

## 1. ANNEX C Draft Decision Notice and Proposed Variation

[MS.MarineRenewables@gov.scot](mailto:MS.MarineRenewables@gov.scot)



Mr Daniel H. Finch  
Moray Offshore Windfarm (West) Limited  
C/O Shepherd And Wedderburn Llp  
Octagon Point  
5 Cheapside  
London  
EC2V 6AA

Our Reference: 012/OW/MORLW-8

March 2022

Dear Mr Finch,

**APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 ON 14 JUNE 2019 TO CONSTRUCT AND OPERATE THE MORAY WEST OFFSHORE WIND FARM, ELECTRICITY GENERATING STATION, LOCATED APPROXIMATELY 22.5 KILOMETERS (“KM”) SOUTHEAST FROM THE CAITHNESS COASTLINE.**

I refer to the application to vary the consent for the Moray West Offshore Wind Farm (“the Development”). This Application (“the Variation Application”) was made by Moray Offshore Windfarm (West) Limited (“the Company”) on 30 March 2021 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 14 June 2019 (“the Existing s.36 consent”) for the construction and operation of the Development, located approximately 22.5km southeast from the Caithness 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 14 June 2019 to allow the following:

1. Vary Annex 1 of the Existing s.36 consent, to change the physical parameters of the Wind Turbine Generators (“WTG”) under the

consented 72 WTG scenario by increasing the blade width from 6 metres to 6.6 metres,

and

2. remove reference to a maximum generating capacity of around 850MW.

1.1.2 The Variation Application does not seek to change any other physical parameters of the WTG or any other component included within the Original Application for the Existing s.36 consent.

## **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 the following:

- Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) and regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the 2017 Offshore Habitats Regulations”) (collectively referred to as “the Habitats Regulations”); and
- the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”)
- the Marine Works (Environmental Impact Assessment) Regulations 2007 (“the 2007 MW 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 Existing s.36 consent.

1.2.4 In accordance with the 2017 EW Regulations and the 2007 MW Regulations, the Scottish Ministers did not deem it necessary for a new Environmental Impact Assessment (“EIA”) report to be submitted in support of the Variation Application.

1.2.5 An AA under the Habitats Regulations dated 26 April 2019 was completed in respect of the application for the Existing s.36 consent. The Scottish Ministers have reviewed the AA and having considered the updated environmental information, are content that the conclusions remain valid in respect of the Variation Application and no further assessment is 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

## Annex C Draft Decision Notice and Proposed Variation

website, serve a copy of the variation application on the planning authority(/ies), 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 Banffshire Journal, Fishing News, The Press and Journal and The Edinburgh Gazette for two weeks and for one week each in Lloyd's List and The Scotsman. The same planning authorities were served copies of the Variation Application by the Company as those who were served copies of the Original Application, in this case Aberdeenshire Council, The Highland Council and Moray Council.
- 1.3.3 MS-LOT on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Variation Application including: Aberdeenshire Council, Moray Council, the Highland Council, Historical Environment Scotland ("HES"), Maritime and Coastguard Agency ("MCA"), Northern Lighthouse Board ("NLB"), Scottish Environment Protection Agency ("SEPA"). Scottish Ministers also placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 consent.
- 1.3.4 Objections to the Variation Application were received from the Scottish Fishermen's Federation ("SFF") and initially from the North and East Coast Inshore Fisheries Group ("NECIFG"), although this objection was later withdrawn. The remaining consultation responses in the main restated points made during the consultation on the Original Application.
- 1.3.5 **Scottish Fishermen's Federation** objected to the Variation Application, questioning the need for a variation given that existing s.36 consent is in line with the current capacity of the grid connection, and on the basis that insufficient consideration has been given to new developments on the impacts of Electro-Magnetic Fields ("EMF") from cables; including addressing the cumulative effects. SFF referred to relevant science regarding the impacts of EMF on crabs and lobsters, and maintains its objection on the basis that there is now science backing SFF's point.
- 1.3.6 MS-LOT responded that it is aware of ongoing and emerging research on EMF and impacts on benthic communities. MS-LOT considers the embedded mitigation within the EIA Report, such as the use of cables that reduce EMF emissions, and achieving a minimum cable burial depth of 1 metre where possible, to be sufficient. MS-LOT recognises the importance of collecting field measurements on EMF and is looking into the potential for strategic research. MS-LOT is satisfied that the concerns raised by SFF have been sufficiently addressed
- 1.3.7 **North and East Coast Regional Inshore Fisheries Group ("NECRIFG")** initially objected to the Variation Application on the basis that the proposal did not make clear the impact of the increased flexibility in generating capacity on the commercial fishing industry.

## Annex C Draft Decision Notice and Proposed Variation

- 1.3.8 The Company responded that the proposals in the Variation Application would increase flexibility, to allow the use of the most efficient WTG and generating equipment available. However, it said that it would not result in a change to the transmission infrastructure and therefore would not have any additional impact on the commercial fishing industry.
- 1.3.9 MS-LOT informed NECRIFG that any proposed changes to the wind farm transmission infrastructure would require further consultation. NECRIFG subsequently withdrew its objection.
- 1.5.1 **Aberdeen International Airport** had no comment to make on the Variation Application.
- 1.5.2 **Aberdeenshire Council** stated that the proposed changes to the physical parameters did not in their view result in any significant adverse impacts to the issues most relevant to Aberdeenshire Council and the increase in blade width was highly unlikely to be noticeable from viewpoints within Aberdeenshire and as such caused no concern. Aberdeenshire Council highlighted that the increase in blade width was a direct consideration in assessing collision risk mortality of seabirds, and in this case the East Caithness Cliffs Special Protection Area (“SPA”) could be affected, and would be a matter for the Highland Council, RSPB and NatureScot to consider.
- 1.5.3 **British Telecom (“BT”)** concluded that the Variation Application should not cause interference to BT’s current planned radio network, however if there was a change to the original locations then would BT would review this.
- 1.5.4 **Civil Aviation Authority** confirmed that it had no comments on the proposed Variation Application.
- 1.5.5 **HES** had no comments to make on the Variation Application.
- 1.5.6 **The Highland Council** did not object to the proposal subject to the conditions within the Existing s.36 consent remaining in place on any new consent.
- 1.5.7 **MCA** confirmed it had no objections to the proposal and associated variation to the marine licence and noted that that the agreement of the layout design was under discussion and it expected that any variation to the Existing s.36 consent to be accounted for in future designs presented to MCA.
- 1.5.8 **Ministry Of Defence** confirmed that it had no objection to the proposal on the basis that the conditions applied to the Existing s.36 consent to address the impacts the scheme would have upon MOD Air Traffic Control radar and aviation safety and requirement for submission of data for charting) were replicated on any new consent.
- 1.5.9 **Moray Council** confirmed that it had no objections to the proposed Variation Application.

- 1.5.14 **NatureScot** confirmed it had no major comments to make and noted that the revised collision risk estimates for kittiwake, great black-backed gull, herring gull and gannet were lower than the estimates used to support the original application and Existing s.36 consent decision. NatureScot agreed that the conclusions reached by Moray West and Scottish Ministers remain valid.
- 1.5.15 **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)** advised that its view, as stated in its response to the Original Application, is that the Moray West offshore wind farm, in combination with other wind farms in the Moray Firth and UK east coast, is predicted to have substantial impacts on kittiwakes, guillemot and razorbill, and that these are significant in EIA terms.
- 1.5.16 RSPB Scotland noted that increasing the blade width for the 72 turbine scenario, predicted collisions of kittiwake to reduce by 3 per year but still considered a substantial impact to seabirds from the proposed Development.
- 1.5.17 RSPB Scotland acknowledged that generating similar capacity with fewer, higher output turbines could realise a substantial reduction in impacts to seabirds whilst realising maximum renewables capacity for least environmental effect. They said that they would welcome further consideration of potential opportunities for reducing impacts to seabirds.
- 1.5.18 The Company noted the comments from RSPB Scotland and responded that the Variation Application would not alter the mitigations to be put in place. MS-LOT is content that, given the Variation Application does not increase the adverse impacts on ornithology receptors in comparison to the Original Application, the concerns of RSPB Scotland have been adequately addressed.
- 1.5.19 **Royal Yachting Association** Scotland had no comment to make on the Variation Application.
- 1.5.20 **SEPA** confirmed it had no comment to make on the Variation Application.
- 1.5.23 **Sport Scotland** confirmed it had no comment on Variation Application.
- 1.5.24 **UK Chamber of Shipping** confirmed no comment on the Variation Application.

#### **1.4 Public Representations**

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

#### **1.7 Advice from Third Parties**

- 1.7.1 **Marine Scotland Science (“MSS”)** advised that the requested change does not exceed the worst case scenario assessment in respect of marine

ornithology. MSS recommended that the Company should seek clarification as to whether any operational change in the WTGs is required to increase the maximum energy generation and how this subsequently might impact the assumptions made in the worst case scenario assessment.

- 1.7.2 In respect to marine mammals and diadromous fish, MSS advised that it is content with the proposed Variation Application, providing that maximum hammer energy in piling remains within the levels included in the Existing s.36 Consent.
- 1.7.3 Regarding aquaculture, MSS advised that the proposal to increase the size of the rotor blades and removing limitation on maximum energy generation capacity is not expected to impact aquaculture animal health.
- 1.7.4 MSS confirmed it had no comments to make regarding marine fish ecology, commercial fisheries, physical environment and coastal processes, and benthic ecology.
- 1.7.5 The Company confirmed that no other parameters of the WTGs are expected to change including any operational parameters that may affect collision risk modelling.
- 1.7.6 **Transport Scotland** stated that it had no objections to the proposed Variation Application, subject to its condition regarding a Construction Traffic Management Plan being reattached to any new consent granted.

## **1.5 The Scottish Ministers' 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 14 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 it is appropriate to make the variation to the existing s.36 consent.
- 1.5.3 Accordingly, the Scottish Ministers **hereby vary the Existing s.36 consent as set out in the table below.**

### 1.5.4 Original and substituted text for Section 36 consent

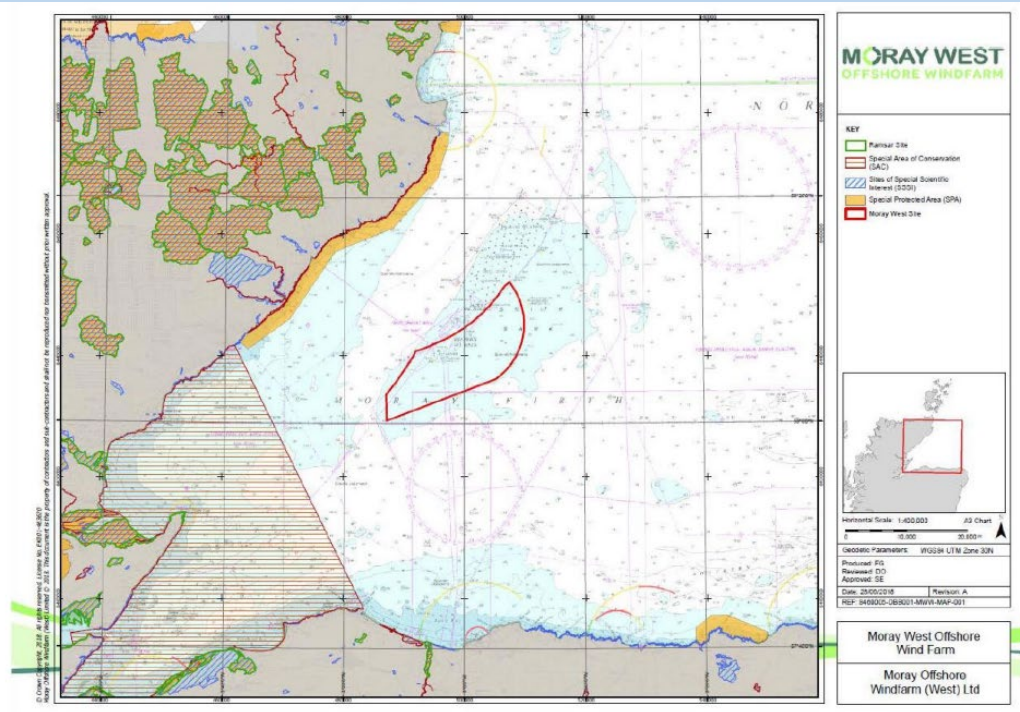
Section or Annex	Text
<p>In Section 1.5  and Annex 1</p>	<p><b>Original Text:</b></p> <p>The Application is for the construction and operation of an offshore energy generating station, within a maximum generating capacity of around 850 megawatts (“MW”). The offshore generating station shall comprise either:</p> <p>1. No more than 85 three-bladed horizontal axis Wind Turbine Generators (WTG) each with either:</p> <ul style="list-style-type: none"> <li>a. a maximum rotor tip height of 230 metres (measured from Highest Astronomical Tide “HAT”);</li> <li>b. a maximum rotor diameter of 195 metres;</li> <li>c. a maximum hub height of 132.5 metres (measured from HAT);</li> <li>d. a minimum blade tip clearance of 35 metres (measured from HAT);</li> <li>e. blade width of up to 6 metres; and</li> <li>f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind.</li> </ul> <p><b>or</b></p> <p>If the rotor tip height of the WTGs exceeds 230 metres (measured from HAT), no more than 72 WTGs each with:</p> <ul style="list-style-type: none"> <li>a. a maximum rotor tip height of 265 metres (measured from HAT);</li> <li>b. a maximum rotor diameter of 230 metres;</li> <li>c. a maximum hub height of 150 metres (measured from HAT);</li> <li>d. a minimum blade tip clearance of 35 metres (measured from HAT);</li> <li>e. blade width of up to 6 metres; and</li> <li>f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind</li> </ul> <p>2. No more than 275km of inter-array cable;</p> <p>3. Monitoring equipment, such as metocean buoys;</p> <p>4. Up to 85 foundations and substructures, and associated fixtures, fittings and protections;</p> <p>5. Scour and inter-array cable protection; and</p>

	<p>6. The design of the WTG substructure will be chosen from the following options:</p> <ul style="list-style-type: none"><li>i. Gravity base;</li><li>ii. Monopile;</li><li>iii. Jacket Foundation;</li><li>iv. Suction Caisson;</li></ul> <p>All as described in the Application.</p>
	<p><b>Substitute for:</b></p> <p>The Application is for the construction and operation of an offshore energy generating station. The offshore generating station shall comprise either:</p> <p>1. No more than 85 three-bladed horizontal axis Wind Turbine Generators (WTG) each with either:</p> <ul style="list-style-type: none"><li>a. a maximum rotor tip height of 230 metres (measured from Highest Astronomical Tide “HAT”);</li><li>b. a maximum rotor diameter of 195 metres;</li><li>c. a maximum hub height of 132.5 metres (measured from HAT);</li><li>d. a minimum blade tip clearance of 35 metres (measured from HAT);</li><li>e. blade width of up to 6 metres; and</li><li>f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind.</li></ul> <p>or</p> <p>If the rotor tip height of the WTGs exceeds 230 metres (measured from HAT), no more than 72 WTGs each with:</p> <ul style="list-style-type: none"><li>a. a maximum rotor tip height of 265 metres (measured from HAT);</li><li>b. a maximum rotor diameter of 230 metres;</li><li>c. a maximum hub height of 150 metres (measured from HAT);</li><li>d. a minimum blade tip clearance of 35 metres (measured from HAT);</li><li>e. blade width of up to 6.6 metres; and</li><li>f. a minimum spacing of 1,050 metres crosswind and 1,200 metres downwind</li></ul> <p>2. No more than 275km of inter-array cable;</p> <p>3. Monitoring equipment, such as metocean buoys;</p>



4. Up to 85 foundations and substructures, and associated fixtures, fittings and protections;
5. Scour and inter-array cable protection; and
6. The design of the WTG substructure will be chosen from the following options:
  - i. Gravity base;
  - ii. Monopile;
  - iii. Jacket Foundation;
  - iv. Suction Caisson;All as described in the Application.

**Figure 1 - Moray West Offshore Windfarm Site**



1.5.5 Copies of this letter have been sent to relevant onshore planning authorities: Aberdeenshire Council, The Highland Council and Moray Council. This letter has also been published on the [Marine Scotland Information website](#).

## Annex C Draft Decision Notice and Proposed Variation

- 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,

Debbie England

A member of the staff of the Scottish Government

**DEFINITIONS AND GLOSSARY OF TERMS - In the decision letter attached at Annex C**

“AA” means Appropriate Assessment;

“BT” means British Telecom;

“CRM” means Collision Risk Modelling;

“the Development” means the Moray West Offshore Wind Farm, approximately 22.5km southeast from the Caithness coastline;

“EIA” means Environmental Impact Assessment;

“the Electricity Act” means the Electricity Act 1989;

“the Existing s.36 consent” means the s.36 consent granted by the Scottish Ministers in favour of the Company on 14 June 2019;

“the Company” means Moray Offshore Windfarm (West) Limited (10515140), Octagon Point, 5 Cheapside, London, England, EC2V 6AA);

“HES” means Historic Environment Scotland;

“HRA Report” means Habitat Regulations Appraisal Report;

“km” mean kilometres;

“MCA” means Maritime and Coastguard Agency;

“MOD” means Ministry of Defence;

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

“MSS” means Marine Scotland Science;

“MW” means megawatts;

“NECRIFG” means North and East Coast Regional Inshore Fisheries Group;

“NLB” means Northern Lighthouse Board;

“the Original Application” means the application submitted to the Scottish Ministers on 5 July 2018 by the Company for Section 36 consent;

“s.36” means Section 36;

“RSPB Scotland” means the Royal Society for the Protection of Birds Scotland;

“RYA” means Royal Yachting Association;

“SEPA” means Scottish Environment Protection Agency;

“SFF” means Scottish Fishermen Federation;

“TS” means Transport Scotland;

“UK CoS” means UK Chamber of Shipping;

“the Variation Application” means the application to vary the Existing s.36 consent submitted to the Scottish Ministers on 30 March 2021 by the Company;

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

“the Variation Report” means An Offshore Consents Variation Application Report;

“WTG” means wind turbine generator;

“the 72 WTG scenario” means the option to construct 72 WTGs within the Existing s.36 consent;

“the 85 WTG scenario” means the option to construct 85 WTGs within the Existing s.36 consent;

“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;

“the 2007 MW Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007

## Annex C Draft Decision Notice and Proposed Variation

“the 2017 Offshore Habitats Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017.