

Cabinet Secretary for Net Zero, Energy and Transport

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED TO THE MORAY WEST OFFSHORE WIND FARM DEVELOPMENT

1. Submission to Ministers

1.1 Purpose

1.1.1 To seek your approval to vary the Section 36 (“s.36”) consent for 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 and relates to the proposed variation of the consent granted on 14 June 2019 to the Company under s.36 of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of the Development.

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. Change the physical parameters of the Wind Turbine Generators (“WTG”) under the consented option to build 72 WTGs (“the 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 850 megawatts (“MW”)

1.3.2 On 12 November 2020 the Scottish Ministers issued a screening opinion under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EW Regulations”) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (“the 2007 MW Regulations”), which concluded that the proposed Variation Application does not require an Environmental Impact Assessment (“EIA”).

1.3.3 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 granted on 14 June 2019 and in relation to the application submitted on 5 July 2018 (“the Original Application”), in line with the Scottish Government Applications for Variation of s.36 Consents Guidance Note published in May 2019.

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

1.4 Consideration of the Application

- 1.4.1 Under s.36C(4) of the Electricity Act, the Scottish Ministers may make a variation to a s.36 consent if it appears appropriate to do so, in particular having regard to:
- 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 The Variation Application seeks to amend Annex 1 of the Existing s.36 consent but does not propose to fundamentally alter the character or scale of the Development. There will be no changes in the boundary of the Development as shown at Figure 1 of Annex 1.
- 1.4.3 Eighteen consultation responses to the Variation Application were received, including two objections, as explained below. A full summary of the consultation responses and the means by which concerns and objections have been addressed are detailed in [Annex A](#).
- 1.4.4 The Scottish Fishermen’s Federation (“SFF”) objected to the Variation Application on the basis that the capacity of the grid connection is in line with the Existing s.36 consent, and on the basis that further consideration should be given to new developments regarding the impacts of electro-magnetic fields (“EMF”) from cables on fishing interests.
- 1.4.5 Marine Scotland-Licensing Operations Team (“MS-LOT”) is aware of ongoing and emerging research on the impact of EMF on benthic communities. However, MS-LOT considers the embedded mitigation within the EIA Report that supported the Existing Section 36 consent, 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 considers that the removal of the reference to a maximum generating capacity has no impact on fishing interests as the Variation Application does not seek to alter the offshore transmission infrastructure.
- 1.4.6 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.
- 1.4.7 The Company confirmed that the Variation Application intended to increase flexibility to allow the use of the most efficient WTG and generating

equipment available but would not result in a change to the transmission infrastructure and therefore would not have any additional impact on the commercial fishing industry.

1.4.8 MS-LOT informed NECRIFG that any proposed changes to the wind farm transmission infrastructure would require further consultation and NECRIFG subsequently withdrew its objection.

1.4.9 The views of consultees were considered in determining whether to grant the proposed variation.

1.5 Environmental Impacts

1.5.1 On 30 March 2021, the Company submitted the Variation Application and associated s.36 Consent Variation Application Report (“the Variation Report”) detailing the rationale and benefits of the variation requested..

1.5.2 The Existing s.36 consent includes an option to either construct 85 WTGs (“the 85 WTG scenario”) or the 72 WTG scenario. Each scenario has specific parameters, including blade width.

1.5.3 The Company is exploring options for installation of WTGs under the 72 WTG scenario which requires an increase in blade width from the consented 6 metres to 6.6 metres. This differs to the parameters assessed under the 72 WTG scenario within the EIA Report and the Habitats Regulations Appraisal (“HRA”) that supported the Original Application.

1.5.4 The blade width of WTGs under both WTG consented scenarios were assessed in the EIA Report in relation to collision risk for ornithology receptors only. The Company carried out additional Collision Risk Modelling (“CRM”) to assess the collision mortality impacts of the proposed increase in the WTG blade width on ornithology receptors under the 72 WTG scenario. The CRM concluded that there would be a small decrease in the predicted annual collision mortality for each ornithology receptor in comparison to the alternative consented 85 WTG scenario.

1.5.5 The Existing s.36 consent includes a maximum generating capacity of around 850MW. However the capacity of WTGs has become more flexible, with further variation in generating capacity per WTG expected as WTG manufacturers improve performance. MS-LOT considers that a change to WTG capacity will not influence the EIA Report, EIA Addendum, Habitats Regulations Appraisal Report (“HRA Report”) or the Great Black-Backed Gull Report supporting the Original Application.

1.5.6 Officials have administered the Variation Application in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), and the 2017 EW Regulations, and are satisfied that the proposed changes are not likely to have new environmental impacts and therefore no new EIA Report was needed to support the Variation Application.

- 1.5.7 An Appropriate Assessment (“AA”) under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 and regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (collectively referred to as “the Habitats Regulations”), dated 26 April 2019 was completed in respect of the Original Application. Officials have reviewed the AA and having considered the updated environmental information, they are content that the AA’s conclusions remain valid in respect of the Variation Application and no further assessment is required (see Annex D).
- 1.5.8 MS-LOT considers that the legislative requirements set out above, and described in Annex B, 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, Moray Council, The Highland Council and Aberdeenshire Council. This requirement has been met.
- 1.6.3 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, NatureScot, Northern Lighthouse Board, Scottish Environment Protection Agency and Historic Environment Scotland.
- 1.6.4 No representations were received from members of the public. The SFF maintains its objection however MS-LOT is content that the concerns raised have been sufficiently addressed. The objection raised by NECRIFG was resolved and lifted.
- 1.6.5 Officials consider that you can be satisfied that, in this circumstance, that it is appropriate to authorise the proposed variation to the Existing s.36 consent.
- 1.6.6 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](#), [Annex B](#) and [Annex D](#).

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 Section 1.5 and 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](#).

If consent is granted for this Variation Application, the Scottish Ministers will vary the marine licence granted on 14 June 2019 (licence number 06763/19/0) in accordance with section 72(3)(d) of the Marine and Coastal Access Act 2009 to ensure that the marine licences and consent granted under section 36 of the Electricity Act 1989 in relation to the Development are consistent.

1.8 List of Annexes

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Copy List:	For Action	For Comment	For Information		
			Portfolio Interest	Constituency Interest	General Awareness
Cabinet Secretary for Net Zero, Energy and Transport	X	X			
Cabinet Secretary for Rural Affairs and Islands			X		
Minister for Environment, Biodiversity and Land Reform			X		
<p>DG Economy</p> <p>DG Net Zero</p> <p>Director of Marine Scotland</p> <p>Mike Palmer, Marine Scotland</p> <p>David Pratt, Marine Scotland</p> <p>Zoe Crutchfield, Marine Scotland</p> <p>Gayle Holland, Marine Scotland</p> <p>Debbie England, Marine Scotland</p> <p>Jessica Malcolm, Marine Scotland</p> <p>Mark Christie, Marine Scotland</p> <p>Paul Smith Marine Scotland</p> <p>Jared Wilson, Marine Scotland</p> <p>Allan Gibb, Marine Scotland</p> <p>Kersti Berge, Energy Directorate</p> <p>Andrew Hogg, Energy Directorate</p> <p>David Stevenson, Energy Directorate</p> <p>David Moffat, Legal Directorate</p> <p>Joanna Dingwall, Legal Directorate</p> <p>Mark Richards, Legal Directorate</p> <p>Fiona McClean, Legal Directorate</p> <p>John McFarlane, Special Advisor</p> <p>Kate Higgins, Special Advisor</p> <p>Communications – Finance & Economy</p> <p>Communications – Net Zero and Rural Affairs</p> <p>Gillian Provan – Communications</p> <p>Aileen MacArthur - Communications</p>					