

ANNEX A – EXEMPTIONS APPLIED

Exemptions under Sections 30(b)(i) (free and frank provision of advice) and 30(b)(ii) (free and frank exchange of views) of FOISA apply to some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation.

Section 30(b)(i) recognises the need for Ministers and officials to receive advice within a private space before the Scottish Government reaches a settled public view. Similarly, Section 30(b)(ii) recognises the need for Ministers and officials to have a private space within which to discuss issues and options with external stakeholders before the Scottish Government reaches a settled public view. Disclosing certain aspects of the content of these discussions with Burntisland Fabrications Ltd (BiFab), DF Barnes, Grant Thornton, and our Enterprise Agencies would substantially inhibit such discussions in the future, because these stakeholders would be reluctant to provide their advice and views fully and frankly if they believe that those views are likely to be made public. This is a particular risk when discussions relate to a sensitive or controversial issue such as commercial negotiations.

These exemptions are subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable governance, and to inform public debate. However, there is a greater public interest in allowing Ministers and officials to have a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the Government’s position on commercial or financial information, until the Government as a whole can adopt a decision that is sound and likely to be effective.

This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

An exemption under section 33(1)(b) (commercial interests) of FOISA applies to some of the information requested. This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of BiFab and DF Barnes. Disclosing this information would be likely to give BiFab’s competitors an advantage in future similar tendering exercises, which would substantially prejudice the company’s ability to submit competitive tenders and could significantly harm their commercial business.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing

the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open and transparent government, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies that enter into contracts with the Scottish Government, thus ensuring that we are always able to obtain the best value for public money.

Exemptions under Section 38(1)(b) (personal data of a third party) of FOISA applies to some of the information requested. This exemption applies to the names of third parties referenced throughout the documents that have been requested. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants, therefore the names of some Scottish Government, Scottish Enterprise, and Highlands & Islands Enterprise officials have been redacted. The names of BiFab and DF Barnes employees who are not BiFab board members, and the names of our commercial advisors, have also been redacted to protect their privacy.

Scottish Government/DF Barnes Phone Call– 6 April 2020

Present

DF Barnes

Jason Fudge

Scottish Government

Andrew Hogg

[Redacted]

[Redacted]

Minute of Meeting

Points made – general:

- Jason Fudge (JF) - MacRoberts considered to be taking a [Redacted]
 - Andrew Hogg (AH) reply – MacRoberts should be engaging in a collaborative way, [Redacted]
- AH reiterated that [Redacted] relies on us getting the [Redacted]

Points made in relation to specific areas [Redacted]

- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- AH agreed to take JVD view back to advisors, but also asked JF/JVD to reflect on above points
- JF - MacRoberts need to clearly articulate how this would [Redacted]

[Redacted]

- JF – [Redacted]
- JF acknowledged that [Redacted]
- AH – purpose here is [Redacted]
- JF noted that [Redacted] . Agreed to take back and discuss
- AH closed off this discussion by noting [Redacted]

Actions arising from call

1. Andrew (SG) to speak to MacRoberts to ask how [Redacted]
2. SG to feedback to MacRoberts and Grant Thornton re points below –
[Redacted] articulated to TW – [Redacted] *will action [unless Andy wants call set up AH-[Redacted]]*

Scottish Government/BiFab/Grant Thornton Regular Call – 6 April 2020

Present

BiFab

[Redacted]

Grant Thornton

[Redacted]

Scottish Government

[Redacted]

[Redacted]

Minute of Meeting

- Long Term Trading Forecasts (LTTF) – Jason had a lot of input in to these; [Redacted]
- [Redacted] – there has been no discussion between local management (Martin Adam, [Redacted] & [Redacted]) and Jason on the [Redacted] in light of new [Redacted] – [Redacted] sees this as something Jason needs to engage with SG on
- Revised Short Term Cash Flow (STCF) to be received by Wed – [Redacted]
- [Redacted] by Monday & should have 20 days thereafter to close off any actions on BiFab
- First E&P (FEP) – dialogue between BiFab and client ongoing. FEP understanding of BiFab's position
- Call next week to include Martin & [Redacted] for further detail on Covid impact, FEP status update, Moray East update, etc.

Call with DF Barnes and Grant Thornton – 30 March 2020

Present

DF Barnes

Jason Fudge

Grant Thornton

[Redacted]

[Redacted]

Scottish Government

Andy Hogg

[Redacted]

Minute of Meeting

[Redacted]

- Grant Thornton (GT) flagged they were conscious the [Redacted] is still there and they are currently reviewing the [Redacted] on behalf of Scottish Government (SG). [Redacted] are now showing a [Redacted] which is [Redacted] is put in place and there is an [Redacted]. GT/SG need to understand [Redacted].
- Jason flagged there is a lot of movement so it's hard to define exactly what is required. Especially with COVID-19 and what this means for projects and staff. [Redacted].
- GT further flagged the [Redacted] sent by [Redacted] are not currently taking into account the effects of COVID-19 and the [Redacted]. How do BiFab take into account the impacts of COVID-19? [Redacted].
- Jason responded that the [Redacted] and is happy to speak with [Redacted] to get a better understanding of where things are. There are a wide range of possibilities that we are trying to navigate when we don't know what will happen in the next few weeks never mind months.
- GT understood but highlighted [Redacted]. Understands that it's a starting point but we need to look at it and move things [Redacted] Probably challenging given COVID-19 and the effect this has on it. Just wanted to know if there is anything GT should take into account in their thinking/reporting.
- Jason suggested BiFab [Redacted]. Jason will work with Scott on getting to that [Redacted]. From a project work point of view, [Redacted].
- SG mentioned that we would have to take back final details from GT [Redacted]. Keen to avoid providing anything that doesn't have a clear understanding and level of detail.
- Jason made the point that as soon as BiFab [Redacted].

- SG stressed it's important that evidence base and forecasts match up with your thinking and we have an audit trail which shows Minister's clearly.
- Jason agreed to work with [Redacted] on a range of possible outcomes and send the documents by the end of the week.
- Grant Thornton asked if [Redacted]
- Jason responded that based on current information it is more likely it won't be needed and will be [Redacted].

[Redacted]

- [Redacted].
- [Redacted].

Board Meeting

- The board meeting for 8th April is cancelled due to Covid-19 circumstance and we will look to get a new date in the diary end of April for a virtual meeting.

Actions

1. Jason to discuss [Redacted] with [Redacted] and look at different possibilities and send something by the end of this week.
2. Jason and Andy to discuss [Redacted].
3. Jason to circulate agenda/dial in details for board meeting.

**Scottish Government officials introductory meeting with Cabinet Secretary for
Economy, Fair Work and Culture – 12 March 2020**

Attendees:

Cabinet Secretary for Economy, Fair Work and Culture

Andrew Hogg (AH)

[Redacted]

[Redacted]

Stewart Maxwell

Minute of Meeting

Actions arising from the meeting;

- Prepare factual briefing for Cab Sec/Richard Leonard meeting. Focus will likely be on industrial strategy (gone)
- Update the [Redacted] (if required) and resend
- Prepare a [Redacted] – to be as wide as possible eg include green hydrogen sites [Redacted]
- Give consideration [Redacted]
- Send copy of Clare Baker Parliamentary Question (PQ) from the prior week [Redacted]
- Pick up with JV Driver (JVD) re alternative dates for a meeting with Cab Sec (on leave for 8 April).
- [Redacted]

Strategy

- A steer given to make sure [Redacted]. AH noted that [Redacted] in this – and [Redacted]. One for further consideration
- Agreement for officials to proceed with exploring and progressing with work [Redacted]

Other points to note

- Cabinet Secretary (Cab Sec) noted that she wanted a [Redacted] for input to this and other considerations – wants to make sure there is [Redacted] before decisions with financial implications are made
- In all our narrative – fundamental that it sets out why we are progressing a proposed course of action
- Consider how BiFab sits in the Just Transition narrative / backdrop in more detail
- Keep Cab Sec up to date on [Redacted] as the detail develops

**Scottish Government/Scottish Enterprise/Highlands and Islands Enterprise
Strategy Meeting - 24 February 2020**

Actions arising from meeting and already actioned

Actions

- Engage with Sean Power and re-establish frequent catch ups, for greater visibility on his plans and upcoming meetings.
- Share readouts of BiFab board meetings going forward with the group
- Lead on developing Project Management Office (PMO) function and timelines for group
- Group meetings to be established (project group), approx. monthly
- Confirm when draw in other stakeholders (eg, Fife Council)
- Issue comms to Martin Adam re the meeting

Points already actioned

- [Redacted] to share [Redacted] [Redacted] with Scottish Government (SG)
- Scottish Enterprise (SE)/Highlands and Islands Enterprise (HIE) account managers following up to see [Redacted]
- Andrew Hogg to catch up with Jason Fudge

Points raised which may form the basis of future discussion points and/or actions

- [Redacted]
- [Redacted]
- Could the Arnish yard in future be linked in to Stornoway Deep Water Port being developed?
- [Redacted]
- How does BiFab explore opportunities arising from nuclear, decommissioning, Carbon Capture, Utilisation and Storage (CCUS) and hydrogen?
- Does BiFab's current [Redacted] prevent further enterprise agency support?
- Scottish Offshore Wind Energy Council (SOWEC) offshore wind summit work – who leads with follow up on this for maximum benefit for BiFab?
- Has anyone looked at areas of price differential BiFab/European competitors to others?
 - SE feedback suggested some awareness, eg that BiFab typically [Redacted]
- [Redacted] Arnish yard noted
- Infrastructure group no longer meets
- Repeated comments that it is not clear on [Redacted]

- Clarified in discussions that [Redacted]
- [Redacted]
- [Redacted] & [Redacted] in recent correspondence with both HIE & SE.
[Redacted].
- Need to consider [Redacted] as we consider.

Call with BiFab Local Management – 7 February 2020

Present

Martin Adam – BiFab
Jason Fudge – DF Barnes
Andy Hogg – Scottish Government
[Redacted] – Scottish Government
[Redacted] – Scottish Government
[Redacted] – Scottish Government
[Redacted] – Scottish Government

Minute of Meeting:

- General updates given re Canada. Jason Fudge's new title as President of DF Barnes (DFB) was noted
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
- [Redacted]
- **Moray east**
 - Last piles sailed on Tuesday night.
 - Given (i) more positive direction of travel of recent discussions, (ii) number left and (iii) wish to demonstrate to market its ability to complete its first job post-Beatrice, [Redacted]
 - w/c 17th feb for commercial meeting - dialogue ongoing re getting to an agreed [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted] JF engaging with comms on this
- **First E&P** – sail away date of 21 March agreed with client. Mostly paint works remaining; complete in 2nd week of March
- **Staffing** – a lot more downmanning in next couple of weeks. Headcount of [Redacted] by end of Feb
- **Board** – SG ran through suggested names. To email to Jason and thereafter Andy & Jason to agree how to assess/prioritise. Want to have progressed materially prior to next board meeting.
- **DFB in Scotland:**
 - Jason to be across in next few weeks; would like to meet in person to discuss board strategy with Andy
 - Next board meeting likely to be 7 / 8 April.

Offshore Wind Supply Chain Summit – 16 January 2020

Actions agreed to by attendees

1. Scottish Offshore Wind Energy Council will instigate a short independent review of the key actions and recommendations of the summit, including the recommendations of the Offshore Wind Growth Partnership's Strategic Capabilities Assessment of the foundations sector in the UK.
2. Crown Estate Scotland announced it will require developers to outline supply chain commitments when applying for future offshore wind leases.
3. Offshore Wind Industry Council will publish a roadmap to 60% lifetime UK content and a response to the *Martin Whitmarsh Supply Chain Review*, to be published by the end of March 2020.
4. Representatives from the manufacturing sector should be included in future cross-party discussions.

Introduction

- The Cabinet Secretary for Finance, Economy & Fair Work and Minister for Energy, Connectivity & the Islands highlighted supply chain successes since the last summit. Both also acknowledged that current levels of local content in offshore wind projects remain disappointing.
- The Cabinet Secretary made clear that he intends on using all the levers at his disposal to maximise Scottish content in offshore wind projects, and introduced Simon Hodge of Crown Estate Scotland (CES) to speak.

CES update

- CES used the summit to announce that it will require developers to outline supply chain commitments when applying for future offshore wind leases, with further details to follow in the coming months through the upcoming ScotWind Leasing Round.
- CES was clear that developers would face consequences if they breach commitments made in these statements. CES will have the power to revoke a licence.
- The Cabinet Secretary stated that CES' announcement demonstrated how seriously the Scottish Government (SG) takes the issue of current levels of local content in offshore wind projects, and demonstrates progress made by SG in addressing the issue since the last summit, within the limits of its devolved competence.

BEIS update

- Declan Burke, Director (Clean Power, Strategy and Deployment) in the UK Government's Department for Business, Energy and Industrial Strategy (BEIS) spoke on behalf of Andrea Leadsom, Secretary of State for Business, Energy and Industrial Strategy.

- BEIS told the summit that the economic opportunities of decarbonisation and growth in renewables was high on the agenda during discussions with UK Ministers on renewable power deployment.
- UK Ministerial priorities included the publication of an Energy White Paper which, from an offshore wind perspective, would set out future ambitions for the UK's offshore wind capacity in the context of delivering net zero.
- BEIS Indicated that a potential review of the supply chain plan process would be included in the Contracts for Different Allocation Round 4 consultation, which is to be published in due course.

Sector update

- Scottish Offshore Wind Energy Council (SOWEC) presented its vision and goals, and explained how it interacts with the sector in Scotland.
- SOWEC agreed to instigate a short independent review of the key actions and recommendations of the summit, including the recommendations set out in the OWGP's review of the foundations sector in the UK.
- Brian McFarlane (SOWEC co-chair) stated that this work will be led by a senior member of the sector or Government, and sponsored by SOWEC's co-chairs.
- Jonathan Cole [attending on behalf of Offshore Wind Industry Council (OWIC)] emphasised that its membership fully recognises and supports the aims of the summit and stated that building a strong indigenous supply chain has been an imperative for a long time.
- OWIC stated that the methodology that is currently used by the sector to measure UK content is not fit for purpose and does not provide an accurate measurement. OWIC is currently examining this methodology with a view to identify a more effective model to measure UK content.
- OWIC also outlined its intention to issue a response to the Martin Whitmarsh Supply Chain Review and a UK Content Roadmap to 60% lifetime UK content in offshore wind projects.
- Andy Macdonald presented the recommendations of the Offshore Wind Growth Partnership's Strategic Capability Assessment of the foundations sector in the UK, during which it said that there is significant capacity for UK monopile production and therefore scope for a monopile facility to be based in the UK.

Discussion / close

- Trade Unions challenged developers on their efforts to bring work to Scottish yards and emphasised the reputational cost of not awarding contracts to Scottish companies.
- There was general agreement from developers and tier 1s that there was sufficient opportunity for the creation of a monopile foundation facility in Scotland or elsewhere in the UK but that this would require coordinated and collaborative efforts from industry and government.
- Developers also agreed that significant investment in port infrastructure in the UK will be necessary to bring additional contracts to Scotland.

- The Cabinet Secretary stated that developers and tier 1s must consider how much importance they place on their relationship with, and their public perception in, Scotland.
- All agreed that representatives of the manufacturing sector should, where appropriate, be involved in future discussions around increasing local content in offshore wind projects.

List of Attendees

1. Derek Mackay MSP	Cabinet Secretary for Finance, Economy and Fair Work
2. Paul Wheelhouse MSP	Minister for Energy, Connectivity and the Islands
3. Declan Burke	BEIS
4. Fiona Mettam	BEIS
5. Simon Hodge	Crown Estate Scotland
6. Malcolm Rutter	DEME Offshore
7. Dean Lockhart MSP	Economy, Energy and Fair Work Committee
8. Donald Mackay	EDF Energy Renewables
9. Dan Finch	EDPR
10. Sophie Banham	Equinor
11. Hazel Nolan	GMB
12. Jim McPhillimy	GMS Wind
13. Rainer Broering	GE Renewable Energy
14. Audrey Maciver	Highlands and Islands Enterprise
15. Alastair Gill	Innogy
16. Dr Norman Skillen	Jan De Nul
17. Mary Thorogood	MHI Vestas Offshore Wind
18. Andrew MacDonald	Offshore Wind Growth Partnership
19. Jonathan Cole	Offshore Wind Industry Council

20. Andrew Jamieson	ORE Catapult
21. Jane Cooper	Orsted
22. Adam Ezzamel	Red Rock Power
23. Paolo Formica	Saipem
24. Andy McDonald	Scottish Enterprise
25. David Stevenson	Scottish Government
26. Andrew Hogg	Scottish Government
27. Mike Palmer	Scottish Government
28. Brian McFarlane	Scottish Offshore Wind Energy Council
29. Claire Mack	Scottish Renewables
30. Jim Smith	SSE Renewables
31. Lloyd Duthie	Subsea 7
32. David Moxham	Scottish Trades Union Congress
33. Pat Rafferty	Unite The Union
34. Ben Robinson	Van Oord
35. Danielle Lane	Vattenfall

In attendance

36. Allan Taylor	BEIS
37. Karl John	Department for International Trade
38. Vicki Carson	Scottish Government
39. Andrew Young	Scottish Government
40. Claire Martin	Scottish Government
41. Stewart Maxwell	Scottish Government

42. Greig Liddell	Scottish Parliament Information Centre
43. Nick Sharpe	Scottish Renewables

BiFab Board of Directors Meeting – 14 January 2020

- [Redacted], simply the delay hasn't had any impact on the overall project. BiFab will undertake a lessons learnt exercise which will stand them in good stead for the [Redacted].
- Meeting with [Redacted] on 23rd January to close out the commercials.
- [Redacted] due to visit methyl on 16th January to progress the [Redacted].
- Suggestion that Subsea 7 have won the Seagreen installation contract, which they may potentially [Redacted].
- Concreting of Methil yard 40% complete, targeting end of March for completion. [Redacted] & Jason to speak next week to reach a solution re [Redacted].
- Scottish Government suggested some names for Board of Directors (BoD) and would email to confirm these and potentially others shortly.
- Next Board meeting targeted for end March/beginning of April, by which point hopefully identified 2-3 BoD candidates and possibly secure meeting with Minister.

Cabinet Secretary and Minister meeting with Unions – 9 January 2020

Present

Scottish Government

Cabinet Secretary for Finance, Economy & Fair Work

Minister for Energy, Connectivity & the Islands

Andrew Hogg

[Redacted]

Stewart Maxwell (Special Advisor)

Scottish Traded Union Congress (STUC)

David Moxham

GMB Scotland

Hazel Nolan

Derek Mackay (DM) passed on Pat Rafferty's (Unite the Union) apologies for not being able to attend.

DM & Hazel Nolan (HN) expressed concern at the future of BiFab following the completion of current contracts.

DM stated that BiFab were tendering for further contracts but as yet nothing confirmed. Cabinet Secretary reaffirmed Scottish Government's commitment to support the company.

DM & HN stated that the developers were being critical of the fabrication sector in Scotland/UK stating that it is no longer viable/competitive.

DM confident that further work would be secured and reinforces the message to the developers/tier 1s that they should be supportive of the Scottish supply chain in awarding contracts and standing by their Sector Deal commitments.

DM and Paul Wheelhouse both said they would be emphasising this point again at the Offshore Wind Summit this week. Important that all are supportive of our indigenous supply chain in the build out of offshore wind.

BiFab Methil Site Visit – 16 December 2019

Present

BiFab

Martin Adam

[Redacted]

Scottish Government

Andrew Hogg

[Redacted]

[Redacted]

[Redacted]

Martin Adam gave a brief update on the Moray East pin piles contract – transfer of piles from Arnish to Methil now complete. He anticipates that last piles will be ready to go 21 January 2020.

Four members of staff will be retained at Arnish to maintain the kit.

[Redacted]

[Redacted]

[Redacted]

It was raised by Martin that there is an opportunity for Scottish companies to compete for contracts in Nigeria and Andy said that he would raise this point with Scottish Development International.

Agreement that Scottish Government officials should meet with [Redacted] in January to find out who he has been talking to and to identify individuals and organisations he should be approaching.

Discussions with Highlands and Islands Enterprise regarding equipment upgrade at Arnish are ongoing.

A senior project manager will start at BiFab on 20 January 2020.