

3B Note to East Lothian Council



INCH CAPE OFFSHORE LIMITED

ONSHORE CONSENTING: EAST LOTHIAN COUNCIL SCOPING OPINION

1. BACKGROUND

- 1.1 On 5 September 2017, East Lothian Council (the “**Council**”) issued a scoping opinion (the “**Scoping Opinion**”) to Inch Cape Offshore Limited (“**ICOL**”) under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the “**EIA Regulations**”) in respect of the onshore transmission works (the “**OnTW**”) for the Inch Cape offshore wind farm. In issuing the Scoping Opinion to ICOL, the Council suggested that ICOL could seek a scoping direction from the Scottish Ministers under the EIA Regulations if ICOL was not satisfied with the terms of the Scoping Opinion.
- 1.2 ICOL has all required consents for the Inch Cape offshore wind farm and offshore transmission works (the “**Offshore Works**”) which were granted in October 2014 (the “**Existing Consents**”), although it intends to pursue new consents for a revised wind farm and offshore transmission works (the “**Revised Consents**”). The Existing Consents are no longer subject to legal challenge and therefore the OnTW would serve the offshore development as consented, or approved. The timescale for submission of an application for the Revised Consents is likely to be after receipt of the OnTW planning decision.
- 1.3 We understand that the Council has some concerns about the interaction between the OnTW and the Offshore Works for the purposes of environmental impact assessment (“**EIA**”) under the EIA Regulations. These concerns are set out at paragraphs 2.1 to 2.5 of the Scoping Opinion.
- 1.4 There are some specific issues in the Scoping Opinion which ICOL has concerns about and these formed the basis of discussions at our meeting on 30 October 2017. In broad terms, these concerns relate to the contents of the Scoping Opinion in relation to the interaction between the OnTW and the Offshore Works as well as matters of detail relating to specific topic areas. The Council has said that it is willing to consider the issues raised by ICOL. It is therefore possible that the position set out in the Scoping Opinion will not reflect the final position confirmed by the Council.
- 1.5 ICOL is aware of the new requirement under regulation 5(3) of the EIA Regulations for an EIA Report to be “based on” a scoping opinion or scoping direction and the potential for parties submitting representations to question the validity of an EIA Report if it reflects an updated position confirmed by the Council rather than the terms of the Scoping Opinion.
- 1.6 The discussion during the meeting on 30 October 2017 raised the following procedural matters:
1. Is ICOL able to seek a scoping direction from the Scottish Ministers if there are issues in the Scoping Opinion with which ICOL is not satisfied?
 2. Is there an approach to EIA of the OnTW and the Offshore Works that would satisfy the requirements of the EIA Regulations and ensure that the Council’s process is robust?
 3. Is it possible for the Council to update the Scoping Opinion following discussions with ICOL and potential resolution of issues?
- 1.7 It was agreed at the meeting that ICOL and its advisers would prepare a note on these matters for the Council’s consideration. This note addresses each of these procedural matters in turn. [The concerns on matters of detail relating to specific topic areas are set out in the Appendix to this note.]

2. SCOPING DIRECTION

2.1 ICOL do not consider it has the ability to seek a scoping direction from the Scottish Ministers under the EIA Regulations. In terms of the EIA Regulations, ICOL could only seek a scoping direction from the Scottish Ministers in one of the following circumstances:

- (i) An application for EIA Development, which is not accompanied by an EIA Report, has been referred to the Scottish Ministers for determination and the Scottish Ministers have notified the applicant that an EIA Report is required (regulation 14(4)).
- (ii) An appeal for EIA Development, which is not accompanied by an EIA Report, has been submitted to the Scottish Ministers and the Scottish Ministers have notified the appellant that an EIA Report is required (regulation 15(3)).
- (iii) The planning authority has failed to adopt a scoping opinion within a period of 35 days beginning with the date of receipt of the scoping request (or such longer period as is agreed in writing with the developer) (regulation 17(8)).

2.2 The first two are clearly not relevant to ICOL as no application has yet been submitted to the Council for the OnTW. The third option is not available to ICOL as the Council has now issued its scoping opinion.

2.3 It is open to the Scottish Ministers to make a scoping direction at their own volition under regulation 18(2) of the EIA Regulations. However, we understand that the Scottish Ministers have only ever issued one scoping direction and we are aware that they are generally of the view that decisions on scoping should be made by the relevant planning authority. This position is likely to be strengthened where the planning authority has already issued a scoping opinion. We consider the prospect of the Scottish Ministers making a scoping direction at their own volition to be highly unlikely.

3. ONSHORE / OFFSHORE INTERACTION

3.1 The Council and ICOL are in agreement that the ‘Rochdale envelope’ approach to EIA is appropriate (see paragraph 3.2 of the Scoping Opinion). In summary, this enables environmental impact assessment to proceed where the final design has not been resolved by assessing on the basis of worst case design parameters.

3.2 By way of background, ICOL applied for and was granted planning permission in principle (ref: 14/00456/PPM) for a previous proposal for onshore transmission works in a different part of the former Cockenzie Power Station site (the “PPP”). At the time of submitting the PPP application, the applications for the Existing Consents had already been submitted to the Scottish Ministers with an Environmental Statement. The Environmental Statement which accompanied the PPP application took account of the Offshore Works by undertaking an assessment of the “whole Project” (i.e. the onshore transmission works and the Offshore Works).

3.3 It is our understanding that the ‘Rochdale envelope’ approach for a “whole Project” assessment which catered for the potential of implementing either the Existing Consents or the Revised Consents would be reliant on the Offshore Works parameters of the Existing Consents for all topics other than the Seascape, Landscape and Visual Impact Assessment. We understand that the Council is concerned about how it can undertake that “whole Project” assessment in relation to the OnTW in respect of the Revised Consents development, as the EIA Report associated with the Revised Consents applications will not be publicly available.^{3.4} ICOL considers that we (and the Council as the determining authority) could undertake a “whole Project” assessment of the OnTW with the Existing Consents, taking account of any necessary updates such as relevant

updated guidance. If planning permission is granted for the OnTW, ICOL would be able and entitled to implement that planning permission with the Existing Consents as a “whole Project”.

- 3.5 If ICOL subsequently submits applications for the Revised Consents, ICOL (and the Scottish Ministers as determining authority) would need to undertake a “whole Project” assessment of the OnTW with the Revised Consents development before they could grant the necessary consents. The Council will be a consultee in the Revised Consents application process so will be involved in the determination process and will be able to submit representations to the Scottish Ministers. This approach would be consistent with the approach taken in respect of the PPP; undertaking a “whole Project” assessment within an EIA Report which takes account of a previously submitted EIA Report.
- 3.6 If the Revised Consents are granted, ICOL would then be able to deliver the OnTW with either the Existing Consents or the Revised Consents knowing that both had been subject to a “whole Project” assessment. ICOL would not be able to deliver the OnTW in connection with the Revised Consents until there had been a “whole Project” assessment which assessed the OnTW and the Revised Consents development.
- 3.7 In summary, for the application for planning permission in principle for the OnTW to be submitted to the Council we consider that ICOL could submit an EIA Report which assessed the OnTW with the Existing Consents. An assessment of the OnTW with the Revised Consents would be undertaken in the EIA Report for the Revised Consents. We consider that this approach would be in accordance with the requirements of the EIA Regulations and ensure a robust process for the Council. However, if the Council required some additional comfort, a condition could be imposed to provide that the OnTW would only be used in connection with the Existing Consents save where an EIA had been undertaken which took into account the impact of the OnTW with the other works.

4. UPDATING SCOPING OPINION

- 4.1 Regulation 17(12) of the EIA Regulations provides that a “later scoping opinion supersedes the terms of an earlier scoping opinion”. A scoping opinion is therefore not fixed for all time coming. If the Council’s position changes following its consideration of the concerns raised by ICOL, we consider that it is possible for the Scoping Opinion to be replaced with an updated statement of the Council’s position.
- 4.2 The question therefore arises as to the manner in which the Council could do this. Any update to the Council’s position would need to be in writing to ensure that there is a clear paper/audit trail. The clearest method would be to update the text of the Scoping Opinion and issue a new scoping opinion which is clearly stated to be a replacement for the Scoping Opinion. However, we consider that the Council could also issue a supplementary report or letter which states that it is supplementary to the Scoping Opinion and that the Scoping Opinion as supplemented by the new report or letter replaces the Scoping Opinion.

[APPENDIX]

MARINE MAMMALS

The Scoping Opinion states:

'The revised site has the potential to have greater impacts on marine mammals than the previous location and this should be considered. These may be affected through underwater noise and disturbance associated with the construction of the proposal and possibly also its operation. Noise can also affect availability of prey species. The main activities likely to result in noise or disturbance are piling, blasting, dredging and vessel movements but all potentially noisy activities should be assessed. There are also potential effects from sediment mobilisation affecting prey availability. Any blasting or piling works should be fully described and assessed.'

The following information provides ICOL's explanation on why impacts on marine mammals from the Onshore Transmission Works (OnTW) is not required to be assessed:

The Council have noted that the revised site has the potential to have greater impacts on marine mammals than the previous location. The proposed cable Landfall (at Cockenzie) is not materially different to previous submissions, nor is the remainder of the Offshore Export Cable Corridor; it should be noted that one of the potential cable Landfall options assessed in the offshore consents process (at Seton Sands) has been removed. Therefore, ICOL does not consider that further additional assessment on impacts on marine mammals within the OnTW Environmental Impact Assessment (EIA) is required.

ICOL disagree that the OnTW has the potential to have greater impacts on marine mammals than the previous location. A summary of the activities at landfall are provided below, with an overview of impacts and reasoning as to why ICOL feels this issue does not require further additional assessment. For a full description of the OnTW please refer to Section 3.2 of the Scoping Report,¹

Open Cut Trenching

Open Cut Trenching consists of excavating a trench from a point approximately 7 m below MLWS to the Cable Transition Pits. The marine section would be created by a dredging vessel while the onshore section would be created by land based earth moving equipment. The onshore section shall include a pair of conduits through which the export cables will subsequently be pulled ashore. These onshore trenches will be backfilled over the conduits and left until the arrival of the offshore cable lay vessel. The Offshore Export Cables are brought ashore by pulling them from the cable laying vessel through the conduits and into the Cable Transition Pits. Once in position, the underwater section of the cables is buried by backfilling

¹ Please note that Marine Scotland, SNH and Whale and Dolphin Conservation have agreed in their Scoping Opinion for the Revised Offshore Wind Farm that an assessment of the impacts associated with the cable installation along the entirety of the Offshore Export Cable Corridor is not necessary due to the limited likely impacts identified within the Original Offshore Wind Farm EIA and the similarity in the Export Cable works for the Revised Offshore Wind Farm. For the application for the Revised Offshore Wind Farm, the assessment is only considering the direct impacts on marine mammals associated with piling requirements for turbines (and not the indirect impacts associated with prey availability) as non-piling related impacts of the Revised Offshore Wind Farm will be less than those assessed for the Original Offshore Wind Farm. For further information on this please refer to Marine Scotland's website: <http://www.gov.scot/Topics/marine/Licensing/marine/scoping/ICOLRevised-2017>

the trench via the dredging vessel. Subject to the detailed site investigation findings, weather conditions and the time of year, the open cut trenching option will take approximately eight weeks to prepare the ground, install the ducts and cover. The cable installation would require approximately two weeks per cable, the timing of the cable installation activities will occur sometime after the trenching works are complete.

Horizontal Directional Drilling (HDD)

HDD involves drilling a hole from the landward side of the Landfall to a point below MLWS where marine equipment can operate. A small diameter pilot hole is initially drilled under directional control and the hole is widened to accommodate a conduit pipe through which the cable will be pulled.

HDD requires a temporary landward working area of up to 15 m x 15 m per cable during construction to accommodate the drilling equipment. This will be above MHWS within the Onshore Export Cable Corridor. Once installed the working area will be restored to pre-construction conditions.

Depending on detailed geotechnical characteristics of the Onshore Export Cable Corridor and final cable design for the Project, the length of the drilling (from the landward side of the Landfall to a point below MLWS where marine equipment can operate) will be around 500 m in length.

Impacts

Works required at the Landfall location are considered, in terms of potential impacts on marine mammals, to be no more than those associated with the installation of the Offshore Export Cable. The underwater noise associated with the activities for the installation and operation of the Offshore Export Cable Corridor, and the impacts that this noise may exert upon marine mammals in the vicinity of the works, were fully assessed in the Original Offshore Wind Farm applications. The assessments concluded no significant effects (further information can be found in the Original Offshore Wind Farm ES should it be required). Therefore, any potential impacts associated with the Landfall works would be unlikely to result in significant effects.

Marine Mammal Distribution

The distribution of relevant marine mammal populations within the vicinity of the cable landing location can be found in the Original Offshore Wind Farm EIA baseline should it be required. However, the population density of marine mammals along the East Lothian coast is known not to be particularly high, and animals within the vicinity of the works are not undertaking activities that would render them particularly sensitive to disturbance.

Summary

Landfall works associated with the OnTW will have no greater impact on marine mammals than the installation of the Offshore Export Cable associated with the Original Offshore Wind Farm, which has been assessed as not significant. Not including the impacts upon receptors within this assessment for the OnTW (that would be no greater than those already assessed in the Original Offshore Wind Farm EIA) would also be consistent with the approach taken for the offshore EIA. Any impact from the OnTW should be contextualised with the fact that there is low mammal presence in the vicinity of the coast line at this location.

Therefore, in line with paragraph 2.5 (page 7) of the Council's Scoping Opinion, which notes 'the assessment should focus on the significant impacts of the proposal on the environment' ICOL is proposing that no additional further assessment of marine mammals is required in the application for the OnTW. This

approach is also in line with the EIA regulations which also note the assessment should focus on likely significant effects.

LANDSCAPE AND VISUAL

Table 1 below details ICOL’s position on the Council’s Scoping Opinion with regards to landscape and visual. Whilst ICOL does not consider all the requests to be proportionate to the development, where possible, the Council’s requests have been met.

The council’s Scoping Opinion	ICOL’s Position
There is a request for a full topographic analysis with spot heights at no less than 0.5m intervals.	There is no access available to the Application Site which is subject to ongoing demolition works. The LVIA can be completed based on available OS 5m Terrain data (OS Terrain-5).
It is requested that cross sections through the site are provided.	Indicative cross sections showing the proposals and included mitigation will be provided.
Under Zone of Theoretic Visibility Influence (ZTVI) , it is stated that a “full level survey and proposed finished level plan must be carried out” to enable accurate modelling.	The modelling will be carried out in relation to the currently proposed design parameters and OS 5m Terrain data.
It is requested that the latest version of OS Terrain-5 is used.	A current version of OS Terrain-5 will be used.
It is requested that tree belts, woodland and buildings be built into the ZTV model.	An overlay of the ZTV for the proposed development on aerial photography for the study area will be provided which will show these features.
It is requested that a ZTV is provided for the existing site.	It is not clear what purpose a ZTV of the existing site would serve in the context of the LVIA.
It is requested that the ZTV reflect finished floor levels and proposed roof ridge heights.	This will be done on the basis of the available design information and bearing in mind that the application is for Planning Permission in Principle.
It is requested that the ZTV information is provided in raw GIS format.	Raster data for the ZTV can be provided if required.
Under View Points (VP) , certain requirements are laid out in the first paragraph.	The Viewpoint visualisation requirements are acceptable.
Various locations, receptor types and display methods are requested.	The LVIA viewpoints have been chosen to be representative of the range of landscape and visual receptors identified within the LVIA study area, in line with GLVIA3 likely to be affected by the proposed development. Further response in the context of each of the locations identified by ELC’s Landscape Advisor is provided at the end of this table.

The council's Scoping Opinion	ICOL's Position
Under Viewpoint Analysis , cross-reference is made to an assessment matrix set out in ELC's L + V response.	The assessment will be carried out with reference to the matrix set out in the Scoping Report which is based on SLR's tried and tested methodology. This is considered in line with GLVIA3.
Under Night Lighting , a request is made of assessment of lighting.	Night time lighting will be considered in the LVIA.
Under Cumulative Landscape and Visual Impact (CLVIA) , it is suggested that effects in combination with the adjacent substation be considered.	The presence of the substation will be reflected in the baseline.
Under Tree Survey and Arboricultural Constraints Plan , a lot of statements are made about the need to develop a plan and working methodology.	It is considered that this would be better suited as part of any planning conditions rather than determination of effects and consideration of PPP.

Table 2 below provides details on the viewpoints which will be included as part of the EIA.

SLR VP Location	Grid Reference	Distance to Site	Receptors	Comments
1 B1348 Edinburgh Road	339676 675436	130m	Urban Area Road Users, pedestrians	
2 Cockenzie Harbour	339772 675695	390m	Urban Area (Conservation Area) Visitors, recreational walkers	
3 John Muir Way	339479 675684	200m	Urban Area Local recreational walkers Walkers on long distance route	
4 John Muir Way	339220 675368	100m	Urban Area Local recreational walkers Walkers on long distance way	
5 B1348 Edinburgh Road	339275 674989	310m	Urban Area Road Users Pedestrians	

6 Top of Mound adjacent to Atholl View, Prestonpans	339343 674930	330m	Urban Area Local recreational walkers	
---	---------------	------	--	--

SLR VP Location	Grid Reference	Distance to Site	Receptors	Comments
7. Battle of Prestonpans Viewpoint	340173 673959	1470m	Coastal Margins Visitors to Viewpoint Local Recreational Walkers	
8. Meadowmill Loan, Tranent	340551 673430	2110m	Lowland Hills and Ridges Residents	In line with ELC advice, this VP can be removed due to lack of visibility to site.
9. A199 west edge of Tranent	339588 673018	2220m	Lowland Hills and Ridges Residents	

ELC VP Locations				
1. Inside the security fence round demolition works at former Cockenzie Power Station site adjacent to John Muir Way	339453 675624	140m	Urban Area	Viewpoint location would not be representative of views that would be obtained from John Muir Way. No access is possible inside the security fence. An additional VP will not be provided at this location.
2. Top of grass mound to west of site on Preston Links	339185 67523	180m	Urban Area Local recreational walkers	An additional viewpoint will be provided at this location.

3. Inside the security fence round demolition works at former Cockenzie Power Station site	339390 675176	90m	Urban Area	Viewpoint location would not be representative of any visual receptors. No access is possible inside the security fence. An additional VP will not be provided at this location.
--	---------------	-----	------------	--

SLR VP Location	Grid Reference	Distance to Site	Receptors	Comments
4. Cockenzie Harbour	339840 675716	450m	Urban Area, Conservation Area Visitors and recreational walkers	ELC suggested VP location is very close to SLR VP with potential for more foreground elements to distract from view to site. However, a viewpoint will be included at the location indicated by ELC.
5. Footpath north of Edinburgh Road, B1348	339743 675509	230m	Urban Area Road users, pedestrians and local recreational walkers	This location is very close to VP 6. To avoid duplication, it will not be required as the analysis from VP6 is considered to be representative.
6. John Muir Way	339823 675543	310m	Urban Area and Conservation Area Road users, local recreational walkers and walkers on long distance path	An additional VP will be provided at this location.

MISCELLANEOUS

Decommissioning

Statement

The Council has requested in the Scoping Opinion that the expected lifetime of the development should be included, along with a Decommissioning Statement.

As best practice techniques and other matters are likely to evolve significantly over the duration of the OnTW lifetime, rendering a scheme potentially out of date in 50 years time, the anticipated end of the operational life of the OnTW. ICOL has provided a commitment within the EIA Report whereby the detail will be confirmed nearer to the anticipated date of decommissioning works.

A draft decommissioning statement will be prepared prior to construction and the final decommissioning statement will be prepared for agreement with ELC prior to decommissioning.

Embedded Mitigation

The Council notes that the 'Embedded Mitigation' detailed within ICOL's Scoping Report states that the acoustic bund constructed to protect occupiers from the noise of Cockenzie Power Station will be taken into account. The Council has highlighted that the bund was constructed specifically to avoid noise from former Cockenzie Power Station, which use has now ceased. There would not now therefore appear to be

an obligation on the part of its owner to retain it. The continued existence of the bund should not be relied upon, unless the bund is under control of the applicants and the application includes provision for it to remain in place.

In response to this ICOL notes that the bund located to the south of the Application Site, to the north of Atholl View, is well established and is likely to remain in place for the operational life of the Onshore Substation. It has therefore been considered within the assessment of noise impact, along with the surrounding local topography and landscape mitigation plan.

Cumulative Impacts

The Council has requested that sites in the Proposed Local Development Plan should be considered for potential cumulative impacts.

ICOL does not consider it to be proportionate or necessary to consider all sites within the Proposed Local Development Plan as part of the cumulative assessments. Only those Proposed Local Development Plan sites that also have planning permission will be considered in the EIA Report as there is considered to be a sufficient degree of certainty over the likely deliverability and timetable for such sites. Only those sites with planning permission as of 17 November 2017 cut-off date will be considered in the EIA Report.

Noise Assessment

The Council requested that an assessment should predict internal daytime and night-time noise levels within residential properties of sensitive receptors associated with both construction and operational phases. Therefore, night-time surveys should be undertaken.

A night-time baseline survey was undertaken and the assessment has considered the predicted noise levels during both the daytime and night-time periods.

As per the guidance of BS4142:2014, the assessment of internal sound levels is not required; however, consideration has been made to the guidance of BS8233:2014 and the World Health Organisation for suitable internal daytime and night-time noise limits.