

FAO: Debbie Flaherty
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6th March 2023

Dear Debbie,

Creag Riabhach Wind Farm, Sutherland, Highland
Application for Variation under Section 36C of the Electricity Act 1989

Background

Further to pre-application discussions with you, my client Creag Riabhach Wind Farm Limited (the 'Applicant') requests a variation under Section 36(C) of the Electricity Act 1989 (the 1989 Act) of the Section 36 consent for the Creag Riabhach Wind Farm (CRWF) on the basis of the terms set out below. This application submitted under Section 36(C) is hereinafter referred to as the 'Variation Application'.

The Section 36 Consent and Creag Riabhach Wind Farm

The existing Section 36 consent for the CRWF (the Section 36 consent) and the associated deemed planning permission were granted to the Applicant by way of a Decision Letter issued by the Scottish Ministers dated 17 October 2016. Please note the Applicant is referred to as the Developer within the definitions attached to the Grant of Consent (electronic page 41).

In accordance with the requirements of Regulation 3(1)(d)(iii) of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (the '2013 Regulations'), copies of the Section 36 Consent and the Decision Letter from the Scottish Ministers are enclosed.

The Applicant remains the owner of the CRWF and is entitled to the benefit of the Section 36 consent. The Applicant is therefore entitled to make the Variation Application as submitted.

CRWF is located on the Altnaharra Estate, Sutherland, approximately 6.5 kilometres south of Altnaharra and approximately 33.5 kilometres north of Lairg with access from the A836. The location of the site as shown on Figure 1 which is enclosed.

CRWF is now an operational wind farm, having started commissioning and commenced commercial operations on 24th November 2022 (the Date of First Commissioning). The CRWF has been built out on the basis of the Section 36 Consent and deemed planning permission granted by the Scottish Ministers in 2016. There have been no Section 42 Applications submitted or such consents granted.

The Proposed Development (as Varied)

Condition 1 attached to the Section 36 consent currently provides that the consent to operate the CRWF will expire after a period of 25 years from the Date of Final Commissioning. The Variation Application seeks only to amend Condition 1 of the Section 36 consent to extend the duration of the operational lifespan from 25 years (current) to 40 years (proposed), from the Date of Final Commissioning of CRWF.

The Date of Final Commission is confirmed as 21st February 2023.

It is important to note that there are no changes proposed to the site boundary, the physical layout of CRWF or to any other conditions which control the manner of operation of CRWF.

There are consequential changes required to conditions in consequence of the proposed variation to Condition 1.

In particular, the deemed planning permission is subject to two planning conditions which require variations in terms of the 25 year period which they refer to as follows:

- > Condition 22 of the deemed planning permission entitled “duration of consent” requires the wind turbines to be decommissioned and removed from the site upon the expiration of a period of 25 years from the Date of Final Commissioning.
- > Condition 23 of the deemed planning permission entitled ‘site decommissioning, restoration and aftercare’ requires the development to be decommissioned and to cease to generate electricity by no later than the date following 25 years from the Date of Final Commissioning.

These conditions would also require to be varied from 25 to 40 years.

The Applicant is therefore also seeking a Direction from the Scottish Ministers under Section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 that the deemed planning permission is varied in respect of these two conditions which form part of the current deemed planning permission.

A draft of the proposed variations to the terms of Condition 1 of the Section 36 consent and Conditions 22 and 23 of the deemed planning permission is provided in Appendix 1 shown as tracked changes.

In accordance with Regulation 3(1)(C) of the 2013 Regulations, the reasons for seeking a variation to the Section 36 consent are stated in the Supporting Statement that accompanies the Variation Application. A technical report supporting the capabilities of the infrastructure to operate for the extended time period is also provided. In summary, the extension to the operational life of CRWF would contribute to an increased energy output over the life of the wind farm and would secure the continued provision of a renewable source of energy for a further 15 years.

Environmental Impact Assessment (EIA)

The Applicant has considered the need for EIA under the terms of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the ‘2017 EIA Regulations’).

The 2017 EIA Regulations were amended in December 2017 to clarify the EIA should only be required where the changes proposed by a variation may themselves be likely to give rise to significant environmental effects. Where the proposed variation itself is unlikely to have significant effects, no EIA report is required for a variation application.

Based on advice from David Bell Planning Ltd and other environmental experts, it has been concluded that the proposed variation would not be likely to give rise to any new or different significant effects on the environment. As such, the Variation Application is not considered to constitute EIA Development.

Variation Application Publicity and Advertising

A copy of the Variation Application will be served on Highland Council and on the owners of the site in accordance with Regulations 4(2)(b) and (d) respectively of the 2013 Regulations.

The Variation Application will be advertised in accordance with the 2013 Regulations, after the application documents have been served on the Planning Authority and copies have been published on the project website, as follows:

- the Northern Times (for two successive weeks) – 24th and 31st March 2023
- the Edinburgh Gazette (for one week) – 20th March 2023
- the Herald (for one week) – 24th March 2023.

A copy of the press advertisement is provided at Appendix 2 to this letter.

A copy of the notice of the Section 36(C) Variation Application served on the owner and occupier of the land (6th March 2023) to which the application relates is provided at Appendix 3. These parties have been notified of a date, not less than a 28 day period for representation (to 5th May 2023).

Section 4(2)(A) of the 2013 Regulations states that the Applicant must publish on a website (i) a summary of the Variation Application (ii) a copy of the application (iii) the Section 36 consent and (iv) any environmental statements prepared in relation to the proposed development. Please note this information will therefore be published on the following website on the date of submission (6th March 2023): <https://www.erguk.energy/>

A copy of the application has also been served on the Highland Council on the date of submission (6th March 2023) in accordance with Regulation 4(2)(b) of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013.

On the basis of the information provided in this Variation Application the Applicant requests that the Scottish Ministers grant the Variation Application and make the proposed variations to the Section 36 consent and vary the deemed planning permission and issue direction under Section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997.

There is no requirement for statutory public consultation for applications of this nature, however consultation with the Highland Council and NatureScot have taken place in the preparation of proposals, prior to submission.

Documentation Submitted

The documentation submitted with the Variation Application therefore comprises the following:

- > this application cover letter and Appendices as follows:
 - Appendix 1: a draft of the proposed Variation;
 - Appendix 2: a copy of the press advertisement; and
 - Appendix 3: a copy of the Notice served upon the owner and occupier of the land to which the application relates.
- > Site Plans – the Original Layout and ‘As Built’ Layout;
- > a copy of the original Section 36 Consent and Decision Letter;
- > a Supporting Statement including reference to the applicable policy framework and which contains reasoning as to why the variation is requested, prepared by David Bell Planning Limited;
- > a Technical Statement confirming the infrastructure life capability entitled “ERG Lifetime Extension Process”;
- > a Non-Avian Ecology and Ornithology Assessment Note prepared by Caledonian Conservation Limited; and
- > a Landscape and Visual Technical Note prepared by WSP Environment and Infrastructure Solutions UK Limited.

We confirm the application fee of £22,500 has been paid with reference number: ECU00004758 Creag Riabhach.

We look forward to your acknowledgement in early course that the Variation Application has been accepted for determination. Please do not hesitate to contact me or my colleague Pippa Gardner should you have any queries or if you require any additional information.

Yours sincerely



David C Bell BSc(Hons) DipUD MCIHT MRTPI
Director

Enc.