

Benjamin King  
5<sup>th</sup> Floor  
40 Princes Street  
Edinburgh  
EH2 2BY

Our Reference: 048/0W/RRP-10

22 July 2021

Dear Mr King,

**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 ELECTRICITY GENERATING STATION, LOCATED APPROXIMATELY 15-22 KILOMETRES EAST OFF THE ANGUS COASTLINE.**

I refer to the application to vary the consent for the 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 for:

- a) a variation under section 36C of the Electricity Act 1989 (“the Electricity Act”) to the consent granted under section 36 (“s.36”) of the Electricity Act on 17 June 2019 for the construction and operation of the Development, located approximately 15-22 kilometers 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”).

**This letter contains the Scottish Ministers’ decision to vary the Existing s.36 consent.**

**1.1 Nature of the Variation Sought**

1.1.1 The Variation Application seeks to vary Annex 1 of the Existing s.36 consent to allow the following:

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 Wind Turbine Generators (“WTGs”) or any other component included within the application for the Existing s.36 consent in June 2019 (“the Original Application”).

## **1.2 Environmental Impacts**

- 1.2.1 The Scottish Ministers are satisfied that the Variation Application will not have significant effects on the environment.
- 1.2.2 The Scottish Ministers 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 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 2017 EW Regulations”).
- 1.2.3 The Scottish Ministers do not consider that the proposed changes within the Variation Application will change the conclusions of the Environmental Impact Assessment Report and the Habitats Regulation Appraisal supporting the Original Application.
- 1.2.4 In accordance with the 2017 EW Regulations, the Scottish Ministers did not deem it necessary for a new Environmental Impact Assessment Report to be submitted in support of the Variation Application.
- 1.2.5 As there will be no likely significant effects from the proposed changes, either on any European marine site or on any European protected sites, an Appropriate Assessment (“AA”) is not required.

## **1.3 Consideration of consultation responses**

- 1.3.1 Regulation 4 of the Variation Regulations provides that an applicant must publish the Variation Application relating to an offshore generating station on a website, serve a copy of the Variation Application to the planning authority, and also advertise by public notices in specified publications.
- 1.3.2 In line with Regulation 4 the Company served notice of the Variation Application to the planning authorities consulted on the Original Application. Public notices were placed in the in the Courier for two weeks and for one week each in the Scotsman, the Edinburgh Gazette, the Lloyds List and the Fishing News. 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.
- 1.3.3 Marine Scotland - Licensing Operations Team (“MS-LOT”), on behalf of the Scottish Ministers, consulted a wide range of relevant organisations on the Variation Application including: Aberdeenshire Council, Angus Council, East Lothian Council, Fife Council, Dundee City Council and Scottish Borders Council. NatureScot, Scottish Environment Protection Agency (“SEPA”), the Maritime and Coastguard Agency (“MCA”), Historic Environment Scotland (“HES”) and the Northern Lighthouse Board (“NLB”). Scottish

Ministers also placed the Variation Application documentation on the [Marine Scotland Information](#) website alongside the Existing s.36 consent.

- 1.3.4 Two objections were received with concerns regarding the need for additional offshore transmission infrastructure due to the increase in generating capacity. A summary of the representations is provided below, including consideration of the objections received by MS-LOT. A number of organisations did not provide a response. In the case of no response, MS-LOT notified the relevant consultees that “nil returns” would be assumed.
- 1.3.5 The following consultees raised no objections to the Variation Application.
- 1.3.6 **Aberdeen International Airport** had no objection to the Variation Application.
- 1.3.7 **Aberdeenshire Council** stated that it had previously undertaken an assessment of the impacts that the Development would have on 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 was accepted that the scope of this Variation Application only related to removing the maximum generating capacity of the s.36 consent and thus holds no objection to the Variation Application.
- 1.3.8 **Angus Council** had no representation to make on the Variation Application.
- 1.3.9 **British Telecom** confirmed that the Development should not cause interference to its current and presently planned radio network.
- 1.3.10 **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.
- 1.3.11 **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 did not object to the Variation Application.

- 1.3.12 The Company responded to the representation received from East Lothian Council by 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 was 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.
- 1.3.13 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.
- 1.3.14 **Fife Council** had no representation to make on the Variation Application.
- 1.3.15 **Forth Ports** had no objection to the Variation Application.
- 1.3.16 **HES** confirmed that it was content that the Variation Application would not alter the level of impact on historic environment interests and therefore had no representations to make.
- 1.3.17 **Infrastructure Organisation on behalf of the Ministry of Defence (“MOD”)** had no objection 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.
- 1.3.18 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.
- 1.3.19 **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. 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 also requested clarification on whether the worst case scenario assumptions regarding ornithology for operational parameters remain the same following the proposed variation.

- 1.3.20 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 developments Development Specification and Layout Plan which will demonstrate that ornithological impacts from the final design of the wind farm are no greater than those assessed in the 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.
- 1.3.21 **MCA** had no representation to make on the Variation Application.
- 1.3.22 **National Air Traffic Service** had no objection to the Variation Application.
- 1.3.23 **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.
- 1.3.24 **NLB** had no objection to the Variation Application.
- 1.3.25 **Royal Yachting Association Scotland** had no objection to the Variation Application.
- 1.3.26 **Scottish Borders Council** had no representation to make on the Variation Application.
- 1.3.27 **SEPA** had no objection to the Variation Application.
- 1.3.28 **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.
- 1.3.29 **Whale and Dolphin Conservation** confirmed that due to capacity issues it is not able to respond to the Variation Application consultation.
- 1.3.30 The following consultees raised objections to the Variation Application.

- 1.3.31 **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 their 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 were 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 closed on the grounds that the SFF objection is not related to the content of the current Variation Application.
- 1.3.32 **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 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 consenting 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.
- 1.3.33 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 RSPB explaining that the removal of the maximum generating capacity would enable the Development to create more energy without the need for further infrastructure which supports Scottish Government 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 Public Representations**

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

#### **1.5 The Scottish Minister’s Determination**

- 1.5.1 The Scottish Ministers have considered the Variation Application documentation and all responses from consultees. Having granted consent (the Existing s.36 consent) for the Development on 17 June 2019 and provided their reasons for doing so in the decision letter associated with that consent, and being satisfied that the changes proposed in the Variation Application do not fundamentally alter the character or scale of the Development, the Scottish Ministers are content that it is appropriate to vary the Existing s.36 consent.
- 1.5.2 Accordingly, the Scottish Ministers hereby vary the Existing s.36 consent as set out in the table below.

**Annex or Condition**

**Variation**

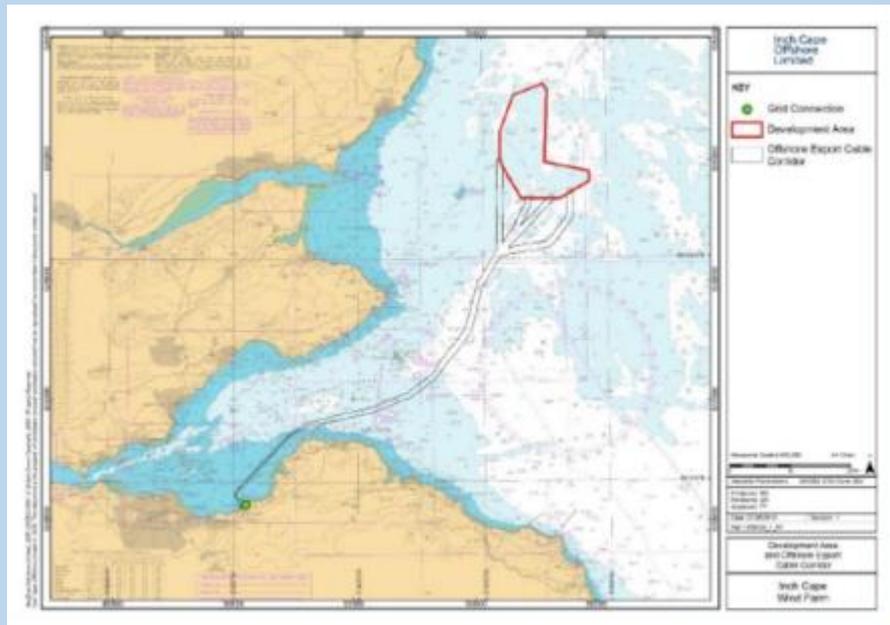
**for:**

An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below, with a maximum generating capacity of up to 1000 megawatts (“MW”) comprising:

1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
  - b) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
  - c) A maximum rotor diameter of 250 metres;
  - d) A minimum blade tip clearance of 27.4 metres (measured from LAT);
  - e) A maximum blade width of 7.8 metres; and
  - f) A nominal turbine spacing of 1,278 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling;

**In Annex 1**

The total area within the Development site boundary is 150km<sup>2</sup>

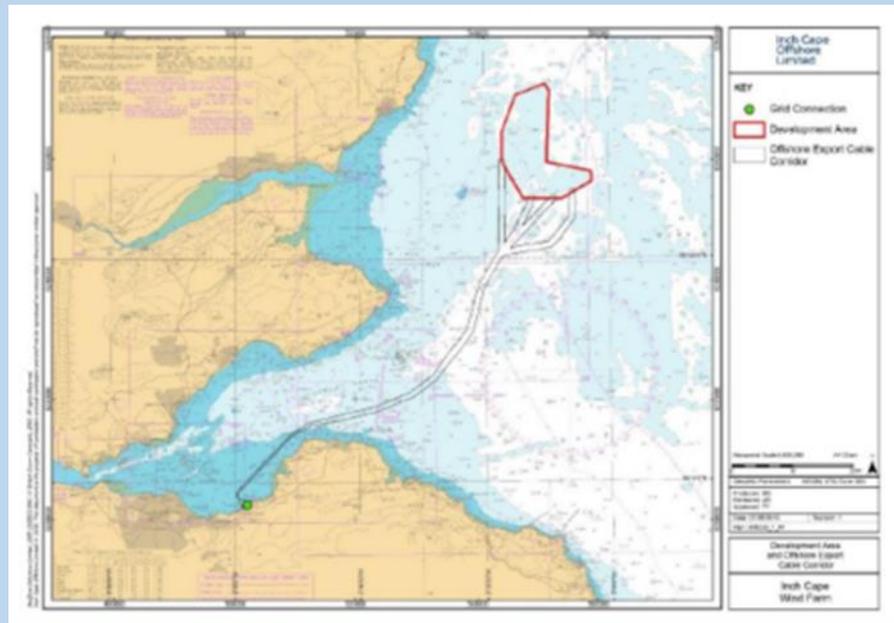


**Substitute:**

An offshore energy generating station, located in the outer Firth of Forth, approximately 15-22km east of the Angus coastline, as shown in Figure 1 below. The offshore energy generating station shall be comprised of:

1. No more than 72 three-bladed horizontal axis Wind Turbine Generators (“WTGs”), each with:
  - a) A maximum height to blade tip of 291 metres (measured from Lowest Astronomical Tide (“LAT”));
  - b) A maximum rotor diameter of 250 metres;
  - c) A minimum blade tip clearance of 27.4 metres (measured from LAT);
  - d) A maximum blade width of 7.8 metres; and
  - e) A nominal turbine spacing of 1,278 metres.
2. No more than 72 substructures and foundations and ancillary equipment.
3. No more than 190km of inter-array cabling;

The total area within the Development site boundary is 150km<sup>2</sup>



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- 1.5.3 Copies of this letter have been sent to relevant onshore planning authorities: Aberdeenshire Council, Angus Council, East Lothian Council, Fife Council, Dundee City Council and Scottish Borders Council. This letter has also been published on the [Marine Scotland Information website](#) .
- 1.5.4 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for variation of a s.36 consent.
- 1.5.5 Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

Zoe Crutchfield  
Head of Marine Scotland - Licensing Operations Team  
A member of the staff of the Scottish Government

## **DEFINITIONS AND GLOSSARY OF TERMS - In the decision letter attached at Annex C**

“AA” means Appropriate Assessment;

“ADR Scheme” means Air Defence Radar Mitigation Scheme;

“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme;

“CRM” means Collision Risk Modelling;

“HES” means Historic Environment Scotland;

“km” means kilometres;

“LAT” means Lowest Astronomical Tide;

“LMP” means Lighting and Marking Plan;

“MCA” means Maritime and Coastguard Agency;

“MOD” means Ministry of Defence;

“MSS” means Marine Scotland Science;

“MS-LOT” means Marine Scotland - Licensing Operations Team;

“MW” means megawatts;

“NLB” means Northern Lighthouse Board;

“s.36” means section 36 of the Electricity Act 1989;

“SEPA” means Scottish Environment Protection Agency;

“SFF” means the Scottish Fishermen’s Federation;

“the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended);

“the Company” means Inch Cape Offshore Limited (SC373173);

“the Development” means the Inch Cape Offshore Wind Farm, approximately 15-22km east off the Angus coastline;

“the Electricity Act” means the Electricity Act 1989 (as amended);

“the Existing s.36 consent” means the s.36 consent granted by the Scottish Ministers in favour of the Company on 17 June 2019 and subsequently varied on 16 July 2020;

“the Original Application” means the application submitted to the Scottish Ministers on August 2018 for a s.36 consent by the Company;

“the Variation Application” means the application to vary the Existing s.36 consent submitted to the Scottish Ministers on 26 January 2021 by the Company;

“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended);

“RSPB” means the Royal Society for the Protection of Birds;

“SPA” means Special Protection Area;

“TS” means Transport Scotland; and

“WTGs” means Wind Turbine Generators.