commencement of the Development must be no later than five years from the date of the original consent (dated 17 June 2019), or in substitution such other period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of the Development to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian*

*Council, Fife Council and Scottish Borders Council no later than one calendar month before that date.*

**Reason: To ensure that the Commencement of the Development is undertaken within a reasonable timescale after consent is granted.**

7. On 30 March 2023, the Scottish Ministers received a formal request from the developer, Inch Cape Offshore Limited (“ICOL”), to substitute the time period for the commencement of the Development in accordance with condition 2 of the Existing s.36 Consent. ICOL requested that the Scottish Ministers extend the period in which commencement of the Development must take place, from five years from the date the original consent was granted to seven years. This will provide an additional two years to begin construction.

8. In 2019, ICOL was unsuccessful in securing Contract for Difference (“CfD”). The project design was optimised and ICOL successfully secured a CfD in 2022, during Allocation Round (“AR”) four. ICOL considers that shortages and increasing costs in the supply chain coupled with increased interest rates and geo-political challenges have made it more challenging to deliver projects at AR four prices resulting in protracted construction programmes. Consequently, commencement of offshore construction is unlikely to begin before June 2024, which is five years from the date of original consent.

9. ICOL considers that no new or materially different environmental effects will arise as a result of the proposed extension to the commencement of Development and therefore the conclusions of the applications for the Existing s.36 Consent remain valid.

10. Marine Directorate – Licensing Operations Team (“MD-LOT”) notes that all conditions of the Existing s.36 Consent remain applicable. Several of these conditions require multi-stage regulatory approval under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 to determine whether the development is within the parameters which have already been considered within the environmental impact assessment report, in light of current knowledge and methods of assessment at that time.

## **OPTIONS CONSIDERED AND ADVICE**

11. A five year time limit for the commencement of a development is a standard condition on any s.36 consent granted. A developer may write to the Scottish Ministers requesting a substitution to the time period for the date of the commencement of the development. The condition applied to s.36 consents allows for the Scottish Ministers to substitute this time period at their own discretion. Where the Scottish Ministers agree to substitute the time period for the commencement of the development, in accordance with the relevant s.36 consent condition, this will only apply to the s.36 consent and not, for example, any planning permission.

## **ASSESSMENT OF OPTIONS**

**12.** The following statutory bodies were consulted; NatureScot, Historic Environment Scotland (“HES”), Scottish Environment Protection Agency (“SEPA”), Aberdeenshire Council, Angus Council, Dundee City Council, Fife Council, East Lothian Council (“ELC”) and the Scottish Borders Council.

**13.** Representations were received from all consultees detailed above.

**14.** No objections were raised by any consultees.

**15.** ELC raised concerns regarding the calculation of the overall carbon balance of the project and the effect on the climate as a receptor, the cumulative landscape and visual impact of the project not taking into account developments such as the Berwick Bank Offshore Wind Farm and the Ossian Offshore Wind Farm. In addition, ELC raised concerns on the impact of the extension on bird populations, and the onshore grid connection and transmission infrastructure of the project.

**16.** ELC considers that due to a change in scientific understanding of the baseline, and potentially different effects on the predicted CO<sub>2</sub> savings, that the effect on greenhouse gas emissions overall may require updating, if commencement of the Development extends beyond five years. MD-LOT has considered the point raised by ELC in regards to the carbon balance of the project. MD-LOT is content that the carbon balance assessment undertaken to support the application for the s.36 consent granted in 2019 remains valid and no updates are required.

**17.** With regards to the concerns raised around cumulative impacts with other offshore developments, MD-LOT is content that Inch Cape Offshore Wind Farm will form part of the baseline for future projects and therefore the cumulative impacts with both Berwick Bank Offshore Wind Farm and Ossian Offshore Wind Farm in respect of seascape, landscape and visual impacts (“SLVIA”) will be assessed in the respective EIA Reports.

**18.** NatureScot was consulted and provided no comment regarding the impact of the extension to commencement of the Development on bird populations, or cumulative effects in regards to SLVIA. Following consideration of the representations, MD-LOT is content that there will no significant impacts to seascape, landscape or visual receptors or bird populations as a result of the request to extend the time period in which commencement of the Development must take place by two years.

**19.** ELC queried whether the location of the onshore grid connection point for the export cable could be reconsidered due to the delayed commencement of the Development. ICOL advised that the grid connection was offered by National Grid following a review which found Cockenzie, East Lothian to be the most economic and efficient location to connect the project. It is not possible to reconsidered the onshore connection point as ICOL has placed contracts, acquired land and commenced onshore construction works for the substation at Cockenzie.

**20.** Additionally, ELC queried whether the delayed commencement of Development would require other transmission infrastructure which would not have been necessary, had the Development been constructed on the original timetable. ICOL confirmed that the delayed commencement of the Development will not result in the need for

additional transmission infrastructure. MD-LOT is satisfied that should ICOL require any additional transmission infrastructure, ELC would be consulted accordingly.

**21.** HES, SEPA, Aberdeenshire Council, Angus Council, Dundee City Council, Fife Council and the Scottish Borders Council had no comment to make.

**22.** MD-LOT specifically asked the consultees to provide a view in relation to whether any new or materially different significant effects will arise as a result of the proposed extension and whether the conclusions of the application for the Existing s.36 Consent remain valid.

**23.** Having considered the consultation responses, MD-LOT does not anticipate any new environmental impacts will arise as a result of the extension of time being granted.

### **BUTE HOUSE AGREEMENT IMPLICATIONS**

**24.** Approval of the extension of the commencement to the Development of Inch Cape Offshore Wind Farm is related to the commitment in the Bute House Agreement to manage the potential impacts on marine biodiversity alongside the growth of marine renewables and offshore wind sectors in a proportionate manner.

### **FINANCIAL AND LEGAL CONSIDERATIONS**

**25.** This submission has been informed by appropriate advice from Scottish Government Legal Directorate. The legislative action falls within the competence of the Scottish Government and is a legally appropriate course of action to take.

### **QUALITY ASSURANCE**

**26.** This submission has been approved by Iain Wallace, Deputy Director, Marine Directorate.

### **CONCLUSION AND NEXT STEPS**

**27.** Should the Minister choose to approve the request from ICOL to substitute the time period in accordance with condition 2 of the Existing s.36 Consent, thereby extending the time period from five to seven years within which commencement of the Development must take place, a draft approval letter is attached in Annex A which MD-LOT will finalise and issue to ICOL on the Minister's behalf.

**28.** In order for the determination process to be fully open and transparent, MD-LOT recommends that this submission is published on Marine Scotland Information, alongside the Existing s.36 Consent.

**Jessica Malcolm**  
MD-LOT

### **LIST OF ANNEXES**

**ANNEX A** Draft Decision Notice

Copy List:	For Action	For Information		
		Portfolio Interest	Consist Interest	General Awareness
Minister for Energy and the Environment	X			
Cabinet Secretary for Wellbeing, Economy, Fair Work and Energy		X		
Cabinet Secretary for Rural Affairs, Land Reform and Islands		X		
Cabinet Secretary for Transport, Net Zero and Just Transition		X		
Minister for Green Skills, Circular Economy and Biodiversity		X		

DG Economy  
 DG Net Zero  
 Director, Marine Directorate  
 Mike Palmer, Deputy Director Offshore Wind Directorate  
 Iain Wallace, Deputy Director Marine Directorate  
 Drew Milne, Offshore Wind Directorate  
 Lewis Hurley, Offshore Wind Directorate  
 Zoe Crutchfield, Marine Directorate  
 Gayle Holland, Marine Directorate  
 Stephanie Morrison, Marine Directorate  
 Lauren Cowan, Marine Directorate  
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 Angela Lawson, Legal Directorate  
 Joan McHutchison, Legal Directorate  
 David Moffat, Legal Directorate  
 Hannah Matthew, Legal Directorate  
 Callum McCaig, Special Advisor  
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Mrs Sarah Arthur  
Inch Cape Offshore Limited  
5<sup>th</sup> Floor  
40 Princes Street  
Edinburgh  
EH2 2BY

01 August 2023

Dear Mrs Arthur,

**ELECTRICITY ACT 1989  
INCH CAPE OFFSHORE WIND FARM  
SECTION 36 CONSENT, CONDITION 2 – COMMENCEMENT OF THE DEVELOPMENT**

In your correspondence dated 30 March 2023, on behalf of Inch Cape Offshore Limited (“ICOL”) in relation to the section 36 consent granted on 17 June 2019 (and subsequently varied on 16 July 2020, 22 July 2021 and 14 June 2023) (“the Existing s.36 Consent”) for Inch Cape Offshore Wind Farm (“the Development”), you requested that the Scottish Ministers give written approval for the substitution of the time period, from five years to seven years, for commencement of the Development.

Condition 2 of the Existing s.36 Consent is set out as follows:

*“The Commencement of the Development must be no later than five years from the date of the original consent (dated 17 June 2019), or in substitution such other period as the Scottish Ministers may hereafter direct in writing. The Company must provide written confirmation of the intended date of Commencement of the Development to the Scottish Ministers and to Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council no later than one calendar month before that date.*”

Marine Directorate – Licensing Operations Team (“MD-LOT”), on behalf of the Scottish Ministers, consulted NatureScot, Historic Environment Scotland, Scottish Environment Protection Agency, Aberdeenshire Council, Angus Council, Dundee City Council, Fife Council, East Lothian Council and the Scottish Borders Council. No objections were raised during the consultation.

## **ANNEX A** Draft Decision Notice

The Scottish Ministers are content to extend the commencement of the time period for the Development covered by the Existing s.36 Consent by an additional two years. MD-LOT hereby confirm that the commencement of the Development under condition 2 of the Existing s.36 Consent must be a date no later than seven years from the date the original consent was granted on 17 June 2019.

For the avoidance of doubt, the commencement of the Development (as defined in the Existing s.36 Consent) must begin no later than 16 June 2026, or such other period as the Scottish Ministers may agree and confirm in writing.

Yours sincerely,

Jessica Malcolm  
Marine Directorate – Licensing Operations Team