

Cabinet Secretary for Transport, Infrastructure and Connectivity

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 17 JUNE 2019 TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM, LOCATED 15-22 KILOMETRES (KM) EAST OFF THE ANGUS COASTLINE, IN ACCORDANCE WITH THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013

1. Submission to Ministers

1.1 Purpose

1.1.1 To seek your approval to vary the s.36 consent for the Inch Cape Offshore Wind Farm (Revised Design) (“the Development”). This application (“the Variation Application”) was made by Inch Cape Offshore Limited (“the Company”) on 30 January 2020 and relates to the consent granted on 17 June 2019 to the Company under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of the Development located approximately 15-22km east off Angus coastline with a maximum generating capacity of around 700 megawatts (“MW”) (“the Existing s.36 consent”).

1.2 Priority

1.2.1 Routine

1.3 Nature of the Variation Sought

1.3.1 The Variation Application seeks to vary Annex 1 of the Existing s.36 consent as follows:

1. Vary Annex 1 of the Existing s.36 consent, to increase the overall generating capacity permitted from “*around 700MW*” to “*up to 1000MW*”, without any variation to the physical parameters of Wind Turbine Generators (“WTG”) or any other component included within the application for the Existing s.36 consent in August 2018 (“the Original Application”).

1.3.2 Officials have considered the Variation Application and are satisfied that the proposed changes are appropriate to be considered as a variation to the Existing s.36 consent in line with the Scottish Government Applications for Variation of Section 36 Consents Guidance published in May 2019.

The proposed variation is shown in [Annex C](#).

1.4 Consideration of the Application

- 1.4.1 Under s. 36 C(4) of the Electricity Act, the Scottish Ministers will exercise judgement in regards to the below criteria, in order to determine whether any variation sought is “appropriate”:
- (a) the applicant's reasons for seeking the variation;
 - (b) the variations proposed;
 - (c) any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.
- 1.4.2 Officials consider that you can be satisfied that, in this circumstance, the changes proposed are reasonable to be authorised by means of the variation procedure.
- 1.4.3 The Variation Application seeks to increase the overall maximum generating capacity consented in the Existing s.36 consent from “*around 700MW*” to “*up to 1000MW*”. Thus, none of the physical parameters of Wind Turbine Generators (“WTG”) or any other component of the Development would change, and there would be no implications for the environmental effects of it. The variation proposed in the Variation Application does not fundamentally alter the character or scale of the Development and there will be no changes in the red and black boundary of the Development.
- 1.4.4 No objections were made to the proposed variation, and the views of consultees were considered during the determination process. Officials, therefore, advise Scottish Ministers that the variation is appropriate.

1.5 Environmental Impacts

- 1.5.1 On 30 January 2020, the Company submitted the Variation Application and an associated Offshore Consent Variation Application Report (“the Variation Report”) detailing the rationale of the variation requested and specifying the reasons the variation sought is beneficial. The Company, has undertaken a review of WTG technologies, in conjunction with potential timescales for construction of the Development. This review has determined that it is feasible that the overall capacity of the Development could be increased from “*around 700MW*” to “*up to 1000MW*” without resulting in any further effects to those assessed within the Environmental Impact Assessment Report and the Habitats Regulations Appraisal associated with the Original Application.
- 1.5.2 Officials have administered in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”).
- 1.5.3 Officials are satisfied, based on the fact that no change is proposed either to the maximum number or physical characteristics of turbines or to any other

components of the Development, that the proposed changes are not likely to have new environmental impacts and therefore no new Environmental Impact Assessment report was needed in support of the Variation Application.

- 1.5.4 Officials 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”) and are content that an Appropriate Assessment is not required under the 2017 Habitats Regulations, as the Variation Application will not result in any likely significant effects on either any European marine site or any European protected site.
- 1.5.5 Marine Scotland – Licensing Operations Team considers that the legislative requirements set out above, and described in Annex A, have been complied with throughout the process of determining the Variation Application.

1.6 Publication of Application and Consultation

- 1.6.1 Regulation 4 of the Variation Regulations provides that an applicant must publish a variation application relating to an offshore generating station on a website and publish a notice of the Variation Application in a local newspaper; the Edinburgh Gazette, a national newspaper, Lloyd’s List and in at least one appropriate fishing trade journal in circulation. These requirements have been met.
- 1.6.2 The Variation Regulations also require copies of the Variation Application to be served on the planning authority. 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, Angus Council, Dundee City Council, East Lothian Council, Fife Council, and Scottish Borders Council. This requirement has been met.
- 1.6.3 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, Angus Council, Dundee City Council, Fife Council, East Lothian Council, Scottish Borders Council, Scottish Natural Heritage, Scottish Environment Protection Agency and Historic Environment Scotland.
- 1.6.4 No representations were received from members of the public, and no objections to the Variation Application were received from the consultees.
- 1.6.5 In order for the determination process to be fully open and transparent, MS-LOT recommends that this submission is published on [Marine Scotland Information](#) website, alongside the Existing s.36 consent and the Variation Application documentation.

The key considerations in relation to the determination of the Variation Application are set out in [Annex A](#) and [Annex B](#).

1.7 Recommendation

Having taken into account the consultation responses and being satisfied that all legislative requirements have been met, MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary Annex 1 of the Existing s.36 consent, in accordance with section 36C of the Electricity Act 1989 and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013.

A draft decision letter is attached at [Annex C](#).

1.8 List of Annexes

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Copy List:	For Action	For Comment	For Information		
			Portfolio Interest	Constituency Interest	General Awareness
Minister for Energy, Connectivity and the Islands			X	X	
Cabinet Secretary for Transport, Infrastructure and Connectivity	X	X			
Cabinet Secretary for the Rural Economy			X		
Cabinet Secretary for Environment, Climate Change and Land Reform			X		
Minister for Rural Affairs and the Natural Environment			X		
<p>DG Economy</p> <p>Director of Marine Scotland, Marine Scotland</p> <p>Mike Palmer, Marine Scotland</p> <p>Tim McDonnell, Marine Scotland Science</p> <p>Ian Davies, Marine Scotland Science</p> <p>Michael Bland, Licensing Operations Team, Marine Scotland</p> <p>Zoe Crutchfield, Licensing Operations Team, Marine Scotland</p> <p>Gayle Holland, Licensing Operations Team, Marine Scotland</p> <p>Mark Christie, Marine and Offshore Renewable Energy, Marine Scotland</p> <p>David Pratt, Marine Planning and Strategy, Marine Scotland</p> <p>Jared Wilson, Renewables and Energy Programme, Marine Scotland</p> <p>Allan Gibb, Sea Fisheries Division, Marine Scotland</p> <p>Kersti Berge, Energy and Climate Change</p> <p>Neal Rafferty, EI, Utilities, Markets & Networks Policy Unit, Energy and Climate Change</p> <p>David Stevenson, Infrastructure Delivery & Capital Investment, Budget & Sustainability</p> <p>Debbi Ramsay, Energy Industries, Energy and Climate Change</p> <p>Joanna Dingwall, SGLD, Marine, Transport and Natural Resources Division</p> <p>David Moffat, SGLD, Marine, Transport and Natural Resources Division</p> <p>Kenneth Hannaway, SGLD, Marine, Transport and Natural Resources Division</p> <p>Fiona McClean, SGLD, Marine, Transport and Natural Resources Division</p> <p>Callum McCaig, Special Advisor, Communications, Ministerial Support and Facilities</p> <p>Leanne Dobson, Special Advisor, Communications, Ministerial Support and Facilities</p> <p>Aileen MacArthur, News, Communications, Ministerial Support and Facilities</p> <p>Communications, Rural Economy and Environment, Communications, Ministerial Support and Facilities</p>					

1. ANNEX A Background and Consultation

1.1 Background Information

1.1.1 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 offshore generating station known as the Inch Cape Offshore Wind Farm (Revised Design) (“the Development”) located approximately 15-22 kilometres (km) off the Angus coastline with a maximum generation output of around 700 Megawatts (“MW”) (“the Existing s.36 consent”).

1.1.2 On 30 January 2020, the Scottish Ministers received an application from Inch Cape Offshore Limited (“the Company”), 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”), to vary its Existing s.36 consent (“the Variation Application”). The Variation Application seeks to increase the overall generating capacity consented by the Existing s.36 consent from “*around 700MW*” to “*up to 1000MW*”, without any change to the physical parameters of Wind Turbine Generators (“WTG”) or any other component included within the Existing s.36 consent.

1.1.3 The Company stated that the increase to up to 1000MW will result in an estimated 612,325 tonnes of carbon dioxide being saved each year, based on the Scottish Government’s published Renewable Electricity Output Calculator and depending on the fuel type displaced. The Company estimated that the Development would generate enough electricity to meet the needs of the equivalent of 669,565 Scottish households per year. This would represent an increase of approximately 200,869 additional homes being powered using clean energy from the Existing s.36 consent.

1.1.4 The Company stated that utilising best available turbine technology and increasing the overall generating capacity of the Development will allow it to produce more electricity for the same level of development, thereby producing more electricity with no increase in environmental impact and allowing electricity a more cost-effective way for the end user.

1.2 Application Documentation

1.2.1 The Company submitted the following Variation Application documentation, which was issued for consultation on 5 February 2020:

- An application to vary Annex 1 of the Existing s.36 consent; and
- An Offshore Consents Variation Application Report.

1.2.2 Full details of the consultation undertaken as part of the process are set out below.

1.3 Application publication, notification and consultation

1.3.1 In accordance with Regulation 4 of the Variation Regulations, the Company:

- Placed the Variation Application documentation on the [application website](#) alongside a link to the Existing s.36 consent;
- Served copies of the Variation Application to the Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council; and
- Place Public Notices relating to the Variation Application in the Courier for two weeks and for one week each in the Scotsman, the Edinburgh Gazette, the Lloyds List and the Fishing News.

1.3.2 Marine Scotland - Licensing Operations Team (“MS-LOT”) consulted a wide range of interested parties on the Variation Application including relevant local authorities (in this case Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council), Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”) and the Historic Environment Scotland (“HES”) and placed the Variation Application documentation on the [Marine Scotland Information website](#) alongside the Existing s.36 consent.

1.4 Summary of consultation process

1.4.1 Most of the consultees did not object or had no comments to make, or did not provide a response to the consultation. In the case of no response, MS-LOT notified the relevant consultees that “nil returns” would be assumed.

1.4.2 Consultees and local authorities did not raise any objections, however, comments were submitted. Summaries of the comments received from the consultees are presented in section [1.5](#). Section [1.6](#) lists all consultees who did not respond to the consultation.

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

1.4.4 Copies of the full consultation responses received have been made available on the Inch Cape Offshore Windfarm (Revised Design) page of [Marine Scotland Information website](#).

1.5 Summary of consultation responses

1.5.1 No objections to the Variation Application were raised by any consultees.

1.5.2 **Aberdeen International Airport** did not object to the Variation Application.

1.5.3 Aberdeenshire Council confirmed that it held no objection to the Variation Application.

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- 1.5.4 **Aberdeenshire Council** undertook an assessment of the Variation Application against the Aberdeenshire Local Development Plan 2017 (“the 2017 Aberdeenshire LDP”), which was submitted to MS-LOT in support of its final response. In the assessment, Aberdeenshire Council highlighted its initial concerns related to the Original Application regarding potential impacts on the Built Heritage, Landscape and Visual Impacts and Ornithology, the latter being an objection to the Original Application. Aberdeenshire Council commented that the Variation Application is unlikely to lead to additional impact in relation to Built Heritage, Landscape and Visual Impacts and consequently, confirmed the proposal will continue to be in compliance with the relevant policies of the 2017 Aberdeenshire LDP. In regard to Ornithology, Aberdeenshire Council previously objected on the basis that uncertainty remained in relation to the potential effect on the Fowlsheugh Special Protected Area (“SPA”), and whether further mitigation could alleviate these concerns. Aberdeenshire Council reiterated that it remained unconvinced that the impact of the Development to the Fowlsheugh SPA could be reconciled with the 2017 Aberdeenshire LDP. Aberdeenshire Council accepted that the scope of the Variation Application was limited and confirmed that it was unlikely additional impacts in relation to Ornithology would occur.
- 1.5.5 **Angus Council** had no comments to make on the Variation Application.
- 1.5.6 **British Telecom (“BT”)** confirmed that the Development should not cause interference to BT’s current and presently planned radio network.
- 1.5.7 **Defence Infrastructure Organisation on behalf of the Ministry of Defence (“MOD”)** had no objection to the Variation Application. MOD requested that the conditions in regard to Aviation Radar (“ATC Scheme”), Air Defence Radar Mitigation Scheme (“ADR Scheme”) and Lighting and Marking Plan (“LMP”) were carried forward into any new consent that may be issued.
- 1.5.8 Officials can confirm that the conditions of the Existing s.36 consent regarding the ATC Scheme, ADR Scheme and LMP will not be varied and will remain in place.
- 1.5.9 **Dundee City Council** had no comments to make on the Variation Application.
- 1.5.10 **East Lothian Council** requested clarification from MS-LOT on whether the Variation Application will lead to further onshore transmission works located at Cockenzie which have planning consent in principle. MS-LOT advised that any issues related to the onshore aspects of the Development and the national grid connections are not under the jurisdiction of Marine Scotland and advised East Lothian Council that the best way to address concerns might be to get in touch directly with the Company. East Lothian Council requested confirmation from the Company on whether the onshore works already permitted will be affected by the Variation Application. The Company confirmed that the Onshore Transmission Works Planning Permission in

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Principle (“OnTW PPP”), granted in 2019, remains valid and that the Variation Application will not effect this. The Company also confirmed that no onshore works beyond the parameters of the 2019 OnTW PPP will be required. East Lothian Council confirmed that, it does not object to the Variation Application and welcomes the increase in the generating capacity.

- 1.5.11 Officials are content with the evidence submitted and considered the issue closed.
- 1.5.12 **Fife Council** confirmed that it had no adverse comment to make to the Variation Application. Fife Council stated its interest in finding out more about any provision made for funds for community benefit from the Development and similar developments off the Fife coast.
- 1.5.13 The Company commented that it does not deem Fife Council’s comments, in relation to community benefit, to be pertinent to the Variation Application. MS-LOT agreed with the Company’s response and agreed that any engagement with Fife council would be welcome. The Company confirmed on 27 April 2020 that it is in regular discussions with the councils and that it will discuss community benefits outside of the Variation Application consultation process.
- 1.5.14 **Forth Ports** had no comments to make to the Variation Application.
- 1.5.15 **HES** stated that it did not object to the Development and since the Variation Application did not seek to alter any physical parameters of the original proposals, confirmed that it had no further comments or advice at this stage.
- 1.5.16 HES highlighted that its comments should be treated as a material consideration and confirmed that the proposals did not raise historic environment issues of national significance and, therefore, it does not object. HES however, stated that this decision should not be taken as 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.
- 1.5.17 Officials noted the comment of HES and can confirm that all the national and local policies have been taken into consideration at the time that the Existing s.36 consent was granted.
- 1.5.18 **Maritime and Coastguard Agency (“MCA”)** confirmed that it did not have significant concerns to raise on the Variation Application. MCA reiterated that the above opinion is on the understanding that the worst case scenario remains as is assessed in the Navigational Risk Assessment (“NRA”) and that there is no change to parameters in it that would lead to greater significance.
- 1.5.19 The Company confirmed on 27 April 2020 that the proposals of the Variation Application will not affect the conclusions of the NRA. Officials are satisfied with the confirmation.

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- 1.5.20 **National Air Traffic Service** had no safeguarding objection to the Variation Application.
- 1.5.21 **Northern Lighthouse Board** has no objection to the Variation Application.
- 1.5.22 **Royal Yachting Association Scotland** had no comments to make to the Variation Application.
- 1.5.23 **Scottish Borders Council** had no comments to make to the Variation Application.
- 1.5.24 **Scottish Fishermen Federation (“SFF”)** confirmed it was content with the Variation Application. SFF however, highlighted it still had concerns about the impacts of the consented Development on the environment and the fishing industry. SFF requests that MS-LOT develops a consent condition to ensure the Development would consider fishing impacts whilst updating its post-consent plans and ensure the Company is contributing to fishing related projects at Scottish Marine Energy Research (“ScotMER”) programme.
- 1.5.25 Conditions had been attached to the Existing s.36 consent requiring the Company to prepare, consult on and adhere to an Fisheries Mitigation Management Strategy (“FMMS”) and participate at the ScotMER programme, to contribute to an improved understanding of the impacts of the Development on commercial fisheries to mitigate concerns regarding commercial fisheries.
- 1.5.26 Officials can confirm that the conditions of the Existing s.36 consent regarding the FMMS and ScotMER participation are not being varied and will remain in place.
- 1.5.27 **SEPA** had no objection to the Variation Application.
- 1.5.28 **SNH** had no comments to make to the Variation Application.
- 1.5.29 **Transport Scotland (“TS”)** confirmed that after reviewing the Variation Application Report and the Variation Application that it was satisfied that the conclusions of its consultation response to the Original Application remained valid and requested the condition, in regard to the Construction Traffic Management Plan (“CTMP”) to be attached to any potential consent variations.
- 1.5.30 TS confirmed that it had no further comments to make to the Variation Application.
- 1.5.31 Officials can confirm that the condition regarding the CTMP will not be varied and will remain in place.
- 1.5.32 **UK Chamber of Shipping** had no comments to make to the Variation Application.

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1.5.33 **Whale and Dolphin Conservation** confirmed that due to capacity issues is not able to respond to the Variation Application consultation.

1.6 Nil responses

1.6.1 The following consultees did not respond to the consultation and therefore nil responses have been assumed:

Arbroath Harbour, Atlantic Salmon Trust	Marine Scotland Compliance - Eyemouth
Babcock MCS Offshore	Marine Scotland Compliance – Aberdeen
Bristow, Civil Aviation Authority	Montrose Port Authority
CHC Helicopter	Musselburgh & Inveresk Community Council
Communities Inshore Fisheries Alliance	Oil & Gas UK
Cockenzie & Port Seaton Community Council	National Trust for Scotland
Crown Estate Scotland	North Berwick Community Council,
Dunbar Community Council	North Sea Regional Advisory Council
Dunbar Harbour Trust	Prestonpans Community Council,
Dunbar Fisheries Association	Royal Society for the Protection of Birds Scotland
Dundee Sub Aqua Club	Salmon Net Fishing Association of Scotland
Dunpender Community Council	Scottish Canoe Association,
North & East Regional Inshore Fisheries Group	Scottish Creel Fishermen's Association
East Fortune Airfield	Scottish Enterprise
East Lammermuir Community Council	Scottish Environment LINK
Edinburgh Airport Ltd	Scottish Federation of Sea Anglers
Esk District Salmon Fishing Board	Scottish Fisherman's Organisation
Eyemouth Harbour Trust	Scottish Power Generation
Fife Fish Producers Organisation	Scottish Seabird Centre
Firth of Forth Lobster Hatchery	Scottish Surfing Federation
Firth of Forth U10m Fishing Association	Scottish Wildlife Trust
Fisheries Management Scotland	Scottish Wild Salmon Company (Usan)
Fishermen's Mutual Association (Pittenweem) Limited	Seagreen Wind Energy Limited
Forth District Salmon Fishery Board	Sport Scotland
Forth Estuary Forum Ltd	Surfers Against Sewage
Gullane Community Council	Tay District Salmon Fishing Board
Heathrow Airport Holdings Limited	The 10 Metre and Under Association

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Health & Safety Executive	Torness Power Station
Joint Radio Company	Tranent & Elphinstone Community Council
Longniddry Community Council	Transport Scotland (Ports & Harbours)
Macmerry & Gladsmuir Community Council	Tweed District Salmon Fishing Board
Neart na Gaoithe Offshore Windfarm Limited	Visit Scotland
Marine Safety Forum	West Barns Community Council
Marine Scotland Compliance - Anstruther	

1. ANNEX B Legislative Requirements

1.1 Legislative Background

- 1.1.1 Section 36C (“s.36C”) of the Electricity Act 1989 (“the Electricity Act”) has, since 1 December 2013, enabled persons who are entitled to the benefit of a section 36 (“s.36”) consent to apply to the appropriate authority (in Scotland this is the Scottish Ministers) for a variation of such s.36 consents. The procedure is set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”). The Variation Regulations provide for a consistent and transparent process for making, publicising, and consideration of applications to vary s.36 consents.
- 1.1.2 The variation process is designed to apply to projects that have been consented to under s.36, where the operator wishes to carry out construction, extension and operation of electricity generating stations. This process is also applied when the operator of a generating station wishes to change any other aspects of its proposals as set out in a s.36 consent in a way that is inconsistent with that s.36 consent. Scottish Government guidance on s.36 consent variations considers that the process is not intended as a way of authorising any change in a developer’s plans that would result in a generating station that would be fundamentally different in terms of character, scale or environmental impact from what is authorised by the existing consent.
- 1.1.3 Under section 36C(4) of the Electricity Act the Scottish Ministers may make variations to consents as appear to them to be appropriate, having regard in particular to the company’s reasons for seeking the variation, the variation proposed, the views of consultees, any objections made to the proposed variation and the outcome of any public inquiry.

1.2 Environmental Impact Assessment

- 1.2.1 The process to vary a s.36 consents is primarily governed by the Variation Regulations. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”) amend the Variation Regulations and provide that an Environmental Impact Assessment is required in relation to variation applications where the proposed changes are likely to have significant effects on the environment.

1.3 Appropriate Assessment

- 1.3.1 Regulation 48(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”) require that before deciding to undertake, or give consent, permission or authorisation for a plan or project which is likely to have a significant effect on a European site or European Offshore marine site [the 2017 Habitats Regulations only] (either alone or in combination with others

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plans or projects) and where not directly connected with or necessary to the management of that site, a competent authority must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

1. ANNEX C Draft Decision Notice and Proposed Variation

MS.MarineRenewables@gov.scot



Mr Adam Ezzamel
Inch Cape Offshore Limited
5th Floor, 40 Princes Street
Edinburgh
EH2 2BY

Our Reference: 048/OW/RRP-10

XX MONTH 2020

Dear Mr Ezzamel,

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 17 JUNE 2019 TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, LOCATED APPROXIMATELY 15-22 KILOMETRES (“KM”) EAST OFF THE ANGUS COASTLINE.

I refer to the application to vary the consent for the Inch Cape Offshore Wind Farm (Revised Design) (“the Development”). This Application (“the Variation Application”) was made by Inch Cape Offshore Limited (“the Company”) on 30 January 2020 for:

- a) a variation under section 36C of the Electricity Act 1989 (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act on 17 June 2019 (“the Existing s.36 consent”) for the construction and operation of the Development, located approximately 15-22 km east off the Angus coastline.

This letter contains the Scottish Ministers’ decision to vary the Existing s.36 consent.

1.1 Nature of the Variation Sought

1.1.1 The Variation Application seeks to vary Annex 1 of the Existing s.36 consent granted on the 17 June 2019 to allow the following:

1. Vary Annex 1 of the Existing s.36 consent, to increase the overall generating capacity permitted from “around 700MW” to “up to 1000MW”, without any variation to the physical parameters of Wind Turbine Generators (“WTG”) or any other component included within the application for the Existing s.36 consent in August 2018 (“the Original Application”).

1.2 Environmental Impacts

- 1.2.1 The Scottish Ministers are satisfied that the Variation Application will not have significant 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 (“the Variation Regulations”), and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”).
- 1.2.3 The Scottish Ministers do not consider that the proposed changes within the Variation Application will change the conclusions of the Environmental Impact Assessment Report and the Habitats Regulation Appraisal supporting the application for s.36 consent in August 2018 (“the Original Application”).
- 1.2.4 In accordance with the 2017 EW Regulation, the Scottish Ministers did not deem it necessary for a new Environmental Impact Assessment report to be submitted in support of the Variation Application.
- 1.2.5 As there will be no likely significant effects from the proposed changes, either on any European marine site or on any European protected sites, an Appropriate Assessment is not required.

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.
- 1.3.2 In line with Regulation 4 the Company served notice of the Variation Application to the planning authorities consulted on the Original Application. Public notices were placed in the in the Courier for two weeks and for one week each in the Scotsman, the Edinburgh Gazette, the Lloyds List and the Fishing News. 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, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council.
- 1.3.3 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, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council, Scottish Natural Heritage (“SNH”), Scottish Environment Protection Agency (“SEPA”), the Maritime and Coastguard Agency (“MCA”), Historic Environment Scotland (“HES”) and the Northern Lighthouse Board (“NLB”). Scottish Ministers also placed the Variation Application

documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 consent. No objections were received, with comments in the main restating points made during the consultation on the Original Application. A number of organisations did not provide a response. In the case of no response, MS-LOT notified the relevant consultees that “nil returns” would be assumed.

- 1.3.4 No objections to the Variation Application were raised by any consultees.
- 1.3.5 **Aberdeen International Airport** did not object to the Variation Application.
- 1.3.6 Aberdeenshire Council confirmed that it had no objection to the Variation Application.
- 1.3.7 **Aberdeenshire Council** undertook an assessment of the Variation Application against the Aberdeenshire Local Development Plan 2017 (“the 2017 Aberdeenshire LDP”), which was submitted to MS-LOT in support of its final response. In the assessment, Aberdeenshire Council highlighted its initial concerns related to the Original Application regarding potential impacts on the Built Heritage, Landscape and Visual Impacts and Ornithology, the latter being an objection to the Original Application. Aberdeenshire Council commented that the Variation Application is unlikely to lead to additional impact in relation to Built Heritage, Landscape and Visual Impacts and consequently, confirmed the proposal will continue to be in compliance with the relevant policies of the 2017 Aberdeenshire LDP. In regard to Ornithology, Aberdeenshire Council previously objected on the basis that uncertainty remained in relation to the potential effect on the Fowlsheugh Special Protected Area (“SPA”), and whether further mitigation could alleviate these concerns. Aberdeenshire Council reiterated that it remained unconvinced that the impact of the Development to the Fowlsheugh SPA could be reconciled with the 2017 Aberdeenshire LDP. Aberdeenshire Council accepted that the scope of the Variation Application was limited and confirmed that it was unlikely additional impacts in relation to Ornithology would occur.
- 1.3.8 **Angus Council** had no comments to make on the Variation Application.
- 1.3.9 **British Telecom (“BT”)** confirmed that the Development should not cause interference to BT’s current and presently planned radio network.
- 1.3.10 **Defence Infrastructure Organisation on behalf of the Ministry of Defence (“MOD”)** had no objection to the Variation Application. MOD requested that the conditions in regard to Aviation Radar (“ATC Scheme”), Air Defence Radar Mitigation Scheme (“ADR Scheme”) and Lighting and Marking Plan (“LMP”) were carried forward into any new consent that may be issued.
- 1.3.11 Officials can confirm that the conditions of the Existing s.36 consent regarding the ATC Scheme, ADR Scheme and LMP will not be varied and will remain in place.

- 1.3.12 **Dundee City Council** had no comments to make on the Variation Application.
- 1.3.13 **East Lothian Council** requested clarification from MS-LOT on whether the Variation Application will lead to further onshore transmission works located at Cockenzie which have planning consent in principle. MS-LOT advised that any issues related to the onshore aspects of the Development and the national grid connections are not under the jurisdiction of Marine Scotland and advised East Lothian Council that the best way to address concerns might be to get in touch directly with the Company. East Lothian Council requested confirmation from the Company on whether the onshore works already permitted will be affected by the Variation Application. The Company confirmed that the Onshore Transmission Works Planning Permission in Principle (“OnTW PPP”), granted in 2019, remains valid and that the Variation Application will not effect this. The Company also confirmed that no onshore works beyond the parameters of the 2019 OnTW PPP will be required. East Lothian Council confirmed that, it does not object to the Variation Application and welcomes the increase in the generating capacity.
- 1.3.14 Officials are content with the evidence submitted and considered the issue closed.
- 1.3.15 **Fife Council** confirmed that it had no adverse comment to make on the Variation Application. Fife Council stated its interest in finding out more about any provision made for funds for community benefit from the Development and similar developments off the Fife coast.
- 1.3.16 The Company commented that it does not deem Fife Council’s comments, in relation to community benefit, to be pertinent to the Variation Application. MS-LOT agreed with the Company’s response and agreed that any engagement with Fife council would be welcome. The Company confirmed on 27 April 2020 that it is in regular discussions with the councils and that it will discuss community benefits outside of the Variation Application consultation process.
- 1.3.17 **Forth Ports** had no comments to make to the Variation Application.
- 1.3.18 **HES** stated that it did not object to the Development and since the Variation Application did not seek to alter any physical parameters of the original proposals, confirmed that it had no further comments or advice at this stage.
- 1.3.19 HES highlighted that its comments should be treated as a material consideration and confirmed that the proposals did not raise historic environment issues of national significance and, therefore, it does not object. HES however, stated that this decision should not be taken as 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.

- 1.3.20 Officials noted the comment of HES and can confirm that all the national and local policies have been taken into consideration at the time that the Existing s.36 consent was granted.
- 1.3.21 **Maritime and Coastguard Agency (“MCA”)** confirmed that it did not have significant concerns to raise on the Variation Application. MCA reiterated that the above opinion is on the understanding that the worst case scenario remains as is assessed in the Navigational Risk Assessment (“NRA”) and that there is no change to parameters in it that would lead to greater significance.
- 1.3.22 The Company confirmed on 27 April 2020 that the proposals of the Variation Application will not affect the conclusions of the NRA. Officials are satisfied with the confirmation.
- 1.3.23 **National Air Traffic Service** had no safeguarding objection to the Variation Application.
- 1.3.24 **Northern Lighthouse Board** has no objection to the Variation Application.
- 1.3.25 **Royal Yachting Association Scotland** had no comments to make to the Variation Application.
- 1.3.26 **Scottish Borders Council** had no comments to make to the Variation Application.
- 1.3.27 **Scottish Fishermen Federation (“SFF”)** confirmed it was content with the Variation Application. SFF however, highlighted it still had concerns about the impacts of the consented Development on the environment and the fishing industry. SFF requested that MS-LOT develops a consent condition to ensure the Development would consider fishing impacts whilst updating its post-consent plans and ensure the Company is contributing to fishing related projects at Scottish Marine Energy Research (“ScotMER”) programme.
- 1.3.28 Conditions had been attached to the Existing s.36 consent requiring the Company to prepare, consult on and adhere to an Fisheries Mitigation Management Strategy (“FMMS”) and participate at the ScotMER programme, to contribute to an improved understanding of the impacts of the Development on commercial fisheries to mitigate concerns regarding commercial fisheries.
- 1.3.29 Officials can confirm that the condition of the Existing s.36 consent regarding the FMMS and ScotMER participation are not being varied and will remain in place.
- 1.3.30 **SEPA** had no objection to the Variation Application.
- 1.3.31 **SNH** had no comments to make to the Variation Application.

- 1.3.32 **Transport Scotland (“TS”)** confirmed that after reviewing the Variation Application Report and the Variation Application that was satisfied that the conclusions of its consultation response to the Original Application remained valid and requested the condition, in regard to the Construction Traffic Management Plan (“CTMP”) to be attached in any potential consent variations.
- 1.3.33 TS confirmed that it had no further comments to make to the Variation Application.
- 1.3.34 Officials can confirm that the condition regarding the CTMP will not be varied and will remain in place.
- 1.3.35 **UK Chamber of Shipping** had no comments to make to the Variation Application.
- 1.3.36 **Whale and Dolphin Conservation** confirmed that due to capacity issues is not able to respond to the Variation Application consultation.

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 (the Existing s.36 consent) for the Development on 17 June 2019 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 vary the Existing s.36 consent.
- 1.5.2 The Scottish Ministers consider that the proposed variation is both reasonable and enforceable.
- 1.5.3 Accordingly, the Scottish Ministers hereby vary the Existing s.36 consent as set out in the table below.

**Annex
Condition**

or

Variation

DESCRIPTION OF THE DEVELOPMENT

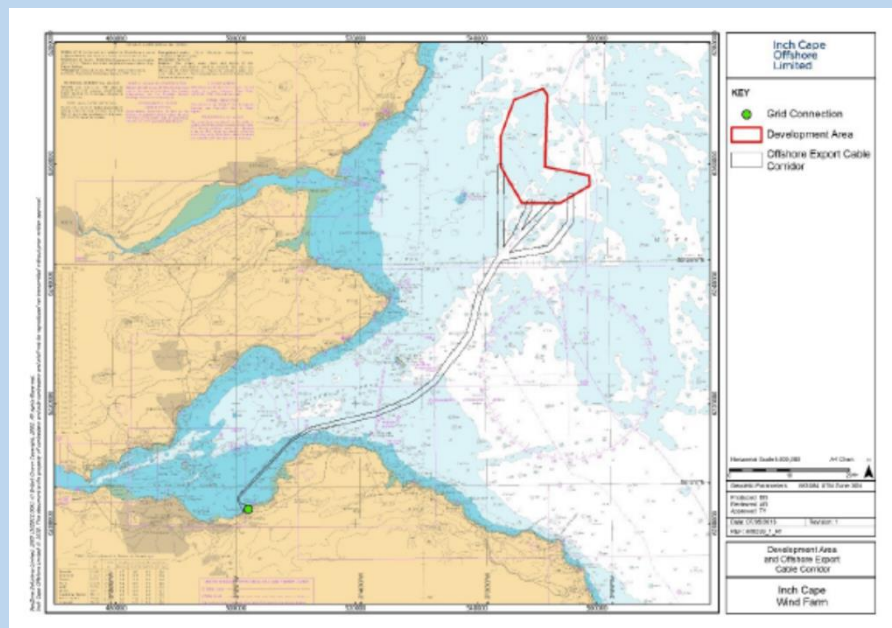
for:

An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below, with a maximum generating capacity of around 700 megawatts (“MW”) comprising:

1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
 - a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
 - b) A maximum rotor diameter of 250 metres;
 - c) A minimum blade tip clearance of 27.4 metres (measured from LAT);
 - d) A maximum blade width of 7.8 metres; and
 - e) A nominal turbine spacing of 1,278 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling;

In Annex 1

The total area within the Development site boundary is 150km².

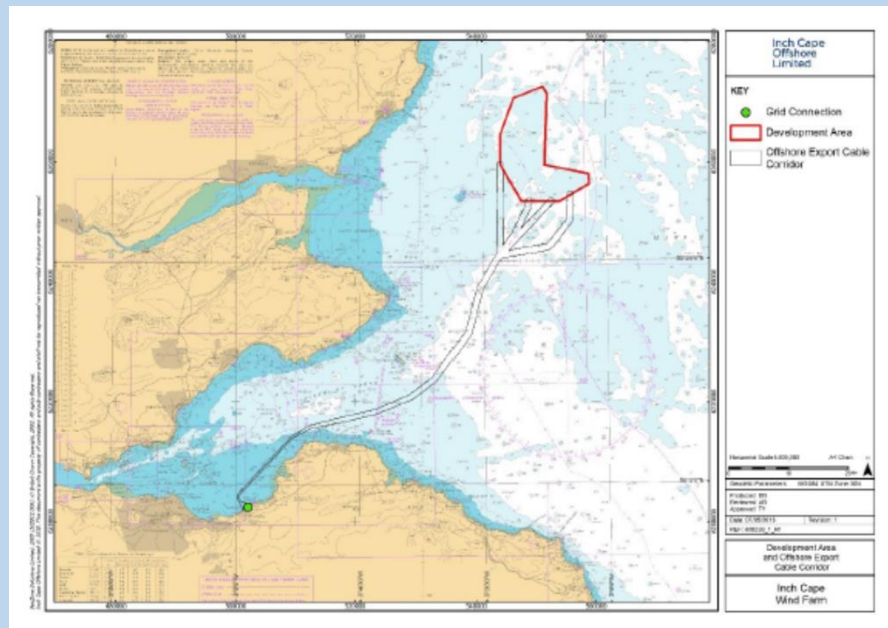


Substitute:

An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below, with a maximum generating capacity of up to 1000 megawatts (“MW”) comprising:

1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
 - a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
 - b) A maximum rotor diameter of 250 metres;
 - c) A minimum blade tip clearance of 27.4 metres (measured from LAT);
 - d) A maximum blade width of 7.8 metres; and
 - e) A nominal turbine spacing of 1,278 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling;

The total area within the Development site boundary is 150km².



1.5.4 Copies of this letter have been sent to relevant onshore planning authorities: Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council. This letter has also been published on the [Marine Scotland Information website](#).

- 1.5.5 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.
- 1.5.6 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 - In the decision letter attached at Annex C

“ADR Scheme” means Air Defence Radar Mitigation Scheme;
“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme;
“BT” means British Telecom;
“CTMP” means Construction Traffic Management Plan;
“HES” means Historic Environment Scotland;
“FMMS” means Fisheries Management and Mitigation Strategy;
“km” mean kilometres;
“LMP” means Lightning Marking Plan;
“MCA” means Maritime and Coastguard Agency;
“MOD” means Ministry of Defence;
“MS-LOT” means Marine Scotland Licensing Operations Team;
“NLB” means Northern Lighthouse Board;
“NRA” means Navigation Risk Assessment;
“OnTW PPP” means Onshore Transmission Works Planning Permission in Principle;
“s.36” means section 36;
“ScotMER” means Scottish Marine Energy Research;
“SEPA” means Scottish Environment Protection Agency;
“SFF” means Scottish Fishermen Federation;
“SNH” means Scottish Natural Heritage;
“the 1994 Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994;
“the 2017 Aberdeenshire LDP” means the 2017 Aberdeenshire Council Local Development Plan;
“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 Inch Cape Offshore Limited (SC373173, 5th Floor, 40 Princes Street, Edinburgh EH2 2BY);
“the Development” means the Inch Cape Offshore Wind Farm, approximately 15-22km east of the Angus coastline;
“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 17 June 2019;
“the Original Application” means the application submitted to the Scottish Ministers on 15 August 2018 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 30 January 2020 by the Company;
“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended);
“TS” means Transport Scotland; and
“WTG” means wind turbine generator.