

# Creich Community Council

## Comments on the proposals by the Scottish Government to 'reform' the consenting processes in Scotland under the Electricity Act 1989



## Introduction

### This Document

1. This document is a response by Creich Community Council to proposals by the Scottish Government to change the consenting processes in Scotland under the Electricity Act 1989

### Who We Are

2. Creich Community Council represent the people in arguably one of the most scenic and scenically diverse areas of the highlands, encompassing the north shore of the inner Dornoch Firth, the Kyle of Sutherland and the north bank of the Oykel to the watershed at Assynt in the West. There are straths, rivers, mountains, and the tidal waters of the Kyle. Views can be intimate or panoramic with wide skies and colours and textures that change with the seasons.

### General Comments and Omissions from the Proposals

3. The people we represent feel strongly that they are poorly served by the processes that allow developers (whether commercial wind-farm developers or organisations acting to meet government network targets) to proceed even though they provide insufficient information about their projects to allow informed decisions to be made.
4. We feel we are at risk of being swamped by multiple, individual electricity-related schemes with no over-arching control and without consideration of the cumulative effect.
5. We are, therefore, rather pleasantly surprised by the common sense of some of these proposals and appreciate a great deal of the content.
6. This does not mean we have no comments.
7. We strongly urge a requirement for unification of aspects of projects – that is a joined-up review of who does what, where they do it and to whom. Typically, we are offered glimpses in a project

of critical parts (routes, connections etc.) which are to be controlled by others and not the concern of the developer. Developers must set their proposals within a framework of why it is needed and how it interacts with other proposals.

8. This does not happen, and a situation has arisen where project scoping is almost always seen by developers as confined to an 'Environmental Impact Assessment' – presumably because this is a statutory obligation.
9. If scoping is done properly by competent design, construction and operating organisations, it should refer also to engineering standards and project target integrity levels. The idea that scoping equals EIA is false. We therefore welcome requirements to provide more information at earlier stages but also wish to see the quality, breadth and depth of technical information extended.
10. We are also concerned that no account is taken of major hazards implicit in, for example, battery storage systems. The resources available to mitigate any major events are very limited in the Highlands and yet batteries are seen as benign, individual objects rather than as clustered energy with tremendous potential for harm. We very strongly urge the inclusion of the Health and Safety Executive as a statutory consultation body.
11. We understand the strategic place of battery storage in future networks, but the proposals we see do not come with justification of their necessity for or even their place in network optimisation and, for example, it is hard to see what that justification might be in our area. We are left with a justified suspicion that it is all about arbitrage and commercial return.
12. We also want to see behind the veil of, in particular, network projects where early information should be provided on the electrical mode of transmission (HVAC, HVDC etc.) and the form of power line proposed with background information on the 'optioneering' – that is selection criteria, options considered and decisions. Again, we are either excluded by dictat or are given insufficient information for informed consent.
13. Clearly provision of some of this information verges on commercial decision making, but we would go further. We wish to see information about the ownership (immediate and ultimate) of the development and any existing agreements for divestment.

## Our Responses to Consultation Questions

14. In our responses, we have followed the order and questions of the document titled 'Electricity Infrastructure Consenting in Scotland' dated October 2024 and produced by the UK Department for Energy Security & Net Zero.

### Pre-application requirement

#### Consultation questions

- 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?**
15. We agree that early information should allow the Community Council to be better informed about the proposal, its extent, composition, timescale and impact on the land and community.
- 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?**
16. Our interest in offshore generating stations is with any landfall for cables and related sub-stations. These should fall within the requirements for onshore applications.
- 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?**

17. We agree that pre-application requirements should apply to all onshore generating stations.

18. Importantly, we consider that, within that class of development, should be included battery storage systems as separate generating stations

**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?**

19. We would wish to see network projects taken in a hierarchy of stages that would consider first, the primary need, the options available, criteria for selection and the methods for choosing between options. At present we are presented with a decision without any background that a proposal is 'Nationally significant' and that seems to bring with it prior decisions on many technical aspects that do not need to be and should not be taken without consultation.

**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?**

20. It is very important to our Community that there is a stage that forms a go/no go boundary. Saturation of an area by developments with high impact would be an example of a 'fail to proceed' criterion and could only be applied at an early stage. We find it difficult to accept any fixed timescale for an acceptance stage given the diversity of systems that might be proposed and the diversity of the capabilities of any area to accept such systems. Assimilation of complex submissions may require technical competence that is not immediately available of all of those affected and in judging timescales the balance of power and knowledge must be accounted for.

21. An independent technical advisory committee to support communities with technical options and costings could be considered.

**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?**

22. Both the Scottish Government and Local Government should be able to charge fees for consideration of pre-application functions.

**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?**

23. We believe this may be the case, but we find it difficult to accept that any fixed timescale for an acceptance stage given the diversity of systems that might be proposed and the diversity of the capabilities of any area to accept such systems

## Application procedures

### Consultation questions

**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?**

24. We fully agree with this, and we already ask for more information at an early stage from developers in our area – albeit in vain. The information we have asked for is information the developers must have as fiscally competent organisations with suitable engineering knowledge and skills

**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?**

25. We agree with this.

26. As noted above, information should be in the hands of developers referring to design, construction, and operation – including possible operating organisations – and it should refer to engineering standards and project target integrity levels (for example inter alia, the Safety

Integrity Level for control of a BESS and integration with wind generation and export connections).

27. Information should be provided on the electrical mode of transmission (HVAC, HVDC etc.) and the form of power line proposed. This should be supported by information on selection criteria and decisions.
28. Information should also be provided on the ownership (immediate and ultimate) of the development and any existing agreements for divestment.

## Application input from statutory consultees

### Consultation questions

**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?**

29. Ability to be involved at the earliest stage – including discussion of national infrastructure. Much is made in the discussion document about the cost to the public of delay and the impact of development expenditure on the cost to the public. It should be clear that money costs are not the ultimate arbiter of acceptance. Minimisation of land and community impact over long time periods, safety and lifetime reliability and maintenance issues also have primary importance
30. Inclusion of HSE in consultation for BESS with the recognition that these represent a potential major hazard and require investment locally in reaction systems in the event of any events.

**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?**

31. We are surprised and pleased with the proposed forum and framework and support the concept.
32. We also support the idea of ‘providing additional specialist support to facilitate the statutory consultees’ ability ..... to electricity infrastructure.’
33. We see a difficulty in this as the support may not keep abreast of the speed of change in engineering and may hold with current engineering paradigms. It may also be heavily influenced by the views/attitudes of developers. This is an issue that has influenced the ability of the workforce to give informed comment on offshore Safety Cases and is hard to resolve – but it is refreshing to see it proposed.

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

34. Relative costings for various development options. Safety engineering support for consideration of BESS.

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

35. A longer time to respond to these proposals would have been nice!
36. As an example of the difficulty with time limits, provision of the technical support groups will add delay but should improve the focus of submissions so that time limits must be balanced against the functions that must be met in the time. For a typical Community Council there will be a lag in receiving notice of an application, a delay in getting and assimilating information never mind submitting comments and then a lag in receiving responses to consultation submissions. These are among ‘the common reasons for and patterns of delay’ that the suggested forum might consider.

## Amendments to applications

### Consultation questions

**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?**

37. We agree that there should be a limit on amendments both in terms of content and the stage of the process. The consultation document concentrates on time, but changes to scope are equally important. We feel that the present system encourages deliberate 'creep' of the design without stakeholders having an ability to influence the changes. We have experience of EIA scoping documents failing to mention or giving no detail of inclusion of a BESS – which then appears as an amendment.

**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?**

38. We consider that the Scottish Government are best placed to determine the amendment limit but, where an amendment is to be allowed the reasons for this should be publicly promulgated and be subject to comment.

## Public inquiries

### Consultation questions

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

39. Individuals within the community and in the Community Council have experience of public and formal investigative inquiries. In the past, Inquiries have been expensive and time consuming. They can become adversarial rather than investigative and we consider there is a bias to material submitted by better resourced parties to the inquiry. Such material may be very useful but will often not explore critical issues. More recently, presumably following the Scottish Government Code of Practice for Handling Inquiries, the inquiries have been quicker.

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

40. Our primary needs are for consistency in the structure, methods and assessment of inquiries and the ability to contribute views and information in diverse ways – but with each and every contribution considered equally and judged on its merits. The need for consistency will not be met by allowing the Reporter complete freedom to determine the procedures and subject matter. There is a need for some flexibility but not if the Reporter can ignore or play down issues. A framework that considers open meetings, and the taking of written and oral evidence is required. The same framework would require testing of evidence given by seeking differing professional opinions and would specify how responses should be given.

41. As a Community Council we want it to be possible to contribute easily and either formally or informally. We want our voices to be heard, and replies given to our concerns and we want to observe thorough investigation of issues in dispute.

## Variations of network projects

### Consultation questions

**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?**

42. We agree there is a need for a process to allow changes to applications. We expect there to be consultation within that process.

## Variation of consents without an application

### Consultation questions

**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?**

43. We agree that the Scottish Government should have this ability in cases where;

- 1) there have been errors,
- 2) there has been a change in environmental circumstances,
- 3) there have been relevant technological changes
- 4) understanding of safety or integrity of operations has changed
- 5) there has been clear default by the developer or operator in the design, installation or operation of the system

**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?**

44. See above items 4 and 5

## Fees for necessary wayleaves

### Consultation questions

**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?**

45. We have no views on this

**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?**

46. We agree that fees for should be based on full cost recovery. The developer should bear the costs.

## Statutory appeals and judicial proceedings

### Consultation questions

**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?**

47. We have no opinion on this

**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?**

48. We accept that a 6-week period may be sufficient although it leaves little time for a community body to seek and fund legal support. 8 weeks would be preferred.

## Transitional arrangements

### Consultation questions

**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?**

49. We would wish to see submission of any information that had not been submitted under the previous regime, but which would be required under the new regime. There is no good reason

why a developer would not have and be able to provide such information. This includes pre-application information.

## Summary

50. Issues that have been identified as inefficient and requiring change are also issues that affect our Community.
51. Information provided by developers is sparse and incoherent and we welcome efforts to provide good quality, integrated information early in the process. The same requirement for good quality information should apply through the duration of the consenting process and when changes are considered.
52. When an inquiry is needed, we want consistency of approach, ease of submitting views and evidence, rigorous examination of conflicting technical views and open reporting. Some freedom for the inquiry to explore but not the freedom to pre-judge or sideline issues. A framework that can be adapted to fit circumstances and, for each inquiry, a narrative to explain how the framework is being used.