

Mr Macaskill  
C/O Cms Cameron Mckenna Nabarro  
Olswang Llp 4th Floor,  
Saltire Court  
20 Castle Terrace  
Edinburgh  
EH1 2EN

Date 1 April 2021

Dear Allan Macaskill,

**ENERGY ACT 2004: OFFSHORE WIND ELECTRICITY GENERATING STATION**

**SAFETY ZONE APPLICATION – KINCARDINE OFFSHORE FLOATING WINDFARM APPROXIMATELY 15KM EAST OF ABERDEENSHIRE COAST.**

**1. The Application**

- 1.1. I am directed by the Scottish Ministers to refer to the Safety Zone application and supporting documentation (“the Application”) submitted on 20 May 2020 by Kincardine Offshore Windfarm Limited (Company Number SC475345) (“the Applicant” or “KOWL”) to the Scottish Ministers for a notice (“a safety zone notice”) be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (as amended) (“the 2004 Act”), declaring that the areas specified in the Application be safety zones for the purpose of securing the safety of the Kincardine Offshore Floating Windfarm and individuals and vessels in its vicinity during the periods of construction, operation, maintenance and decommissioning.
- 1.2. The Applicant requested a safety zone notice declaration in the following terms:

During Construction	A mandatory 500 metre radius safety zone around each Wind Turbine Generator (“WTG”) during hook-up operations of the WTG (from when connected to the first mooring) and when there is a construction vessel stationed at the structure.
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Pre – commissioning	A mandatory 50 metre radius safety zone around each WTG during pre-commissioning operations.
During Operations and Maintenance Phase	A 500 metre radius around all major maintenance <sup>1</sup> works being undertaken, where major maintenance is as per the definition given in the 2007 Regulations. The safety zones will be active whenever a “major maintenance” vessel is on station at a structure during the operational phase.
During Decommissioning	A 500 metre radius safety zone around each WTG during decommissioning operations of the turbine (up to the point where moorings are disconnected) and when there is a construction vessel stationed at the structure.

- 1.3. The application proposed that the 500 metre safety zones would be implemented on a rolling basis to ensure that safety zones are only “live” for those specific areas in which activities are taking place. Construction will be undertaken using, but not limited to: anchor Handling Tow Vessels; Offshore Construction Vessels; and any other vessels which are carrying out construction activities (all referred to as “construction vessels”).
- 1.4. A Notice of Application (the “Public Notice”) was published and served by the Applicant in accordance with the requirements of the 2004 Act and regulations 4 and 5 of the The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”). Due to the Covid-19 outbreak the Scottish Ministers requested that the Applicant carried out additional steps to ensure that all relevant and interested parties were served a notice of the application.

## 2. Representations

- 2.1. The Scottish Ministers note that a range of representations concerning the safety zones were requested by the Applicant. There was a general acceptance that safety zones of the dimensions and applications set out in the application were reasonable measures to secure the safety of mariners and those people working on the wind turbines, including their substructures. A full summary of the representations of all individual consultees and the Applicant’s response to the points raised is set in Annex 1.
- 2.2. The Maritime and Coastguard Agency (“MCA”), Scottish Fishermen’s Federation (“SFF”) and Northern Lighthouse Board (“NLB”) made representations about the application, the detail of which is written below.

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<sup>1</sup> “Major maintenance” works are defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) as “works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”.

2.3. The key points raised by consultees are set out below:

- a. The MCA stated that only the hook-up operations, removal from the site (excluding towing), pre-commissioning, major maintenance and decommissioning could be activities covered by safety zones. This excludes cable laying and towing activities. MCA also added that service operations vessels are not considered as construction or major maintenance vessels.
- b. The SFF responded stating that a 500 metre safety zone should only be active when a construction or work vessel is working on site or is tethered to the turbine and at all other times there should only be a 50 metre safety zone in place
- c. The NLB stated that it had no objections to the safety zone and recommended that the applicant should issue notice to mariners prior to the commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.

2.4. Resolution

- a. The applicant resolved the points raised from the consultation by re-submitting a revised application that was in line with the issues raised by the MCA and SFF. The application was then sent for further consultation with the MCA confirming that they were content with the revised application.
- b. The applicant also made a commitment to issue notice to mariners prior to the commencement of construction or major maintenance activities, and will clearly state the safety zone locations and nature of the activity.

### **3. Considerations of the Scottish Ministers**

- 3.1. Following receipt of the revised application for a safety zone, the Scottish Ministers have several options. Under section 95(2) of the 2004 Act, the Scottish Ministers may issue a notice declaring that such areas as specified or described in the notice are to be safety zones.
- 3.2. Such power shall be exercisable by the Scottish Ministers on an application made to them for the purpose by any person.
- 3.3. On consideration of the application and the representations received from consultees, MS-LOT opted to issue a notice in line the revised application submitted on 5 October 2020.

### **4. The decision of the Scottish Ministers**

- 4.1. In line with the points set out in section 2 above, the Scottish Ministers:

- have considered representations from the MCA and the SFF and are satisfied that the revised application submitted by KOWL has addressed those points raised in a satisfactory manner.
- note “*Major maintenance*” works and “*standard safety zone*”, as defined in the 2007 Regulation;
- note that the Kincardine Offshore Floating Windfarm will be marked and lit in accordance with relevant requirements as detailed in the approved Lighting and Marking Plan;
- note that, as indicated in the application, the Applicant has confirmed that there will be guard vessel(s) during the construction, operation, maintenance and decommissioning phases;
- note that the Applicant will issue regular notices to mariners and has also indicated it will promulgate relevant information about construction operations and safety zones through Kingfisher fortnightly bulletins, weekly notices of operations and notice to mariners (such information should also be sent to appropriate contacts within the Scottish Government and Marine Scotland to keep them informed of progress). Throughout the construction, operation, maintenance and decommissioning phases, the Kincardine Offshore Floating Windfarm will be marked and charted as required by the Scottish Ministers;
- note that vessels engaged in the construction of the wind farm or its major maintenance will, in the first instance, warn any unauthorised vessels that look as if they might be on a trajectory which would take them into a safety zone to alter their course;
- note that within areas declared to be a 500 metre safety zone or a 50 metre safety zone, the vessels permitted to enter and remain in the zone are vessels involved in activities related to construction and major maintenance works;
- having considered the representations and all other material considerations, do not consider it appropriate for a public inquiry to be held with respect to the application or the safety zone proposed by the Scottish Ministers.

## **5. The Issuing of the Notice declaring a safety zone**

- 5.1. On 9 March 2017 the Scottish Ministers granted in favour of Kincardine Offshore Windfarm Limited (Company Number SC475345) (“the Applicant”), a consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of the Kincardine Offshore Floating Windfarm approximately 15KM East of Aberdeenshire coast. The section 36 consent was subsequently varied on 15 May 2018 and then again on 6 September 2018 (“the s.36 consent”).
- 5.2. For the purposes of this notice, the Kincardine Offshore Floating Windfarm comprises not more than six, three-bladed horizontal axis WTGs and

associated inter-array cabling and export cables for which consent was granted by the Scottish Ministers under section 36 of the Electricity Act 1989 on 9 March 2017 and subsequently varied on 15 May 2018 and then again on 6 September 2018.

- 5.3. In light of the matters set out above, the Scottish Ministers consider that the declaration of safety zones of the type requested are appropriate for the purposes of securing the safety of:
- (a) the renewable energy installation or its construction, extension or decommissioning,
  - (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
  - (c) individuals in or on the installation or other installations in that vicinity, or
  - (d) vessels in that vicinity or individuals on such vessels.
- 5.4. The implementation of “rolling safety zones” minimises potential disruption for other marine users, by restricting implementation to certain circumstances and time-frames and is more proportionate than permanent exclusion zones. The Scottish Ministers conclude that the implementation of such proportionate safety zones is required to secure the purposes set out at section 95(2) of the 2004 Act (as listed above in para. 5.3), whilst minimising disruption to other marine users.
- 5.5. The Scottish Ministers hereby issue this notice declaring safety zones in the following terms:

During Construction	A mandatory 500 metre radius safety zone around each Wind Turbine Generator (“WTG”), during hook-up operations of the WTG (from when connected to the first mooring) and when there is a vessel carrying out construction activities.
Pre – commissioning	A mandatory 50 metre radius safety zone around each WTG during pre-commissioning operations.
During Operations and Maintenance Phase	A 500 metre radius around each WTG major maintenance <sup>2</sup> works being undertaken, where major maintenance is as per the definition given in the 2007 Regulations. The safety zones will be active whenever a vessel is carrying out “major maintenance” activities.

<sup>2</sup> “Major maintenance” works are defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) as “works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”.

During Decommissioning	A 500 metre radius safety zone around each WTG during decommissioning operations of the turbine (up to the point where moorings are disconnected) and when there is a vessel carrying out decommissioning.
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5.6. This notice comes into force on the date of this letter.

Yours sincerely,  
Michael Bland

Marine Scotland - Licensing Operations Team

## **Annex 1 Representations to the original application for a safety zone**

- 1 The Marine and Coastguard Agency (“MCA”)** supported the implementation of 500 metre safety zones during hook up, major maintenance and decommissioning, where construction vessels are alongside the floating structures also during pre-commissioning, up until the final commissioning of the windfarm the MCA supports 50 metre safety zone around each WTG.
  - 1.1 The MCA however did not support the use 500 metre safety zone during the mooring pre-lay works due to the lack justification given within the application. The MCA also did not support the use of 500 metre during towing, export cable laying and inter array cable laying operations as these activities are not covered within the 2007 Regulations. The MCA considered good seamanship and communication and adherence to the COLREG’s should ensure any potential risks are alleviated.
  - 1.2 The applicant in response to the MCAs representation amended the application removing the safety zones not supported. The revised application was then sent to the MCA for further consultation who responded stating that they were content with the revised application.
- 2 The Scottish Fishermen’s Federation (“SFF”)** responded to the consultation stating that in its view 500 metre safety zones should only be active when a construction vessel is tethered to the turbine. During normal operation there should ,in SFF’s view, only be a 50 metre safety zone in place.
  - 2.1 The applicant also addressed these comments with the revised application which was also sent to the SFF for further consultation. The SFF provided no further comment.
- 3 The Northern Lighthouse Board (“NLB”)** had no objection to the safety zones applied for but advised that the applicant issue notice to mariners prior to the commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.
  - 3.1 The applicant responded to the comments received by the NLB by making the commitment to issue notice to mariners prior to the commitment of the works.
- 4 The Royal Yachting Association (“RYA”)** had no objection to the application.