

Cabinet Secretary for Net Zero, Energy and Transport

**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 (AS VARIED ON 16 JULY 2020) TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM, LOCATED 15-22 KILOMETRES 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 section 36 (“s.36”) consent for Inch Cape Offshore Wind Farm (Revised Design) (“the Development”). This application (“the Variation Application”) was made by Inch Cape Offshore Limited (“the Company”) on 26 January 2021 and relates to the consent granted on 17 June 2019 to the Company under s.36 of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of the Development located approximately 15-22 kilometres east off the Angus coastline which was subsequently varied on 16 July 2020 to enable a maximum generating capacity of up to 1000 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 remove the maximum generating capacity of up to 1000 MW, without any variation to the physical parameters of the Wind Turbine Generators (“WTGs”) 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.36C(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 appropriate to be authorised by means of a s.36C Variation Application and in accordance with its associated procedures.
- 1.4.3 The Variation Application seeks to remove the maximum generating capacity of up to 1000 MW from Annex 1 of the Existing s.36 consent. None of the physical parameters of the WTGs or any other component of the Development would change, and therefore the Marine Scotland – Licensing Operations Team (“MS-LOT”) considers that there would be no implications with regards to environmental effects. 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 boundary of the Development.
- 1.4.4 The Scottish Fishermen’s Federation (“SFF”) objected to the proposed variation due to the uncertainty on whether the removal of the maximum generating capacity of the Development would lead to an increase in offshore transmission infrastructure. In response to this objection, the Company met with the SFF to discuss its concerns and formally responded in writing to address the concerns raised. The Variation Application does not enable the Company to install any additional infrastructure beyond what is already consented. If the Company was to seek an increase in infrastructure, this would be subject to a separate application. The SFF provided a further response to the Company reiterating its concerns. MS-LOT considers the matter to be resolved on the grounds that the SFF objection is not related to the content of the current Variation Application.
- 1.4.5 The Royal Society for the Protection of Birds (“RSPB”) maintained its historic objection to the Development and stated that a key concern is for MS-LOT to ensure that removing the maximum generating capacity will not alter or exceed the original design parameters of the existing environmental assessment. The Company responded directly to the RSPB confirming that this Variation Application did not seek to change any of the physical infrastructure from what was previously assessed within the environmental impact assessment. The Company also stated that there are a number of plans within the Existing s.36 consent which ensure the predicted environmental impacts of the final wind farm design remain within those assessed at the consenting application stage. It added that as part of the

formal process to discharge the consent conditions, the Company would provide information to demonstrate that there have been no material changes to what was assessed previously.

- 1.4.6 The RSPB also explained that the Variation Application would give the Company an opportunity to explore reducing the substantial predicted impacts to seabirds by generating the same capacity with fewer, higher output WTGs. The Company responded to the RSPB, explaining that the removal of the maximum generating capacity would enable the Development to create more energy without the need for further infrastructure. It said that this would support the Scottish Government's clean energy targets that would otherwise need to be generated by additional renewable energy projects. Upon receiving the response from the Company, the RSPB confirmed that it had no further representations to make. MS-LOT has considered the view of the RSPB and the response the Company submitted to address the concerns raised and is content that this objection has been addressed.
- 1.4.7 The views of consultees were considered during the determination process and the two objections raised have been addressed. Officials, therefore, advise Scottish Ministers that the variation is appropriate.

## **1.5 Environmental Impacts**

- 1.5.1 On 26 January 2021, the Company submitted the Variation Application and an associated Offshore Consent Variation Application Report ("the Variation Report") detailing the rationale of the variation requested. The Company stated that the increase in generating capacity would be achieved without changing the physical parameters of the infrastructure that had already been consented, and therefore would not result 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 the Variation Application 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 WTGs 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 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 MS-LOT 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 the 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 to 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, East Lothian Council, Fife Council, Dundee City Council and Scottish Borders 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, Angus Council, Dundee City Council, Fife Council, East Lothian Council, Scottish Borders Council, NatureScot, Scottish Environment Protection Agency and Historic Environment Scotland.
- 1.6.4 No representations were received from members of the public, and the two objections to the Variation Application received from the consultees were resolved through further discussion.
- 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

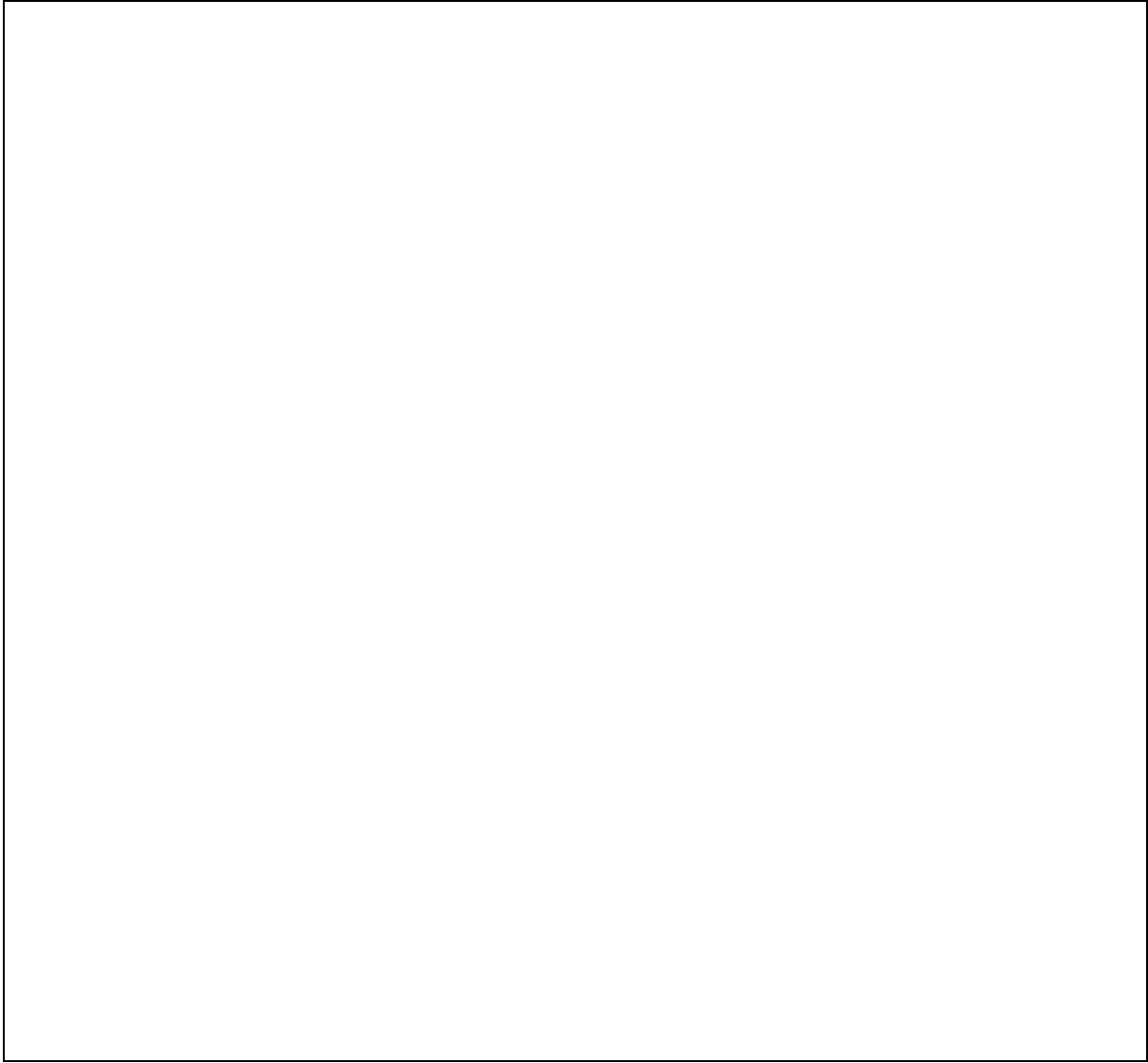
Having taken into account the consultation responses and being satisfied that all legislative requirements have been met, MS-LOT recommends that you determine that it is appropriate not to cause a public inquiry or any other hearing to be held, and to agree to vary Annex 1 of the Existing s.36 consent, 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
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		
Minister for Just Transition, Employment and Fair Work			X		
<p>DG Economy</p> <p>Director of Marine Scotland, Marine Scotland</p> <p>Mike Palmer, Marine Scotland</p> <p>Donna MacKinnon , 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 &amp; Networks Policy Unit, Energy and Climate Change</p> <p>David Stevenson, Offshore Wind Policy &amp; Supply Chain</p> <p>Andrew Hogg, 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>Taylor Scott, News, Communications, Ministerial Support and Facilities</p> <p>Communications, Rural Economy and Environment, Communications, Ministerial Support and Facilities</p> <p>Communications, Finance &amp; Economy, Communications, Ministerial Support and Facilities</p>					



## ANNEX A Background and Consultation

### 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 off the Angus coastline with a maximum generation output of around 700 megawatts (“MW”). The s.36 consent granted on 17 June 2019 was subsequently varied, under section 36C(1) of the Electricity Act in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”), on 16 July 2020 to increase the maximum generating capacity from around 700 MW to up to 1000 MW (“the Existing s.36 consent”).
- 1.1.2 On 26 January 2021, the Scottish Ministers received an application from Inch Cape Offshore Limited (“the Company”) to vary its Existing s.36 consent (“the Variation Application”) under the Variation Regulations. The Variation Application seeks to remove the maximum generating capacity of up to 1000 MW, without any variation to the physical parameters of the Wind Turbine Generators (“WTGs”) or any other component included within the original s.36 consent application dated August 2018 (“Original Application”).
- 1.1.3 The Company stated that the benefit of removing the maximum generating capacity of the Development is that it will allow it to utilise the 1080 MW grid capacity awarded to it. Using the Scottish Government’s published Renewable Electricity Output Calculator, the Company estimated that, depending on the fuel type displaced, 661,311 tonnes of carbon dioxide will be saved each year by the project. In addition, it estimated that the Development would generate enough electricity each year to meet the needs of the equivalent of 723,130 Scottish households.
- 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 26 January 2021:
- An application to vary Annex 1 of the Existing s.36 consent; and
  - An Offshore Consents Variation Application Report (“The Variation Report”).



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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 Aberdeenshire Council, Angus Council, Dundee City Council, Fife Council, East Lothian Council, Scottish Borders Council; and
- Placed public notices relating to the Variation Application in the Courier for two weeks and for one week each in the Lloyds List, Fishing News, the Scotsman and the Edinburgh Gazette.

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, Fife Council, East Lothian Council, Scottish Borders Council), NatureScot, Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”) and placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 consent.

1.3.2 Most of the consultees did not object or had no representations 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.

1.3.3 Two objections were raised by consultees and have been addressed in section [1.4](#) below. The local authorities did not raise any objections, however, representations were submitted. Summaries of the representations received from the consultees are presented in section [1.4](#). Section [1.5](#) lists all consultees which made no representation.

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

1.3.5 Copies of the full consultation representations received have been made available on the Development’s page on the [Marine Scotland Information website](#).

### 1.4 Summary of representations and actions

1.4.1 The following consultees raised no objections to the Variation Application.

1.4.2 **Aberdeen International Airport** had no objection to the Variation Application.

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- 1.4.3 **Aberdeenshire Council** stated that it had previously undertaken an assessment of the impacts that the Development would have upon the council area with potential impacts limited to the historic environment, visual impact and ornithology. The results of that assessment found no differential impact upon built heritage or upon visual receptors in Aberdeenshire. In regards to ornithology, Aberdeenshire Council previously objected to the Original Application on the basis that uncertainty remained in relation to the potential effect on the Fowlsheugh Special Protection Area (“SPA”), and whether further mitigation could alleviate these concerns. While Aberdeenshire Council said that they remained unconvinced that the impact of the Development in relation to Fowlsheugh SPA can be reconciled with the Local Development Plan, it is accepted that the scope of this Variation Application only relates to removing the maximum generating capacity of the s.36 consent and thus holds no objection to the Variation Application.
- 1.4.4 **Angus Council** had no representation to make on the Variation Application.
- 1.4.5 **British Telecom** confirmed that the Development should not cause interference to its current and presently planned radio network.
- 1.4.6 **Dee District Salmon Fisheries Board** welcomed the opportunity to make a representation on the Variation Application and confirmed that it had no objection to the Variation Application.
- 1.4.7 **East Lothian Council** raised concerns with the potential impact of increased generation on the capacity of the existing export route to the national grid and the possibility of the need for further onshore works at Cockenzie or potentially elsewhere in East Lothian. East Lothian Council also questioned why a screening opinion was not issued and subsequent environmental statement did not accompany the Variation Application. East Lothian Council stated that it would prefer that a limit is placed on the generating capacity so that it does not exceed the capacity of the consented onshore transmission works or any other grid connection infrastructure. East Lothian Council confirmed that, as further consent would be required for onshore works with significant environmental effects, it does not object to the Variation Application.
- 1.4.8 The Company responded to the representation received from East Lothian Council reiterating that the Variation Application did not request any changes to the consented parameters for the Development, other than the generating capacity specified in the s.36 consent. In its response, the Company also confirmed that it is not seeking any variation to the onshore transmission infrastructure at this time. Should any variations to the offshore or onshore transmission infrastructure be required as a result of the final design, the Company said that these may require separate applications, which would, in turn, require formal consultation and, in the case of onshore transmission infrastructure, a submission to East Lothian Council as the planning authority.

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- 1.4.9 Officials can confirm that this Variation Application does not constitute an increase in significant adverse effects on the environment and therefore formal screening or a subsequent environmental impact assessment was not required. With regards to the generating capacity limit suggested by East Lothian Council, the Company has not requested such limit in the Variation Application. Officials are to determine the Variation Application based on the content of the application and Officials have no grounds to refuse the application on this basis.
- 1.4.10 **Fife Council** had no representation to make on the Variation Application.
- 1.4.11 **Forth Ports** had no objection to the Variation Application.
- 1.4.12 **HES** confirmed that it is content that the Variation Application will not alter the level of impact on historic environment interests and therefore has no representation to make.
- 1.4.13 **Infrastructure Organisation on behalf of the Ministry of Defence (“MOD”)** had no objections to the Variation Application. The MOD requested that the conditions in regard to Air Traffic Control Radar Mitigation Scheme (“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.
- 1.4.14 Officials can confirm that the conditions of the Existing s.36 consent regarding the ATC Scheme, ADR Scheme and LMP will not be varied by this s.36C variation application and will remain in place.
- 1.4.15 **Marine Scotland Science (“MSS”)** advised that with respect to ornithology, the key issue for such a variation is whether the assumptions of Collision Risk Modelling (“CRM”) are affected. MSS also advised that in addition to the physical parameters (considered by the Company and NatureScot) the operational parameters for the WTGs should also be considered. These operational parameters include: rotor speed, pitch, and percentage of time operational. MSS requested clarification on whether the worst case scenario assumptions regarding ornithology for operational parameters remain the same following the proposed variation.
- 1.4.16 The Company responded stating that the physical and operational parameters of the WTGs will be determined by the final selection of a preferred WTG. Once this has been determined, the Company will provide evidence through the submission of the Development Specification and Layout Plan (required by condition) which will demonstrate that ornithological impacts from the final design of the wind farm are no greater than those assessed in the Appropriate Assessment (“AA”), which relied on the CRM among other things. There will therefore be an opportunity to consider whether the final design has any impacts on the CRM and the AA before final approval is given and construction starts.
- 1.4.17 **MCA** had no representation to make on the Variation Application.

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- 1.4.18 **National Air Traffic Service** had no objection to the Variation Application.
- 1.4.19 **NLB** had no objection to the Variation Application.
- 1.4.20 **Royal Yachting Association Scotland** had no objection to the Variation Application.
- 1.4.21 **Scottish Borders Council** had no representation to make on the Variation Application.
- 1.4.22 **SEPA** had no objection to the Variation Application.
- 1.4.23 **NatureScot** confirmed that removing the maximum generation specification from the consent without changing any of the of the WTGs parameters will enable the company to consider higher rated WTGs which would increase the maximum generation of the wind farm without changing any of the physical parameters or the previously assessed predicted effects and therefore has no further representation to make.
- 1.4.24 **Transport Scotland (“TS”)** confirmed that after reviewing the Offshore Consents Variation Application Report and the Variation Application 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 to be attached to any potential consent variations. TS confirmed that it had no further representation to make on the Variation Application.
- 1.4.25 **Whale and Dolphin Conservation** confirmed that due to capacity issues it is not able to respond to the Variation Application consultation.
- 1.4.26 The following consultees raised objections to the Variation Application.
- 1.4.27 **The Scottish Fishermen’s Federation (“SFF”)** objected to the proposed variation due the uncertainty on whether the removal of the maximum generating capacity of the Development would lead to an increase in offshore transmission infrastructure. In response to this objection, the Company met with the SFF to discuss its concerns and formally responded in writing to address the concerns raised. The Variation Application does not enable the Development to install any additional infrastructure beyond what is already consented. If the Company was to seek to increase in infrastructure this would be subject to a separate application. The SFF provided a further response to the Company reiterating its concerns. MS-LOT consider the matter to be resolved on the grounds that the SFF objection is not related to the content of the current Variation Application.
- 1.4.28 **The Royal Society for the Protection of Birds (“RSPB”)** maintained its historic objection to the Development and stated that a key concern is for MS-LOT to ensure that removing the maximum generating capacity will not alter or exceed the original design parameters of the existing environmental

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assessment. The Company responded directly to the RSPB confirming that this Variation Application does not seek to change any of the physical infrastructure from what was previously assessed within the environmental impact assessment. The Company also stated that there are a number of plans within the Existing s.36 consent which ensure the predicted environmental impacts of the final wind farm design remain within those assessed at the planning application stage, and as part of the formal process to discharge the consent conditions, the Company will provide information to demonstrate that there have been no material changes to what was assessed previously. Upon receiving the response from the Company, the RSPB confirmed that it had no further representation to make. MS-LOT has considered the view of the RSPB and the response the Company submitted to address the concerns raised and are content that this objection has been addressed.

### 1.5 Nil responses

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

Arbroath Harbour	Macmerry & Gladsmuir Community Council
Arbroath Sailing & Boating Club	Neart na Gaoithe Offshore Windfarm Limited
Atlantic Salmon Trust	Marine Safety Forum
Babcock MCS Offshore	Marine Scotland Compliance - Anstruther
Bristow	Marine Scotland Compliance - Eyemouth
Civil Aviation Authority	Marine Scotland Compliance - Aberdeen
Chamber of Shipping	Montrose Port Authority
CHC Helicopter	Musselburgh & Inveresk Community Council
Communities Inshore Fisheries Alliance	Oil & Gas UK
Cockenzie & Port Seton Community Council	National Trust For Scotland
Crown Estate Scotland	North Berwick Community Council
Dundee City Council	North Sea Regional Advisory Council
Dunbar Community Council	
Dunbar Harbour Trust	Prestonpans Community Council

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Dunbar Fisheries Association	Salmon Net Fishing Association of Scotland
Dundee Sub Aqua Club	Scottish Canoe Association
Dunpender Community Council	Scottish Creel Fishermens Association
North & East Coast Regional Inshore Fisheries Group	Scottish Enterprise
East Fortune Airfield	Scottish Federation of Sea Anglers
East Lammermuir Community Council	Scottish Fisherman's Organisation
Edinburgh Airport Ltd	Scottish Power Generation
Esk District Salmon Fishing Board	Scottish Seabird Centre
Eyemouth Harbour Trust	Scottish Surfing Federation
Fife Fish Producers Organisation	Scottish Wildlife Trust
Firth of Forth Lobster Hatchery	Scottish Wild Salmon Company (Usan)
Firth of Forth U10m Fishing Association	Seagreen Wind Energy Limited
Fisheries Management Scotland	Sport Scotland
Fishermens Mutual Association (Pittenweem) Limited	Surfers Against Sewage
Forth District Salmon Fishery Board	Tay District Salmon Fishing Board
Forth Estuary Forum Ltd	The 10 Metre and Under Association
Gullane Community Council	Torness Power Station
Heathrow Airport Holdings Limited	Tranent & Elphinstone Community Council
Health and Safety Executive	Tweed District Salmon Fishing Board

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Joint Radio Company	Visit Scotland
Longniddry Community Council	West Barns Community Council

## **1. ANNEX B Legislative Requirements**

### **1.1 Legislative Background**

- 1.1.1 Section 36 of the Electricity Act 1989 (“The Electricity Act”) provides that an electricity generating station shall not be constructed at a relevant place (which includes the territorial sea and the renewable energy zone), and such a station may not be extended or operated except in accordance with a consent granted by the appropriate authority, which in Scotland is the Scottish Ministers.
- 1.1.2 Section 36C (“s.36C”) of the Electricity Act 1989 provides that persons who are entitled to the benefit of a section 36 (“s.36”) consent may apply to the Scottish Ministers for a variation of that consent.
- 1.1.3 The procedures for handling applications to vary s.36 consents is set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”). The Variation Regulations provide the process for making, publicising, and consideration of applications to vary s.36 consents.
- 1.1.4 Scottish Government guidance on s.36 consent variations<sup>1</sup> 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.
- 1.1.5 Under section 36C(4) of the Electricity Act and following an application for a section 36 consent to be varied, the Scottish Ministers may make variations to the consents as appear to them to be appropriate, having regard to: (a) the company’s reasons for seeking the variation, (b) the variation proposed, and (c) 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 Variation Regulations include references to the Environment Impact Assessment insofar as it relates to the broader s.36C variation process. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“The EIA Regulations”) concern the assessment of the effects of certain projects, including Electricity Act consents, on the environment. The EIA Regulations 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.

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<sup>1</sup> Energy consents: applications for variation of section 36 consents guidance, Scottish Government, May 2019. [Energy consents: applications for variation of section 36 consents guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/publications/2019/05/energy-consents-applications-for-variation-of-section-36-consents-guidance/)



### **1.3 Appropriate Assessment**

Regulation 48(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 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 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 objective