

Mr Adam Ezzamel
Inch Cape Offshore Limited
5th Floor, 40 Princes Street
Edinburgh
EH2 2BY

Our Reference: 048/OW/RRP-10

16 July 2020

Dear Mr Ezzamel,

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 TO CONSTRUCT AND OPERATE THE INCH CAPE OFFSHORE WIND FARM ELECTRICITY GENERATING STATION, LOCATED APPROXIMATELY 15-22 KILOMETRES (“KM”) 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 30 January 2020 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 (“the Existing s.36 consent”) for the construction and operation of the Development, located approximately 15-22 km east off the Angus coastline.

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 granted on the 17 June 2019 to allow the following:

1. Vary Annex 1 of the Existing s.36 consent, to increase the overall generating capacity permitted from “around 700MW” to “up to 1000MW”, without any variation to the physical parameters of Wind Turbine Generators (“WTG”) or any other component included within the application for the Existing s.36 consent in August 2018 (“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 (“the 1994 Habitats Regulations”) and regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the 2017 Habitats Regulations”), 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 application for s.36 consent in August 2018 (“the Original Application”).
- 1.2.4 In accordance with the 2017 EW Regulation, 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 is not required.

1.3 **Consultation**

- 1.3.1 Regulation 4 of the Variation Regulations provides that an applicant must publish a variation application relating to an offshore generating station on a website, serve a copy of the variation application on 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, Dundee City Council, East Lothian Council, Fife 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, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council, Scottish Natural Heritage (“SNH”), 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. No objections were received, with comments in the main restating points made during the consultation on the Original Application. 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.

- 1.3.4 No objections to the Variation Application were raised by any consultees.
- 1.3.5 **Aberdeen International Airport** did not object to the Variation Application.
- 1.3.6 Aberdeenshire Council confirmed that it had no objection to the Variation Application.
- 1.3.7 **Aberdeenshire Council** undertook an assessment of the Variation Application against the Aberdeenshire Local Development Plan 2017 (“the 2017 Aberdeenshire LDP”), which was submitted to MS-LOT in support of its final response. In the assessment, Aberdeenshire Council highlighted its initial concerns related to the Original Application regarding potential impacts on the Built Heritage, Landscape and Visual Impacts and Ornithology, the latter being an objection to the Original Application. Aberdeenshire Council commented that the Variation Application is unlikely to lead to additional impact in relation to Built Heritage, Landscape and Visual Impacts and consequently, confirmed the proposal will continue to be in compliance with the relevant policies of the 2017 Aberdeenshire LDP. In regard to Ornithology, Aberdeenshire Council previously objected on the basis that uncertainty remained in relation to the potential effect on the Fowlsheugh Special Protected Area (“SPA”), and whether further mitigation could alleviate these concerns. Aberdeenshire Council reiterated that it remained unconvinced that the impact of the Development to the Fowlsheugh SPA could be reconciled with the 2017 Aberdeenshire LDP. Aberdeenshire Council accepted that the scope of the Variation Application was limited and confirmed that it was unlikely additional impacts in relation to Ornithology would occur.
- 1.3.8 **Angus Council** had no comments to make on the Variation Application.
- 1.3.9 **British Telecom (“BT”)** confirmed that the Development should not cause interference to BT’s current and presently planned radio network.
- 1.3.10 **Defence Infrastructure Organisation on behalf of the Ministry of Defence (“MOD”)** had no objection to the Variation Application. MOD requested that the conditions in regard to Aviation Radar (“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.
- 1.3.11 Officials can confirm that the conditions of the Existing s.36 consent regarding the ATC Scheme, ADR Scheme and LMP will not be varied and will remain in place.

- 1.3.12 **Dundee City Council** had no comments to make on the Variation Application.
- 1.3.13 **East Lothian Council** requested clarification from MS-LOT on whether the Variation Application will lead to further onshore transmission works located at Cockenzie which have planning consent in principle. MS-LOT advised that any issues related to the onshore aspects of the Development and the national grid connections are not under the jurisdiction of Marine Scotland and advised East Lothian Council that the best way to address concerns might be to get in touch directly with the Company. East Lothian Council requested confirmation from the Company on whether the onshore works already permitted will be affected by the Variation Application. The Company confirmed that the Onshore Transmission Works Planning Permission in Principle (“OnTW PPP”), granted in 2019, remains valid and that the Variation Application will not effect this. The Company also confirmed that no onshore works beyond the parameters of the 2019 OnTW PPP will be required. East Lothian Council confirmed that, it does not object to the Variation Application and welcomes the increase in the generating capacity.
- 1.3.14 Officials are content with the evidence submitted and considered the issue closed.
- 1.3.15 **Fife Council** confirmed that it had no adverse comment to make on the Variation Application. Fife Council stated its interest in finding out more about any provision made for funds for community benefit from the Development and similar developments off the Fife coast.
- 1.3.16 The Company commented that it does not deem Fife Council’s comments, in relation to community benefit, to be pertinent to the Variation Application. MS-LOT agreed with the Company’s response and agreed that any engagement with Fife council would be welcome. The Company confirmed on 27 April 2020 that it is in regular discussions with the councils and that it will discuss community benefits outside of the Variation Application consultation process.
- 1.3.17 **Forth Ports** had no comments to make to the Variation Application.
- 1.3.18 **HES** stated that it did not object to the Development and since the Variation Application did not seek to alter any physical parameters of the original proposals, confirmed that it had no further comments or advice at this stage.
- 1.3.19 HES highlighted that its comments should be treated as a material consideration and confirmed that the proposals did not raise historic environment issues of national significance and, therefore, it does not object. HES however, stated that this decision should not be taken as support for the proposals and commented that the Variation Application should be determined in accordance with national and local policy on development affecting the historic environment along with related policy guidance.

- 1.3.20 Officials noted the comment of HES and can confirm that all the national and local policies have been taken into consideration at the time that the Existing s.36 consent was granted.
- 1.3.21 **Maritime and Coastguard Agency (“MCA”)** confirmed that it did not have significant concerns to raise on the Variation Application. MCA reiterated that the above opinion is on the understanding that the worst case scenario remains as is assessed in the Navigational Risk Assessment (“NRA”) and that there is no change to parameters in it that would lead to greater significance.
- 1.3.22 The Company confirmed on 27 April 2020 that the proposals of the Variation Application will not affect the conclusions of the NRA. Officials are satisfied with the confirmation.
- 1.3.23 **National Air Traffic Service** had no safeguarding objection to the Variation Application.
- 1.3.24 **Northern Lighthouse Board** has no objection to the Variation Application.
- 1.3.25 **Royal Yachting Association Scotland** had no comments to make to the Variation Application.
- 1.3.26 **Scottish Borders Council** had no comments to make to the Variation Application.
- 1.3.27 **Scottish Fishermen Federation (“SFF”)** confirmed it was content with the Variation Application. SFF however, highlighted it still had concerns about the impacts of the consented Development on the environment and the fishing industry. SFF requested that MS-LOT develops a consent condition to ensure the Development would consider fishing impacts whilst updating its post-consent plans and ensure the Company is contributing to fishing related projects at Scottish Marine Energy Research (“ScotMER”) programme.
- 1.3.28 Conditions had been attached to the Existing s.36 consent requiring the Company to prepare, consult on and adhere to an Fisheries Mitigation Management Strategy (“FMMS”) and participate at the ScotMER programme, to contribute to an improved understanding of the impacts of the Development on commercial fisheries to mitigate concerns regarding commercial fisheries.
- 1.3.29 Officials can confirm that the condition of the Existing s.36 consent regarding the FMMS and ScotMER participation are not being varied and will remain in place.
- 1.3.30 **SEPA** had no objection to the Variation Application.
- 1.3.31 **SNH** had no comments to make to the Variation Application.

- 1.3.32 **Transport Scotland (“TS”)** confirmed that after reviewing the Variation Application Report and the Variation Application that 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 (“CTMP”) to be attached in any potential consent variations.
- 1.3.33 TS confirmed that it had no further comments to make to the Variation Application.
- 1.3.34 Officials can confirm that the condition regarding the CTMP will not be varied and will remain in place.
- 1.3.35 **UK Chamber of Shipping** had no comments to make to the Variation Application.
- 1.3.36 **Whale and Dolphin Conservation** confirmed that due to capacity issues is not able to respond to the Variation Application consultation.
- 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 to vary the Existing s.36 consent.
- 1.5.2 The Scottish Ministers consider that the proposed variation is both reasonable and enforceable.
- 1.5.3 Accordingly, the Scottish Ministers hereby vary the Existing s.36 consent as set out in the table below.

**Annex
Condition**

or

Variation

DESCRIPTION OF THE DEVELOPMENT

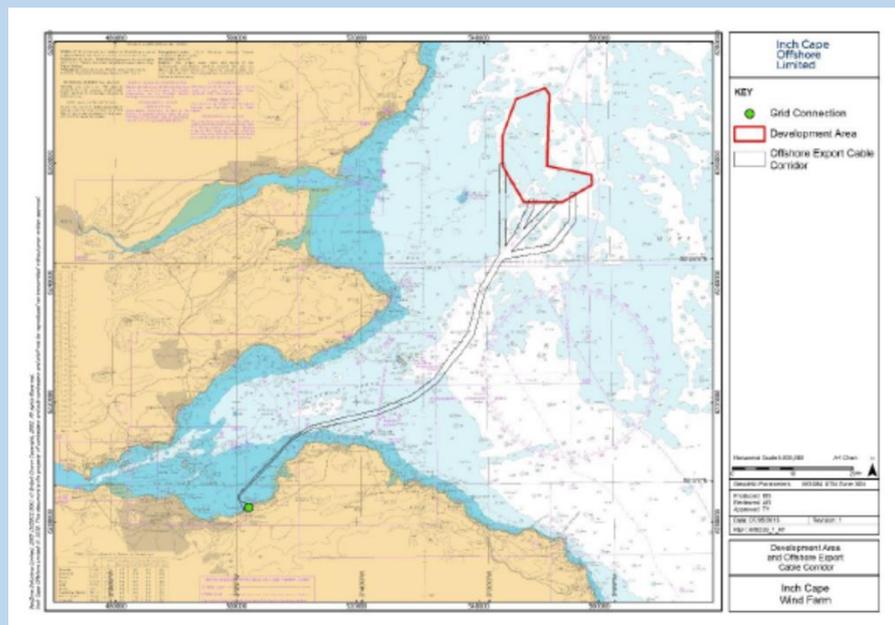
for:

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 around 700 megawatts (“MW”) comprising:

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;

In Annex 1

The total area within the Development site boundary is 150km².

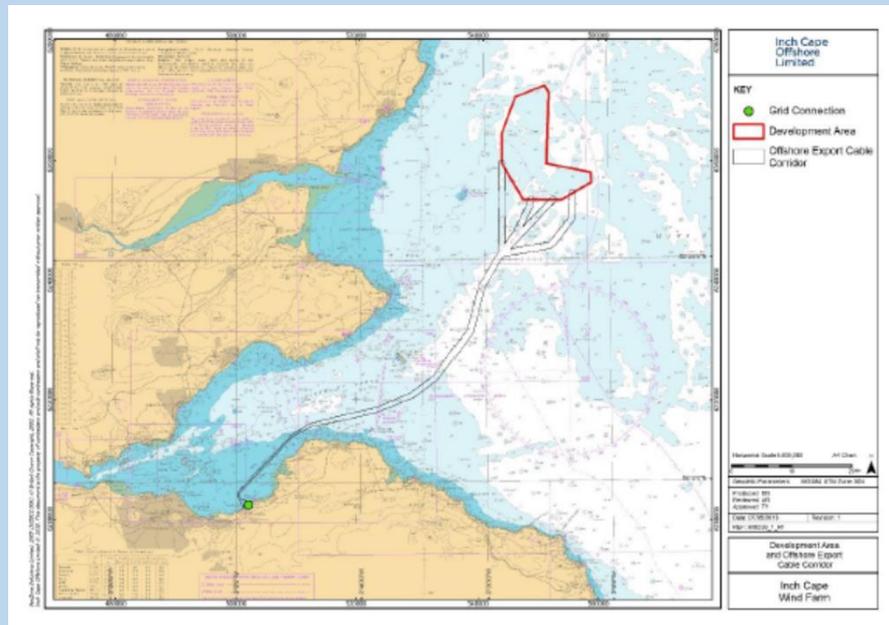


Substitute:

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, 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:
 - 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 150km².



1.5.4 Copies of this letter have been sent to relevant onshore planning authorities: Aberdeenshire Council, Angus Council, Dundee City Council, East Lothian Council, Fife Council and Scottish Borders Council. This letter has also been published on the [Marine Scotland Information website](#).

- 1.5.5 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.
- 1.5.6 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

“ADR Scheme” means Air Defence Radar Mitigation Scheme;
“ATC Scheme” means Air Traffic Control Radar Mitigation Scheme;
“BT” means British Telecom;
“CTMP” means Construction Traffic Management Plan;
“HES” means Historic Environment Scotland;
“FMMS” means Fisheries Management and Mitigation Strategy;
“km” mean kilometres;
“LMP” means Lightning Marking Plan;
“MCA” means Maritime and Coastguard Agency;
“MOD” means Ministry of Defence;
“MS-LOT” means Marine Scotland Licensing Operations Team;
“NLB” means Northern Lighthouse Board;
“NRA” means Navigation Risk Assessment;
“OnTW PPP” means Onshore Transmission Works Planning Permission in Principle;
“s.36” means section 36;
“ScotMER” means Scottish Marine Energy Research;
“SEPA” means Scottish Environment Protection Agency;
“SFF” means Scottish Fishermen Federation;
“SNH” means Scottish Natural Heritage;
“the 1994 Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994;
“the 2017 Aberdeenshire LDP” means the 2017 Aberdeenshire Council Local Development Plan;
“the 2017 EW Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended);
“the 2017 Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017;
“the Company” means Inch Cape Offshore Limited (SC373173, 5th Floor, 40 Princes Street, Edinburgh EH2 2BY);
“the Development” means the Inch Cape Offshore Wind Farm, approximately 15-22km east of 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;
“the Original Application” means the application submitted to the Scottish Ministers on 15 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 30 January 2020 by the Company;
“the Variation Regulations” means the Electricity Generating Stations (Applications for Variation of Consent (Scotland) Regulations 2013 (as amended);
“TS” means Transport Scotland; and
“WTG” means wind turbine generator.