

Cabinet Secretary for Climate Action and Energy

**APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 TO CONSTRUCT AND OPERATE THE FALL OF WARNESS TIDAL TEST SITE**

**Priority and Purpose**

1. Urgent
2. To seek your approval to vary the section 36 (“s.36”) consent granted on 22 March 2016 to construct and operate the European Marine Energy Centre (“EMEC”), Fall of Warness Tidal Test Site (“the Development”). Urgent priority is requested due the imminent expiry of the existing consent for the Development as granted on 22 March 2016 (and subsequently varied on 14 March 2023). A decision is requested by 17 March 2026.

**Recommendation**

3. Recommends that you: agree to vary Annex 2, of the s.36 consent for the Development, in accordance with s.36C of the Electricity Act 1989 and the Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”).

**Context and Issues**

4. Consent for the Development was granted on 22 March 2016 (and subsequently varied on 14 March 2023) under s.36 of the Electricity Act 1989 (“the Existing Consent”). An application was made by The European Marine Energy Centre Limited (“the Company”) on 29 September 2025 to vary the Existing Consent as follows (“the Variation Application”):
  - Vary Annex 2 of the Existing Consent, to increase the duration of the consent from 10 years to 12 years, so that it shall expire on 22 March 2028, without any variation to the physical parameters of the Development or any other component included within the application for the Existing Consent in December 2014 (“the Original Application”).
5. Prior to receiving the Variation Application, the Scottish Ministers adopted a screening opinion on 26 June 2025 under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”), which concluded that the Variation Application does not require environmental impact assessment (“EIA”) (as defined in the EIA Regulations).

## Options Considered and Advice

6. Under s.36C(4) of the Electricity Act 1989, the Scottish Ministers will exercise judgement as to whether any variation sought is appropriate, having regard (in particular) 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.
7. The Variation Application seeks to increase the duration of the consent from 10 years to 12 years, so that it shall expire on 22 March 2028, without any variation to the physical parameters of the Development or any other component included within the Original Application.
8. The Company states the following rationale for the proposed variation: To facilitate further technology development of the tidal energy sector, EMEC has submitted a new s.36 consent application to expand the site capacity to 50 megawatts and expand the parameters of the project envelope. The Company states that the Variation Application will allow continued use of the site for developers in the tidal sector in the interim period.
9. The variations proposed in the Variation Application do not fundamentally alter the character or scale of the Development, and there will be no changes to the boundary of the Development.
10. Officials consider that you can be satisfied that, in this circumstance, the changes proposed are appropriate to be authorised (having regard to the variation proposed, the reasons for the variation, and the views of consultees) by means of the variation procedure in line with the Electricity Act and the Variation Regulations, and the Scottish Government Applications for Variation of Section 36 Consents Guidance published in May 2019.
11. Consideration of any representations made concerning the proposed variations and recommendation not to cause a public inquiry are outlined in the following paragraphs.

## Assessment of Options

12. During the consultation period, 16 representations concerning the Variation Application were received. A full summary of the consultation responses and how they have been addressed is detailed in Annex A.
13. No formal objections were raised through the consultation, however, BT Group stated in its response that if any structures at height are proposed, further consultation should be undertaken with BT Group. BT Group also confirmed that it requires 100m minimum clearance from any structure at height to the radio link path. The Company responded to confirm that it did not foresee any structures at height as part of the Development, however stated that any present will be

communicated to the regulator and BT. Marine Directorate – Licensing Operations Team (“MD-LOT”) can confirm that BT will be consulted on any marine licence applications submitted in respect of the Development, so that BT is made aware of device specific parameters as they become available and is given the opportunity to comment.

14. Before determining a variation application, per the Electricity Act 1989 and the Variation Regulations, Scottish Ministers may cause a public inquiry to be held if it is deemed appropriate to do so. Having considered the representations received and all other material considerations, officials recommend that it is appropriate not to cause a public local inquiry.

### **Contribution to the Government’s Four Priorities**

15. The Development is related to the commitment to provide opportunity by contributing to a just transition to net zero and increasing the use of renewable energy to respond to the climate crisis.

### **Verity House Agreement Implications**

16. There are no known implications for the Verity House Agreement.

[Redacted]

[Redacted]

[Redacted]

### **Financial Considerations**

21. There are no known financial implications relating to this submission.

### **Sensitivities**

22. No objections were received during the consultation period.

23. MD-LOT was required to undertake an Appropriate Assessment (“AA”) validation for the Variation Application in respect of the Existing Consent per the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) and are content that nothing in the proposed variation, or in any consultation responses or representations have been received which would invalidate the conclusions or alter the outcome in respect of the Development. The AA validation can be found at Annex D.

### **Quality Assurance**

24. This Submission has been approved by Mike Palmer, Deputy Director, Marine Directorate.

### **Conclusions and next Steps**

25. Should the Cabinet Secretary choose to approve the Variation Application, a draft decision notice is attached at Annex C which MD-LOT will finalise and issue to the Company on the Cabinet Secretary’s behalf.

26. In order for the determination process to be fully open and transparent, MD-LOT recommends that this submission is published on [Marine Scotland Information website](#), alongside the Existing Consent and the Variation Application documentation.

**Kirsty Black**

Marine Directorate - Licensing Operations Team

<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Cabinet Secretary for Climate Action and Energy	X			
Deputy First Minister and Cabinet Secretary for Economy and Gaelic		X		
Cabinet Secretary for Rural Affairs, Land Reform and Islands		X		
Minister for Public Finance				X
[Redacted]				X
[Redacted]				X

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Permanent Secretary DG Economy DG Net Zero Director, Marine Directorate Director, Offshore Wind Directorate Mike Palmer, Deputy Director Marine Directorate Zoe Crutchfield, Marine Directorate Rebecca Bamlett, Marine Directorate Jessica Malcolm, Marine Directorate Kirsty Black, Marine Directorate Anna Shenton, Marine Directorate Andrew Nicol, Marine Directorate Kerry Bell, Marine Directorate Amy Alexander, Marine Directorate Jane Kidd, Marine Directorate Nuala Gormley, Deputy Director, Marine Directorate Jared Wilson, Marine Directorate Julie Miller, Marine Directorate Allan Gibb, Marine Directorate Lucy Law, Offshore Wind Directorate Ragne Low, Offshore Wind Directorate Alison Gilfillan, Offshore Wind Directorate Laura Murdoch, Offshore Wind Directorate Rebecca Young, Offshore Wind Directorate Kersti Berge, Energy Directorate [Redacted]

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**LIST OF ANNEXES**

<b>ANNEX A</b>	Background and Consultation	6
<b>ANNEX B</b>	Legislative Requirements	12
<b>ANNEX C</b>	Draft Decision Notice	14
<b>ANNEX D</b>	Validation of Appropriate Assessment	30

## 1. ANNEX A Background and Consultation

### 1.1 Background Information

1.1.1 On 22 March 2016, 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 European Marine Energy Centre (“EMEC”), Fall of Warness Tidal Test Site (“the Development”) located adjacent to the Island of Eday, Orkney with a maximum generation output of up to 10 Megawatts (“MW”) (“the Existing Consent”). In March 2023, the Existing Consent was subsequently varied to increase the duration of the consent from 7 years to 10 years, so that it shall expire on 22 March 2026.

1.1.2 On 29 September 2025, the Scottish Ministers received an application from the European Marine Energy Centre 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 the Existing Consent (“the Variation Application”). The Variation Application seeks to further increase the duration of the consent from 10 years to 12 years, so that it shall expire on 22 March 2028.

1.1.3 The Company stated that to facilitate further technology development of the tidal energy sector, EMEC is currently progressing work on developing a new s.36 consent application to expand the site capacity to 50MW and expand the parameters of the project envelope, and stated that the Variation Application will allow continued use of the site for developers in the tidal sector in the interim period. The Company stated that the Variation Application does not seek to change the project description, or any parameters of the Existing Consent.

### 1.2 Application Documentation

1.2.1 The Company submitted the following Variation Application documentation, which was issued for consultation on 13 October 2025:

- An application to vary the Existing Consent

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 Company [website](#) alongside a link to the Existing Consent;

## ANNEX A Background and Consultation

- Placed public notices relating to the Variation Application in the Edinburgh Gazette, the Orcadian and the Herald for two weeks each, in the Fishing News for one week, and in Lloyds List.
- 1.3.2 Marine Directorate - Licensing Operations Team (“MD-LOT”) consulted a wide range of interested parties on the Variation Application including Orkney Islands Council, NatureScot, the Maritime and Coastguard Agency (“MCA”), the Ministry of Defence (“MOD”), the Northern Lighthouse Board (“NLB”), 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 Consent.

### 1.4 Summary of consultation process

- 1.4.1 MD-LOT received a total of 16 responses to the consultation. Several consultees had no comments to make, or did not provide a response to the consultation. In the case of no response, MD-LOT notified the relevant consultees that “nil returns” would be assumed.
- 1.4.2 Consultees and local authorities did not raise any formal objections, however comments were submitted. Summaries of the comments received from the consultees are presented in Section 1.5 and 1.6. Section 1.7 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 [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 British Telecom Group (“BT”)

BT stated in its response dated 17 October 2025 that the proposal will not cause interference to BT’s current and presently planned radio network. However, it highlighted that if any structures at height are proposed, further consultation should be undertaken with BT. BT also confirmed that it requires 100m minimum clearance from any structure at height to the radio link path.

The Company responded to confirm that it did not foresee any structures at height as part of the Development, however, any present will be communicated to the regulator and BT Group.

MD-LOT has considered the representation from BT and the response from the Company and can confirm that MD-LOT will consult with BT on all future marine licence applications associated with the Development to ensure that BT is made

## ANNEX A Background and Consultation

aware of device specific parameters as these become available and is given the opportunity to comment.

### 1.5.3 Crown Estate Scotland

Crown Estate Scotland stated in its response dated 17 October 2025 that it was supportive of EMEC's continued operations at the Fall of Warness site and has no objections to the proposed s.36 extension.

### 1.5.4 Historic Environment Scotland ("HES")

HES stated in its response dated 20 November 2025 that there are no heritage assets within the site boundary that would be subject to physical impact as a result of the Variation Application, and it did not consider that the Variation Application would have any significant impacts on the setting of heritage assets. HES had no objection to the Variation Application.

### 1.5.5 Maritime and Coastguard Agency ("MCA")

The MCA stated in its response dated 20 November 2025 that it had no objection to the Variation Application on the understanding that all maritime safety legislation is adhered to, and that the risk mitigation measures agreed within the Existing Consent are complied with.

### 1.5.6 Ministry of Defence ("MOD")

The MOD stated in its response dated 23 October 2025 that it had no objection to the Variation Application.

### 1.5.7 NatureScot

NatureScot stated in its response dated 11 November 2025 that, on the understanding there will be no changes to the site activities or project envelope, its advice issued on 14 November 2022 in respect of the 2023 Variation remains the same and it had no other comment on the Variation Application.

In its advice in respect of the 2023 Variation NatureScot stated that it concluded no Likely Significant Effect with respect to either the Scapa Flow or North Orkney SPAs. NatureScot confirmed that there were no other changes to designated sites, natural heritage interests or development projects in the vicinity of the Development which could affect the predicted potential impacts.

### 1.5.8 Northern Lighthouse Board ("NLB")

The NLB stated in its response dated 23 October 2025 that it had no objection to the Variation Application.

### 1.5.9 Orkney Harbours

Orkney Harbours submitted a nil response to the Variation Application.

## ANNEX A Background and Consultation

### 1.5.10 Orkney Islands Council Marine Planning

Orkney Islands Council stated in its response dated 20 November 2025 that it had no comments on the Variation Application.

### 1.5.11 Royal Yachting Association Scotland (“RYA”)

The RYA stated in its response dated 18 November 2025 that it had no objection to the Variation Application.

### 1.5.12 Scottish Water

Scottish Water stated in its response dated 21 October 2025 that it had no objection to the Variation Application.

### 1.5.13 Scottish Environment Protection Agency (“SEPA”)

SEPA stated in its response dated 14 October 2025 that the Variation Application falls below the thresholds for which it provides specific advice and referred to its standing advice.

In its standing advice SEPA recommends that method statements produced as part of the Electricity Consent application process should include a risk statement on the introduction of marine non-native species and any mitigation measures that will be adopted to minimise these risks before the construction, operation or decommissioning phases commence.

SEPA also states in its standing advice that operations could potentially give rise to risk of pollution through silt mobilisation, silt suspension or chemical or oil spillages. To prevent pollution and safeguard marine ecology interests it is vital that good working practice is followed and appropriate steps taken to prevent water pollution and minimise disturbance to sensitive receptors.

Further, SEPA states in its standing advice that during decommissioning of the Development as much of the support infrastructure/cabling is removed and all waste materials are removed and reused, recycled, or disposed of at a licensed onshore site.

MD-LOT is content that the Original Application included an assessment of marine non-native species and that the Variation Application does not seek to change the project description or any physical parameters of the Existing Consent.

MD-LOT is content that any marine licences that may be issued in relation to the Development will include appropriate conditions in relation to pollution prevention and safeguarding marine ecology.

MD-LOT is content that any marine licences that may be issued in relation to the Development will include an appropriate condition requiring a

## ANNEX A Background and Consultation

decommissioning programme to be submitted to and approved by the Scottish Ministers.

### 1.5.14 Scottish and Southern Electricity Networks (“SSEN”)

SSEN stated in its response dated 19 November 2025 that it had no concerns regarding the Variation Application.

### 1.5.15 Scottish Fishermen’s Federation (“SFF”)

SFF submitted a nil response to the Variation Application.

### 1.5.16 Stronsay Island Community Council

Stronsay Island Community Council stated in its response dated 3 November 2025 that it had no comment to make on the Variation Application.

### 1.5.17 Transport Scotland

In its response dated 19 November 2025 Transport Scotland had no objection to the Variation Application.

## 1.6 **Advice from third parties**

1.6.1 No advice was sought from third parties in respect of the Variation Application.

## 1.7 **Nil responses**

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

Birsay Community Council	Orkney Waters Trust
Caithness District Salmon Fishery Board	Orphir Community Council
Department for Energy Security and Net Zero	Papa Westray Community Council
Eday Community Council	Rousay, Egilsay, Wyre and Gairsay Community Council
Evie and Rendell Community Council	Royal Society for the Protection of Birds (Scotland)
Firth and Stenness Community Council	Sanday Community Council

## ANNEX A Background and Consultation

Fisheries Management Scotland	Scottish Canoe Association
Fisheries Office – Kirkwall	Scottish Creel Fisherman’s Federation
Flotta Community Council	Scottish Fisherman’s Organisation
Graemsay, Hoy and Walls Community Council	Scottish White Fish Producers Association
Harray and Sandwick Community Council	Scottish Wildlife Trust
Holm Community Council	Shapinsay Community Council
Inshore Fishery Group – Orkney	South Ronaldsay and Burray Community Council
Kirkwall and St Ola Community Council	St Andrews and Deerness Community Council
Marine Planning Partnership – Orkney	Stromness Community Council
Marine Safety Forum	Surfers Against Sewage
National Trust for Scotland	Transport Scotland (Ports and Harbours)
North Link Ferries	UK Chamber of Shipping
North Ronaldsay Community Council	Visit Scotland
Orkney Ferries	Westray Community Council
Orkney Fisheries Association	