

**UK Government Consultation: Electricity Infrastructure Consenting in Scotland**

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**1.0 INTRODUCTION**

- 1.1 This report provides a summary of the proposals set out within the UK Government consultation “Electricity Infrastructure Consenting in Scotland”. A draft response to the consultation is set out within Appendix 1. The consultation was published on 28<sup>th</sup> October 2024 and closed on 29<sup>th</sup> November 2024. A response approved by ELT has been submitted however a further response including comments/amendments from PPSL can be submitted if necessary.
- 1.2 The consultation paper identifies that the electricity consenting process in Scotland is inefficient and gives rise to unnecessary delay in the delivery of new electricity generation and transmission development. It is identified that reform of electricity consenting elsewhere in the UK has streamlined electricity consenting through better alignment of this process with the planning system. The proposals seek to deliver better informed applications and streamlined processes for the consideration and determination of applications through the introduction of a pre-application consultation stage, and through the replacement of the statutory requirement for public inquiries to resolve objections with less formal examination arrangements. The proposals also include provisions which would allow greater scope to amend consented schemes without the requirement for a full resubmission.

**2.0 RECOMMENDATIONS**

- 2.1 Recommend that PPSL consider and approve the draft consultation response attached to this report as Appendix 1.

**3.0 DETAIL**

- 3.1 The Scottish Government determines applications to construct or install electricity infrastructure for onshore generating stations over 50MW, off-shore generating stations over 1MW, and network projects under the provisions of the Electricity Act 1989. This is in alignment with the Scottish Government having devolved responsibility for land use and planning in Scotland. However, whilst the Scottish Government has responsibility for taking decisions under the Electricity Act 1989, the UK Parliament has responsibility for the legislative framework as the powers to legislate for “generation, transmission, distribution and supply of electricity” were reserved under the Scotland Act 1998.
- 3.2 Consenting of electricity infrastructure in England and Wales was streamlined through the Planning Act 2008 and included measures that made this process fairer and more efficient for local communities and applicants. The Electricity Act 1989 as utilised in Scotland has not been modernised in the same way. It has been identified that it in Scotland can take up to four years to consent large-scale onshore electricity projects which is slow in comparison to consents in England in Wales dealt with under the Planning Act 2008. The lengthy timescales give rise to additional costs to consumers primarily through ‘constraints payments’ to electricity generators – these amounted to £2bn in 2022 and could rise to £8bn (or £80 per household) across the UK by the late 2020’s if delays to consenting and delivery remain unresolved.
- 3.3 The consultation sets out and seeks stakeholder input on a range of measures which are intended to improve the timeliness of the consenting process and ensuring that this meaningfully involves communities and relevant planning authorities in decision-making. The proposals cover the entire application process beginning with pre-application requirements through to the process for challenging decisions made by Scottish Ministers. The consultation includes the following overview of the proposals:

***Pre-application requirements*** – in contrast to all other legislative planning regimes in Great Britain, the Electricity Act 1989 stipulates no pre-application requirements, for example the requirement to consult in advance of an application being made. This allows applicants to submit applications for electricity infrastructure consent without consulting communities or statutory consultees, although some may choose to do so. Reform proposals include the introduction of requirements for pre-application consultation, notification and publication of planned applications. Also proposed is the ability for Scottish Ministers to recover the costs of any pre-application activities, and the introduction of an ‘Acceptance Stage’ when Scottish Ministers can decline to accept applications which have not fulfilled pre-application requirements.

***Applications*** – statutory consultees including relevant planning authorities, Scottish National Heritage (now known as NatureScot), the Scottish Environment Protection Agency and Historic Environment Scotland provide important input to enable effective scrutiny of applications. However, without timely delivery of each input, supported by the right skills and capacity, the application timeline can become lengthy. The proposals provide collaborative approaches to deliver a

*predictable application timeline facilitated by the right skills and capacity to provide greater certainty for all parties. Further measures to support the clarity and timeliness of the process include enabling updates of the information requirements for applications, and constraints on the timing of amendments for onshore applications.*

**Public inquiries** – *under existing arrangements, where a relevant planning authority objects to an application within statutory timescales, and the objection is not withdrawn or given effect through modification or conditions, the Scottish Ministers must hold a public inquiry. This is a formal process, usually involving an examination by way of an oral hearing and/or inquiry sessions which takes an average of 18 months. The reform package, particularly pre-application consultation, aims to reduce the number of planning authority objections by bringing forward more complete and better formulated applications, shaped at an earlier stage by input from relevant planning authorities, local communities and other statutory consultees. Specific reform proposals focus on retaining the opportunity for relevant planning authorities to object, and handling objections through a tailored, reporter-led process.*

**Variations** – *there is no prescribed process to vary consents for network projects granted under section 37 of the Electricity Act 1989. This causes uncertainty for generators awaiting connections, is a procedural risk for developers and Ministers, and has the potential to prevent significant network upgrades going ahead unless a new, full application is submitted. Reform proposals seek to implement a prescribed process for varying consents to network projects. There is a further proposal to give the Scottish Government powers to revoke, suspend or vary consents under specific circumstances.*

**Necessary wayleaves** – *in contrast to the UK Government, the Scottish Government cannot charge fees for processing applications for necessary wayleaves (statutory rights that allow electricity licence holders to install and access their electricity lines and associated infrastructure on land owned by others). Changes are required to enable the Scottish Government to process an expected significantly increased volume of applications in coming years. Reform proposals seek to allow the Scottish Government to charge the network operator fees at the point of application submission.*

**Statutory appeals and judicial proceedings** – *in Scotland, there is inconsistency as to whether consents granted to applications for electricity infrastructure can be challenged by a judicial review or a statutory right of appeal, depending on whether the consent is granted for an onshore or offshore project. The time limit for the challenge also varies and may either be 3 months or 6 weeks. Reform proposals look to align the timescales to 6 weeks and use a statutory right of appeal process for all onshore and offshore consenting in Scotland.*

- 3.4 The proposals in the main part would ensure closer alignment between electricity consenting and planning consenting. The proposals relating to pre-application engagement, procedures for examination, variation of permissions, and rights of

appeal/judicial challenge are closely aligned to the Town and Country Planning (Scotland) Act 1997.

- 3.5 Pre-application procedures have proven to be effective in improving community engagement and public awareness for 'nationally significant' and 'major' planning applications since their introduction in 2009. Early engagement with stakeholders and communities should give rise to improved application submissions where there is less likelihood of objections (if key issues are satisfactorily addressed prior to submission) or the requirement for amendments to proposals at a late stage in proceedings. Whilst improved submissions may give rise to the prospect of time and cost savings during the application stage the introduction of an additional step in the consenting process would also introduce new duties for the Council to engage as planning authority along with other stakeholders.
- 3.6 Proposals to amend application procedures are primarily of interest to the Council with the intent to remove the statutory requirement for a public inquiry in the event of a planning authority objection being submitted. Removal of the statutory requirement for a public inquiry could potentially downgrade the Council's position in negotiating improvements to a proposal with a developer who might otherwise be minded to avoid the time and cost implications of inquiry proceedings. It is however highlighted that the proposals identify that a planning authority objections will still give rise to a statutory requirement for an examination of the proposal. The proposals for a reporter led examination are similar to those available within the planning and planning appeal processes and include provision for inquiry sessions, hearings, written submissions, and site visits with the format to be decided by an appointed reporter on a case by case basis. Attendance at a public inquiry is estimated to cost the Council approximately £70k inclusive of legal representation and attendance of specialist consultants but excluding the considerable officer time required for preparation and attendance. Removal of the statutory requirement for a public inquiry gives rise to the expectation that the majority of objections would expect to be handled through less formal proceedings which would be able to be officer led as opposed to the appointment of legal representation. Whilst there may be some concern at the Council's standing in the consenting process being eroded it should conversely be recognised that the likely reduction in costs and officer time that may be required to defend an objection does have potential to significantly reduce the resource implications to the Council in exercising their role within the energy consenting process without compromising its position as planning authority and a lead for its communities. A reduction in the formality and costs required to object to a proposal would also be beneficial to other stakeholders, particularly community councils.
- 3.7 Whilst the proposals overall might be expected to reduce the resource implications to the Council in engaging with the consenting process. It is highlighted that the additional pre-application and acceptance stage duties identified for the planning authority will require additional resource input from the Council in advance of any fees from the Scottish Government being payable under current arrangements. In circumstances where a proposal does not

proceed to formal application stage then this could prospectively mean that considerable effort/resource is expended without recovery of any fee income. This position is also applicable to community councils and other stakeholders who would also be expected to undertake an additional engagement stage within the consenting process. Given the significant financial challenges facing the Council it is appropriate to highlight that the proposals include additional unfunded resource implications that require to be addressed. The Council has also recently received communication from communities highlighting the resource disparity and the request for support to assist with their engagement in the energy consent process and this issue is also highlighted in the proposed Council response.

- 3.8 Proposals to introduce new mechanisms that would allow the Scottish Government the ability to amend new applications, either at the request of the developer, or in some circumstances to act unilaterally to amend, suspend, or revoke permissions mirror similar provisions available within the Town and Country Planning (Scotland) Act 1997 which the Council as planning authority can apply to grants of planning permission. The ability to amend or vary submissions without the requirement for a fresh application would provide a proportionate means of refining consents post determination and ensuring that the Scottish Government is able to take appropriate action in the event of an error in the consenting processing being identified.
- 3.9 Proposals relating to charging for wayleaves and the introduction of an appeal process primarily impact upon developers and are not identified at this time to give rise to significant implications to either the Council as planning authority or the communities of Argyll and Bute.

#### **4.0 CONCLUSION**

- 4.1 The proposals appear largely to improve alignment between the electricity consenting process and the planning system as operated under the Town and Country Planning (Scotland) Act 1997. The requirement for developers to undertake early engagement with stakeholders and communities to better refine their proposals prior to formal submission is intended to give rise to better informed applications, streamlined time periods for assessment and less likelihood of objection being raised. Whether the proposals for enhanced pre-application engagement will reduce the number of proposals which give rise to objection from the Council as planning authority, or other statutory stakeholders including communities across Argyll and Bute will depend very much on whether developers take heed of the issues raised and amend their proposals accordingly, or in some cases choose not to take these forward in the circumstances where the issues raised are irreconcilable. In this respect it should be highlighted that the proposals for pre-application engagement represent an additional stage in the consenting process which will include additional duties for the Council as planning authority that will require to be adequately resourced in order to ensure the timely

local authority input which will be required to deliver on the aspiration for improved processing times.

- 4.2 The proposed removal of statutory public inquiries does mean that developers may be less inclined to make amendments to proposals in response to matters raised by the planning authority. Concerns in this respect can however be allayed as a planning authority objection would still give rise to a statutory requirement for an examination in public that would be expected to give rise to a sufficiently robust and transparent process for determination of applications. Less formal examination procedures give rise to the prospect of significant time and cost savings to the Council for applications that do not require a public inquiry, and should be less prohibitive to full participation for other parties, including communities.
- 4.3 Whilst regulatory reform is essential to improving processing times for electricity consenting it is also important to recognise that unless stakeholders are adequately resourced to participate in the process then there will continue to be significant challenges which will give rise to delays in the consenting process. The Council's response seeks to highlight these issues and invite consideration of how these challenges can be addressed.

## **5.0 IMPLICATIONS**

- 5.1 Policy - None
- 5.2 Financial – Resource implications associated with requirement to participate in additional pre-application stage of energy consent process. Potential for this to be offset with reduced requirement for planning authority objection and/or lower costs associated with defending an objection if statutory PLI proceedings are not required.
- 5.3 Legal - None
- 5.4 HR - None
- 5.5 Fairer Scotland Duty:
- 6.5.1 Equalities - protected characteristics - None
  - 6.5.2 Socio-economic Duty - None
  - 6.5.3 Islands - None
- 5.6 Climate Change – Proposals are intended to improve the efficiency of the consenting process for nationally important electricity generation and transmission infrastructure which are identified as being essential in making a contribution toward climate change targets.
- 5.7 Risk - None
- 5.8 Customer Service - None

5.9 The Rights of the Child (UNCRC) - None

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25<sup>th</sup> November 2024

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## **APPENDICES**

Appendix 1 – Draft Consultation Response

Appendix 2 – Electricity Infrastructure Consenting Scotland Consultation Document

## APPENDIX 1 – DRAFT CONSULTATION RESPONSE

### PRE-APPLICATION REQUIREMENTS:

*1. Do you agree with the proposal for pre-application requirements for onshore applications? Why do you agree/not agree? How might it impact you and/or your organisation?*

#### AGREE

The opportunity for engagement with stakeholders with the aim to developing better informed proposals in advance of submission is to be welcomed and would ensure that there is opportunity for engagement on electricity infrastructure developments in a manner that is similar to process set out for other ‘nationally significant’ and ‘major’ developments which require planning permission. Whilst the proposed pre-application procedures represent an additional step it is accepted that these requirements have the potential to improve the efficiency of the subsequent processing of an application through the early resolution of issues and provision of information to an acceptable standard.

It is however highlighted that the introduction of an additional stage in the consenting process is likely to give rise to a requirement for additional resource expenditure from stakeholders to ensure that this is a meaningful and productive exercise. The introduction of any additional duties gives rise to concern given the challenging financial climate that local authorities continue to operate within. It is also noted that community councils have also highlighted issues in relation to their own lack of resources and the significant costs associated with obtaining specialist advice to inform their own participation in the energy consenting process. The requirement for additional engagement within the consenting process may prove challenging to resource. The redistribution of a portion of any pre-application fee to stakeholders, and/or a requirement for the developer to contribute funding to resource and support engagement by affected communities are suggested as prospective means of directly addressing this challenge.

*2. Do you agree with the proposal for pre-application requirements for offshore generating stations? Why do you agree/not agree? How might it impact you and/or your organisation?*

#### DISAGREE

It is unclear why it is proposed to introduce different arrangements for onshore and offshore development. Whilst it is accepted that offshore development will not be located within a community council area it would appear sensible that the pre-application process still seeks to identify and engage with any neighbouring communities who may be impacted by the development. It is noted that similar arrangements would apply within the terrestrial regime as neighbouring community council areas may be identified for consultation where a proposed development is identified to have impacts that will occur over a wider area. The requirement to produce a statement of community consultation would allow consideration as to whether any



community is likely to be directly or indirectly affected by the proposals and ensuring appropriate engagement where necessary.

*3. Do you agree that pre-application requirements should apply to all onshore applications for electricity generating stations, and for network projects that require an EIA? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

A requirement for pre-application engagement across all onshore developments would ensure a level playing field and would avoid any confusion over the application of the procedures.

*4. Do you agree that a multistage consultation process may be appropriate for some network projects? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

It is agreed that multi-stage consultation would be appropriate for more complicated network projects that cover long distances and will impact upon a multiple communities, particularly where these communities are not strongly connected or linked. It is however highlighted that multi-stage consultation would give rise to increased resourcing challenges, particularly for stakeholders, such as local authorities and national agencies, who may be required to engage multiple times on one project. In such circumstances it may be appropriate that the developer undertakes multiple events across different communities but still seeks to engage with other stakeholders at local authority boundary or whole project level as appropriate.

*5. Do you agree with the proposal for an 'Acceptance Stage' for applications? How long do you think an acceptance stage should be (in weeks)? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

An acceptance stage is necessary to provide the opportunity to review and conclude whether the developer's pre-application has been satisfactorily concluded, failure to do so would only leave this aspect open to challenge at a later stage in proceedings. The opportunity to review whether the information accompanying the application is complete and has been provided to a satisfactory standard is also to be welcomed as this should reduce the requirement for late submission of additional/updated information which in turn should reduce the processing time and resource required to conclude the assessment of the proposal.

It is suggested that a minimum period of 6 weeks be provided for the acceptance stage to include appropriate time for processing and to facilitate the requirement for consultation with the planning authority within this stage.

*6. Do you agree that the Scottish Government should be able to charge fees for pre-application functions? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

It is agreed that the consenting process should be delivered and funded on a full cost recovery basis. It is however highlighted that pre-application engagement will incur significant resource costs for participating stakeholders, including local authorities and community councils. Whilst the planning authority may expect (under the current voluntary arrangements) to receive a portion of the fee from any subsequent application this is not the case for other stakeholders in the process, and even for the planning authority there can be no guarantee that a project at pre-application will result in an application that will retrospectively cover the cost of such earlier engagement. In the event that pre-application charging is introduced it is requested that consideration be afforded to a redistribution of a portion of those funds to offset the additional resource implications to planning authorities and other stakeholders, ideally on a full cost recovery basis.

*7. Do you agree that our proposals for pre-application requirements will increase the speed of the end-to-end project planning process overall? Why do you agree/not agree?*

AGREE

Whilst the introduction of pre-application requirements adds an additional step to the consenting process it is agreed that this does improve the efficiency of the overall process by identifying and resolving any issues at an earlier stage although this will only occur where the developer and stakeholders are able to commit the necessary resources and are able to participate unreservedly in the spirit in which these arrangements are intended.

## **APPLICATION PROCEDURES – APPLICATION INFORMATION REQUIREMENTS:**

*1. Do you agree with the proposal for increased information requirements in applications? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

The provision of minimum validation standards for all electricity developments is to be welcomed and will ensure that consultation and assessment of applications does not commence until such time as all the required information has been provided by the developer.

*2. Do you agree with the proposal to set out detailed information requirements in regulations? Why do you agree/not agree? How might it impact you and/or your organisation?*

AGREE

The provision of minimum validation standards is to be welcomed. This would provide certainty for the developer in respect of the minimum standard of information required

to be included in their submission. The intent of the Scottish Government to introduce varying requirements depending on the nature and location of the development would ensure that minimum requirements remain proportionate.

## **APPLICATION PROCEDURES – INPUT FROM STATUTORY CONSULTEES:**

*1. What are the reforms that would be most impactful in enabling your organisation to provide timely input on section 36 and section 37 applications?*

The provision of additional specialist support would be of greatest benefit to the organisation. The rural nature of Argyll and Bute makes it difficult to support the business case for the Council to directly employ specialist resources who would be utilised on an irregular basis, and also means that specialist resources which can be justified are stretched thinly across a large geographic area. In this respect it is noted that the Council does not currently employ any specialists who are able to provide input on landscape, trees, noise from windfarms, or peat slide assessment. Internal resource is available to advise on biodiversity and the historic environment however this has limited capacity. External consultants are utilised to provide specialist advice as required, however, this can only be procured following receipt of a consultation and, dependent on the availability of consultants, can result in delays to the Council in being able to respond to consultations.

It is suggested that the Planning Hub could prospectively employ specialists who are able to support local authorities in areas such as landscape, noise, peat slide assessment where advice would otherwise require to be procured externally.

The use of a common specialist resource across consultee stakeholders could also prospectively reduce duplication of time, cost and effort within the process – i.e. at present both the planning authority and Nature Scot will engage separate landscape architects to review the application and inform their separate consultation responses. In this respect, the Planning Hub could potentially act as a procurement body which has standardised terms agreed with a range of specialist consultants that could be engaged by local authorities and co-ordinated with the requirements of other stakeholders as required.

It is also suggested that the Planning Hub could prospectively provide a means of reducing the resource implications for community councils who require specialist support to engage in the energy consent process.

*2. What are the advantages and drawbacks of the options set out under Proposed Changes? How might your organisation benefit from the proposed forum and framework?*

A forum providing the opportunity to engage with the ECU and other stakeholders to identify common issues and share best practice in the engagement with the electricity consenting process would be welcome.

The development of a consensual framework for the delivery of an application is supported in principle as this would to all intent and purpose result in a 'Processing

Agreement'. Whilst a framework agreement would potentially increase certainty of timelines this is unlikely in itself to speed up the consenting process as the existing resources within local authorities and communities are already overstretched. Unless the issue of resourcing at stakeholder level is addressed as a root cause then there is a real danger that timelines will not be dissimilar to the existing consenting process.

*3. What specialist or additional support could the Scottish Government's Energy Consents Unit provide to facilitate the statutory consultees' ability to respond?*

Specialist support in relation to landscape, noise impact assessment, peat slide assessment, and biodiversity are all areas which are either currently unavailable internally, or are already oversubscribed.

*4. Would new time limits help your organisation to prioritise its resources to provide the necessary input to the application process?*

The resources available to the Council to engage in the energy consent process are already stretched. It is unclear how the provision of amended time limits would be beneficial to the Council as this would only give rise to increased pressure upon an existing limited resources.

It is however considered that it would be beneficial to enable the Scottish Government the ability to set and extend each stage of the consenting process. At present any extension of the prescribed period for consultation requires to be requested by the applicant which can be unhelpful, particularly where a response is delayed due to their provision of late/amended information. It would appear practicable that the Scottish Government as decision maker is afforded scope to unilaterally extend the consultation process in circumstances where a consultee is able to demonstrate a valid requirement for additional time to respond.

## **APPLICATION PROCEDURES – AMENDMENTS TO APPLICATIONS:**

1. Do you agree with implementing a limit for amendments to applications? Why do you agree/not agree? How might it impact you/your organisation?

AGREE

The imposition of a time limit for the amendment of applications would encourage developers to ensure that their proposal has been appropriately refined prior to submission. This would increase certainty of time lines by reducing the likelihood that a project would require to be the subject of extensive re-consultation at a late stage in the consenting process. It is currently not uncommon for proposals to be the subject of significant modification following the initial consultation process; re-consultation requires considerable duplication of effort and retention of resources that could otherwise be released for other casework.

It is however unclear why it is not proposed to impose a limitation on amendments to offshore development as the same principles in relation to the management of limited resources would also be applicable.

*2. Do you agree the limit should be determined by Scottish Ministers on a case-by-case basis? Why do you agree/not agree? How might it impact you/your organisation?*

NEITHER AGREE OR DISAGREE

There are no adverse comments on this proposal, however it is observed that in absence of a cut-off date defined by regulation it is unclear what process or methodology Scottish Ministers might utilise to fairly and consistently set a cut-off date for applications on a case by case basis, or indeed whether any date intimated would be capable of being reviewed and reset later during the process. Any prospect of a cut-off date being reset would give rise to uncertainty in relation to resource allocation.

### **APPLICATION PROCEDURES – PUBLIC INQUIRIES:**

*1. What is you or your organisation's experience of public inquiries? What are the advantages? What are the disadvantages?*

Argyll and Bute Council has attended a number of public inquiries in its role as planning authority; this has primarily been in cases where the Council has raised objection to a proposal although this has not always been the case.

It is accepted that the public inquiry process provides a robust legal framework for the examination of a range of complex and contentious matters within a public forum.

In addition to the impact of long lead in times upon the overall conclusion of the consenting process, engagement in a public inquiry also requires a significant resource commitment from all participants. The formality of proceedings will generally necessitate the appointment of legal representation in addition to the time and costs that will be accrued in preparation and attendance of Council officers and specialist consultee advisors. The formality of the Public Inquiry process can be overly intimidating, particularly to lay-persons, and in some instances will require disproportionate resource to the issues under consideration.

*2. Do you agree with the proposed 'examination' process suggested? Why do you agree/not agree? How might it impact you/your organisation?*

AGREE

A reduced requirement for public inquiry would be expected to have a positive impact on the overall time for consenting, and result in a reduction in the resources required by local authorities, other stakeholders, and the developer within the examination process.

The proposed retention of a statutory requirement for an examination in the event of a planning authority objection is welcomed as a safeguard that ensures that the Council remains sufficiently empowered as planning authority to engage in the consenting process and direct negotiations with the developer with a view to mitigating the effects of the development, and in representing the views of its communities.

To date, the Council has not considered the prospective cost of attending a public inquiry session as a relevant factor in reaching its decision on whether or not to raise objection to a consultation. However given the expected significant increase in renewable energy developments and demand on limited resource to engage in the consenting process there is a real danger that the limited availability of resources to defend a valid planning objection at PLI could become a limiting factor.

The proposed amendment to the legislation would afford discretion to the appointed reporter to determine the relevant procedures for the examination. This would provide a high degree of alignment with the procedures set out under the Planning legislation and an expectation that formal public inquiry sessions, whilst remaining an option, would likely be reserved for the most complex and contentious of matters with less formal hearing sessions and written submissions being utilised predominantly. The opportunity for interested parties to express their view on the type of procedures required is again similar to the planning appeal process and would assist the reporter in identifying the most appropriate procedures for the examination on a case by case basis.

#### **VARIATIONS – VARIATION OF NETWORK PROJECTS:**

*1. Do you agree with the proposal to prescribe a clear statutory process under which variations to network projects may be granted? Why do you agree/not agree? How might it impact you/your organisation?*

AGREE

Agree that there should be a process to facilitate variations, similar to the process permitted to be undertaken for planning applications and S36C generating station consents, subject to agreement of all parties that the proposed 'variation' is not a fundamental change to the original consent.

The ability to vary consents would reduce demand upon the consenting system from proposals that currently require to be resubmitted in full and would provide the developer with a proportionate means of optimising their proposal post-determination if necessary.

#### **VARIATIONS – VARIATION OF CONSENTS WITHOUT APPLICATION:**

*1. Do you agree with the proposal to give the Scottish Government the ability to vary, suspend or revoke consents, without an application having been made in the circumstances set out above? Why do you agree/not agree? How might it impact you or your organisation?*

AGREE

The proposals would provide similar powers available to the planning authority under S65 of the Town and Country Planning (Scotland) Act 1997. It would appear sensible to allow the decision maker opportunity to revisit a decision to amend or revoke the permission in the event that it is identified that there has been a significant change in circumstances or error within the original decision making process. As any modification or revocation would impact upon the deemed planning permission for the development it would be appropriate to include provision that Scottish Ministers undertake consultation with the planning authority in respect of any steps that they might take to suspend, modify, or revoke a permission.

*2. Do you believe there should be any other reasons the Scottish Government should be able to vary, suspend or revoke consents? What reasons are these?*

NONE IDENTIFIED

#### **FEES FOR NECESSARY WAYLEAVES:**

*1. Do you agree with the principle of introducing a fee for the Scottish Government to process necessary wayleaves applications? Why do you agree/not agree? How might it impact you or your organisation?*

NO COMMENT

*2. Do you agree that the fee amount should be based on the principle of full cost recovery, in accordance with Managing Public Money and the Scottish Public Finance Manual? Why do you agree/not agree? How might it impact you or your organisation?*

NO COMMENT

#### **STATUTORY APPEALS AND JUDICIAL PROCEEDINGS:**

*1. Do you agree that a statutory appeal rather than a judicial review process should be used for challenging the onshore electricity consenting decisions of Scottish Ministers? Why do you agree/not agree? How might it impact you or your organisation?*

AGREE

The provision of a statutory appeal process setting out procedures for the applicant to challenge the outcome of a decision would appear sensible as this would align the electricity consenting process with the planning process which includes a statutory right of appeal for applicants.

*2. Do you agree there should be a time limit of 6 weeks for initiating a challenge to a consenting decision of Scottish Ministers for onshore electricity infrastructure? Why do you agree/not agree? How might it impact you or your organisation?*

AGREE

Limitation of the time period for a judicial review to 6 weeks would again provide alignment with the planning system and would reduce any period of uncertainty following the issue of the initial decision.

## **TRANSITIONAL ARRANGEMENTS:**

*1. Do you agree with the above proposal for transitional arrangements? Why do you agree/not agree? What impact would this have on you/your organisation?*

AGREE

The proposed transition arrangements appear practicable.

## **THE PACKAGE OF REFORMS:**

*1. Having read the consultation, do you agree with the reforms as a package? Why do you agree/not agree? What impact would they have on you/your organisation?*

AGREE

Generally agree with the package of reforms as this will create closer alignment between energy consenting and the planning system in Scotland. The proposals include prospective new duties for the Council as planning authority at pre-application and acceptance stage which will give rise to additional resource implications that should ideally be addressed through redistribution of a portion of the fees paid to the Scottish Government to relevant stakeholders. The consultation recognises that the efficiency of the consenting process is reliant on the timely and efficient engagement from all relevant stakeholders however there is no discussion of how stakeholders will be properly resourced to engage effectively. The Council is supportive of the principle of full cost recovery within the regulatory process but would request that this principle is also extended to the participation of other stakeholders who are acknowledged as being critical to the provision of specialist advice and community representation.

*2. What steps could we take to ensure the project planning process (including the pre-application stage) can be completed as fast as possible?*

It is suggested that a draft framework/checklist be prepared for applicants, setting out exactly they require to prepare from the pre app stage, and for subsequent stages in the project timeline.

It is also suggested that any reform of the electricity consenting process also considers whether this should include formal provision for the reimbursement of costs on a full cost recovery basis to the various stakeholders who are essential to the efficient operation of the consenting process.