

Prescribed Bodies Consultation (Section 19 of Foreshore Act 1933, as amended).

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Date: 14/12/2021

To: [REDACTED], Foreshore - DHLGH

From: [REDACTED] Marine Institute

Re: FS007188 Dublin Array offshore wind farm development Cable Assessment Area Site Investigations – RWE Renewables Ireland Ltd

RWE Renewables Ireland Ltd submitted a foreshore application for a series of site investigation works to be carried out in a defined area off the Dublin and Wicklow coasts and along cable route corridors towards the coastline to sections of the coast at Poolbeg and further south at Shanganagh. It is noted that geophysical and geotechnical surveys cover the cable route only and not the wider proposed licence area. The wider foreshore area applied for will be subject to ecological monitoring only.

In addition to the application form the applicants submitted a number other documents including, *inter alia*:

- Foreshore Licence Application for Site Investigation and Ecological Monitoring - Supporting Information Report (including 6 Annexes)

The overall aim of the site investigations is to collect the necessary data and information required to inform the engineering and detailed design of the cable route ashore and wider ecological characteristics of the foreshore licence area. It is noted the installation of a windfarm and associated infrastructure in the area in the future would be the subject of a separate Foreshore Lease / Licence application and is not the subject of this current application.

A number of surveys methodologies are proposed:

- Up to 61 geotechnical boreholes to an approximate depth of 80m below seafloor and an outside diameter of up to 254 mm.
- Up to 61 Deep push seafloor Cone Penetration Tests (CPT) to an approximate depth of 80m below seafloor with a diameter of approximately 40mm.
- Up to 31 Seafloor CPTs with a diameter of approximately 40mm and 48 vibrocores with a diameter of approximately 150 mm diameter. The target depth of each technique will be approximately 6 m below seafloor. Up to five of each type may be located within the intertidal area.
- Up to 12 nearshore geotechnical boreholes with wireline logging and Rotary Cored Drilling, approximately 100 mm diameter to target depth of 45 m below seafloor (4 at each landfall option).
- Refraction survey in nearshore & intertidal
- 2D UHR & geophysical survey including Bathymetric Survey, Side Scan Sonar, Shallow Reflection Seismic (Sub-bottom Profiling) and Marine Magnetometer
- Geophysical survey including Bathymetric Survey, Side Scan Sonar, Shallow Reflection, Seismic (Sub-bottom Profiling) and Marine Magnetometer;
- Up to two buoy mounted Floating Lidar (FLiDaR) Units and up to two buoys incorporating wave and current measurement devices.
- Up to 10 static acoustic monitoring devices (SAM)
- Up to 3 annual subtidal benthic ecology surveys comprising drop down video, grab sampling and epibenthic trawls
- Up to 3 annual potting surveys and 12 seasonal trawl surveys (4 per year for up to 3 years)
- Up to 3 annual benthic ecology surveys

The proposed site investigation methods are relatively standard and have been used in similar investigations in Irish waters and internationally.

It is intended that the proposed survey works would be phased over a period of 3 years following award of licence and specific survey scope will range from 2 weeks to 3 years in duration.

There are no licenced aquaculture sites within the proposed site investigation area on the Foreshore and therefore impacts on aquaculture are not considered likely.

There is commercial fishing activity within the proposed site investigation area on the Foreshore and therefore some interaction with fishing activity may occur. Notwithstanding this, it is noted that the applicant has appointed a Fisheries Liaison Officer (since 2019) who will engage with the fishing community in the area during investigations.

The NIS submitted identifies a number of risks to conservation features (e.g., marine mammals) likely to result from the proposed activity. As mitigation, a number of actions are suggested that should reduce the risk. Foremost among these is the use of marine mammal observers (MMO) during operations including a 'soft start' protocol. The MI is satisfied that such measures will mitigate any risk to marine mammals in the immediate area during the site investigations. However, it is advised that DHLGH identify any similar geophysical/geotechnical surveys that might be carried out along the eastern seaboard and ensure that they not coincide with this survey. Furthermore, in light of the intensive nature of the methodologies proposed, it would be important that DHLGH consider the cumulative effects of these activities in light of the location and timing of similar activities along the East Coast and consider the likely longer term effects on marine mammals and biota, if any?



Your ref: FS007188

(Please quote in all related correspondence)

16th December 2021

Foreshore Unit
Department of Housing, Local Government and Heritage
Newtown Road,
Wexford
Y35 AP90

Via email: foreshore@housing.gov.ie

Re: Notification to the Minister for Housing, Local Government and Heritage under the Planning and Development Act, 2000, as amended.

Proposed Development: Foreshore Licence to undertake geotechnical and geophysical site investigations and ecological, wind, wave and current monitoring to provide further data to refine wind farm design, cable routing, landfall design and associated installation methodologies for the proposed Dublin Array offshore wind farm off the coast of County Dublin & County Wicklow.

A chara

I refer to correspondence received in connection with the above. Outlined below are heritage-related observations/recommendations co-ordinated by the Development Applications Unit under the stated headings.

Nature Conservation

The proposed site survey to support the development of the Dublin Array Wind Farm has been evaluated by a Natura Impact Statement and other documents. The conclusion of the Natura Impact Statement document is that the proposed works are unlikely to pose a significant likely risk to nature conservation interests in the vicinity.

Potential interaction with marine mammals can be ameliorated by the application of “Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters” as outlined in Section 4.4 of the NIS supporting this application. National Parks & Wildlife Service request that utilisation of this guidance should be added as a condition of consent.

Aonad na nIarratas ar Fhorbairt

Development Applications Unit

Oifigí an Rialtais

Government Offices

Bóthar an Bhaile Nua, Loch Garman, Contae Loch Garman, Y35 AP90
Newtown Road, Wexford, County Wexford, Y35 AP90



Archaeology

Having reviewed the Marine Archaeological Assessment (MAA) report and other documentation associated with the scheme, we have the following comments in relation to the predicted impacts of the proposed scheme on the known and potential archaeological heritage of the development area.

Approach to Documented Losses

It is not clear to that due consideration has been given to the overall archaeological potential of the development area and in particular the high number of historically-documented losses of ships which are recorded as having been wrecked in the development areas but have yet to be located. In this regard, the Wreck Inventory of Ireland Database lists over 3,000 entries for the coastal waters off Dublin, many of which may lie in the proposed Array Area and the proposed Export Cable Corridors. Only a small percentage of these wrecks have been located and many lie scattered and buried beneath the sands off Dublin and its environs.

While known and located wrecks are documented in detail in the MAA report, the assessment does not appear to deal with documented losses of vessels which have yet to be located. The Archaeological Impact Assessment should address both known archaeological sites/receptors and also assess the impact that the works may have on potential archaeology such as documented losses. To illustrate this point: there are over 85 wrecks recorded as lost on the Kish Bank but only 21 have been located; over 100 wrecks are recorded as lost on the South Bull and 85 for Dublin Bay, but only a handful of these have thus far have been discovered. There is also the potential for earlier wrecks to have occurred along the cable route or windfarm site, for which no documentation survives, and which await discovery.

It noted that known wreck sites will be avoided and exclusion zones will be established around them, which is welcomed. However, as indicated above, any number of wrecks or associated artefacts may lie waiting to be discovered in the Array area or along the proposed export cable routes. Should this development proceed it is possible that intrusive seabed SI works will negatively impact on previously unrecorded/unlocated wrecks. It is recommended that this is addressed and a revised Marine Archaeology Assessment report is updated to deal with the impact of the works on potential archaeological sites in the development area. The mitigation measures should also be updated to reflect the impact of the works in areas of high archaeological potential, including on submerged landscape horizons. A list of all wrecks should be included in an appendix in the Marine Archaeology Assessment and this shall be resubmitted to the National Monuments Service for review.

In light of the above it is recommended that the Foreshore Unit request submission of an updated Underwater Archaeological Impact Assessment (UAIA) as **further information**. Once the Underwater Archaeology Unit, National Monuments Service, Department of Housing, Local Government and, Heritage reviews the updated archaeological assessment report, further recommendations will be issued with regard to potential further foreshore licence conditions.



In addition to **further information** (as outlined above) it is recommended that the following is included as **conditions** on any grant of a foreshore licence:

- A copy of the *Dublin Array Offshore Wind Farm EIAR Protocol for Archaeological Discoveries (PAD)* shall be supplied to the NMS for review and agreement prior to the works proceeding.
- The results of all SI works, including core samples, etc., shall be made available for assessment to the consultant archaeologist for review. Such assessment shall seek to identify any cultural material contained within the samples, evidence for palaeo-environments, etc. A follow up Archaeological Report detailing the results of the SI samples shall be forwarded to the National Monuments Service for review and consideration and to inform any future Foreshore/Planning application for the proposed offshore windfarm.
- It is noted that the geophysical data from the Dublin Array 2021 campaign will be assessed ahead of any seabed impact at geotechnical, ecological sample and buoy deployment locations. The results of this assessment shall be compiled into a report and forwarded to the National Monuments Service for review in advance of the works taking place.
- Where archaeological assessment of geophysical data is not possible, or data is not available or of sufficient resolution/standard and an impact on the seafloor/intertidal zone is expected, it is recommended that a dive/ intertidal survey is carried out accompanied by a metal detection survey. Both the dive survey and the metal detection survey should be licenced under the National Monuments acts 1930-2014.
- The Marine Archaeology Assessment report refers to an archaeological report compiled by *Marine Archaeology* which assessed the results of previous SI investigations (Maritime Archaeology, 2020a). A copy of this report shall be forwarded to the NMS for review prior to works proceeding.
- It is noted that archaeological walkover and metal detector surveys were carried out at both of the cable route landfalls (Dive Licence no. 21D0045 & 21D0046 & Detection Device Licence no. 21R0070 & 21R0071). A copy of both assessment reports shall be forwarded to the National Monuments Service for review in advance of the works taking place.
- It is also noted that archaeological monitoring of a number of benthic grab samples was undertaken in 2021 (Excavation Licence no. 21E0082). A copy of the monitoring report shall be forwarded to the National Monuments Service for review in advance of the works taking place.



You are requested to send further communications to this Department's Development Applications Unit (DAU) at fem.dau@housing.gov.ie where used, or to the following address:

The Manager
Development Applications Unit (DAU)
Government Offices
Newtown Road
Wexford
Y35 AP90

Is mise, le meas



Development Applications Unit
Administration

An Roinn Pleanála & Forbairt Maoine
Oifigí na Cathrach
Bloc 4, Urlár 3
An Ché Adhmaid, Baile Átha Cliath 8

Planning & Property Development Department
Dublin City Council
Block 4, Floor 3, Civic Offices
Wood Quay, Dublin 8

T: 01 222 [REDACTED] E: [REDACTED] dublincity.ie

Foreshore Unit,
Department of Housing,
Local Government and Heritage,
Newtown Road,
Wexford,
Co Wexford

16th December 2021

Re: FS007188 RWE Renewables Ireland Ltd, Dublin Array Site Investigations

Dear Sir/Madam,

In accordance with the requirement as set out in Statutory Instrument 353/2011- Foreshore Regulations 2011, please find in the attached report to this email the observations of Dublin City Council with regard to this Foreshore Application on behalf of RWE Renewables Ireland Ltd.

It would be appreciated if you would acknowledge receipt of same for our records.

Yours sincerely

[REDACTED]
[REDACTED]
Administrative Officer

Encl.

Dublin City Council

Reference: FS007188 RWE Dublin Array S.I.

Applicant Name: RWE Renewables Ireland Ltd

Location: Off the coast of County Dublin & County Wicklow.

Proposed Development Activity: Foreshore Licence to undertake geotechnical and geophysical site investigations and ecological, wind, wave and current monitoring to provide further data to refine wind farm design, cable routing, landfall design and associated installation methodologies for the proposed Dublin Array offshore wind farm.

Consultation Response

The applicant is requested to take cognisance of the following policies and objectives from the Dublin City Development Plan 2016-2022.

Chapter 3 – Addressing Climate Change

It is an Objective of Dublin City Council:

CCO3: *To support the implementation of the national level ‘Strategy for Renewable Energy 2012– 2020’ and the related National Renewable Energy Action Plan (NREAP) and National Energy Efficiency Action Plan (NEEAP)*

CCO4: *To support the implementation of the ‘Dublin City Sustainable Energy Action Plan 2010–2020’ and any replacement plan made during the term of this development plan.*

CCO9: *To encourage the production of energy from renewable sources, such as from bio-energy, solar energy, hydro energy, wave/tidal energy, geothermal, wind energy, combined heat and power (CHP), heat energy distribution such as district heating/ cooling systems, and any other renewable energy sources, subject to normal planning considerations, including in particular, the potential impact on areas of environmental sensitivity including Natura 2000 sites.*

CCO10: *To support renewable energy pilot projects which aim to incorporate renewable energy into schemes where feasible*

CCO14: *To support the government’s target of having 40% of electricity consumption generated from renewable energy sources by the year 2020.*

It is the Policy of Dublin City Council

CC2: *To mitigate the impacts of climate change through the implementation of policies that reduce energy consumption, reduce energy loss/wastage, and support the supply of energy from renewable sources.*

CC3: *To promote energy efficiency, energy conservation, and the increased use of renewable energy in existing and new developments.*

The applicant is recommended to also give consideration to Dublin City Council’s Draft Dublin City Development Plan 2022-2028, the relevance of which shall be determined by when the applicant submits their application. The draft Plan, which is currently on public display with the stage two consultation period ending on 14h February 2022, can be accessed via the following link: [Development Plan 2022 - 2028 | Dublin City Council](#).

The Council recognises in the Draft Plan that a significant source of potential growth for the city's economy is the marine sector, which amongst other sectors and industries, includes offshore renewable energy installations in the Irish Sea.

The following policies in the Draft Plan are particularly relevant:

Policy **SIO30** 'Facilitating Offshore Renewable Energy' in Chapter 9 states that it is an objective of Dublin City Council to *support the sustainable development of Ireland's offshore renewable energy resources in accordance with the National Marine Planning Framework (2021) and Offshore Renewable Energy Development Plan (2019) and its successor, including any associated domestic and international grid connection enhancements.*

Policy **CA12** 'Offshore Wind-Energy Production' in Chapter 3 states that it is the policy of Dublin City Council *to support the implementation of the 2014 'Offshore Renewable Energy Development Plan' (OREDPA) and to facilitate infrastructure such as grid facilities on the land side of any renewable energy proposals of the offshore wind resource, where appropriate and having regard to the principles set out in the National Marine Planning Framework.*

The Draft Plan further outlines that the Council shall actively support the development of coastal enabling infrastructure for offshore renewable energy installations in locations that are appropriate and accord with the National Marine Planning Framework (2021). The Council also supports the implementation of the 'Offshore Renewable Energy Development Plan' (2014).

Cognisance should be given to feedback from the Council's Park's Biodiversity and Landscape Services as outlined in Appendix A with consideration to be given also in relation to the need to protect the marine environment and its valuable natural habitats, some of which have international importance for biodiversity and provide crucial ecosystem services.

It is recommended that a visual impact assessment be submitted as part of any future planning application in order to assess the level and character of impact of the proposal on the landscape and the built environment for Dublin City and the surrounding area.

Appendix A: Feedback from Dublin City Council's Parks, Biodiversity and Landscape Services

The proposed works in the Sandymount area, including land and intertidal access, are noted.

More localised and recent data is available than the NPWS Site Synopsis referenced, e.g. Birdwatch Ireland's Dublin Bay Birds Project data, NUIG data on *Zostera* beds in the area, and IWDG data on marine mammals.

This data should be consulted before concluding NIR/EIA.

From: [REDACTED]@fisheriesireland.ie>
Sent: Friday 17 December 2021 17:15
To: [REDACTED] (Housing)
Subject: RE: IFI. FS007188 RWE Renewables-Dublin Array, S.I. - Notice of Public Consultation Period
Attachments: FS007188 RWE Renewables Ireland Ltd, Dublin Array Site Investigations.pdf

Dear [REDACTED]
Please find attached the comments from IFI in relation to the FS007188 RWE Renewables Ireland Ltd, Dublin Array Site Investigations.

Kind
[REDACTED]



Iascach Intíre Éireann
Inland Fisheries Ireland

MARINE LICENCE VETTING COMMITTEE:

**Re: FS007188 RWE Renewables Ireland Ltd, Dublin Array Site Investigations
Request for observations from Mr. [REDACTED] [REDACTED] (DEHLGH) dated 16.11.2021**

Overview:

A foreshore licence is sought to facilitate site investigations ahead of a proposed windfarm development, the Dublin Array. The proposed investigations comprise four major strands, namely geotechnical surveys, geophysical surveys, metocean monitoring (wind, waves and currents) and ecological monitoring, conducted over periods ranging from 2-3 months to 2-3 years. Some preliminary site investigation has already occurred under licence, and this application will allow for further detailed and expansive surveying.

[REDACTED] IFI Comment

IFI would point out that the mitigation measures and guidance of NPWS in regard to marine mammals are not transferrable to fish species. The fish remain invisible to any shore- or boat-based observer. Mitigation measures should aim to reduce the sound generated, in intensity and duration. The use of soft-start and ramp-up procedures for any sound-generating surveys undertaken – both on a day-to-day basis and on re-start after any stoppages within any day should be undertaken. This measure should be a condition of the foreshore licence. The comments of IFI in this regard relate to fish species of conservation significance and of leisure angling significance all of which constitute part of IFI's brief.

It is recommended to contact the Sea Fisheries Protection Agency (SFPA) to seek advice regarding the timing of survey works to avoid clashing with spawning periods of commercial fish in the area. This will reduce any potential for noise damage to larval and juvenile life stages of fish when they are more susceptible to noise damage than adults.

The timings of the work should be cognisant of the migratory window of diadromous species. The application notes that, migratory fish are known to have a temporal or spatial overlap with the proposed Foreshore Licence application area, although no SACs for migratory fish species are present. Various life stages of the migratory fish species (including but not limited to Salmon, European Eel, Sea lamprey, Shad, Sea trout) would be expected to migrate through or forage within the defined licence boundary area.



**Iascach Intíre Éireann
Inland Fisheries Ireland**

The application outlines the potential cumulative effects from other foreshore licence activities in the area and the report concludes that they will not interfere in any of the Natura 2000 sites. While the works outlined here are of short duration the cumulative effect of multiple works taking place in specific areas is difficult to quantify. The local fish community [REDACTED] the applicants need to be cognisant of overlapping or consecutive works taking place in areas. IFI considers that this potential for cumulative impacts is one that requires consideration by the Foreshore Division.

The application notes the widespread use of the investigation area by sea and shore angling and while we acknowledge the appointment of a Fishery Liaison Officer we believe the local angling clubs should also be informed in advance of the dates for investigation works.

[REDACTED] (IFI R&D)

17.12.2021

From: [REDACTED] <[REDACTED]@transport.gov.ie>
Sent: Monday 20 December 2021 13:26
To: [REDACTED] (Housing)
Cc: MSO
Subject: RE: MSO Reminder . FS007188 RWE Renewables-Dublin Array, S.I.
- Notice of Public Consultation

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Dear [REDACTED],

The Marine Survey Office (MSO) have nil obs for now, but will still in due course receive the request for obs as part of the established FS licence application process.

Kind regards,

[REDACTED]

[REDACTED]

Marine Survey Office

An Roinn Iompair
Department of Transport

Lána Líosain, Baile Átha Cliath, D02 TR60
Leeson Lane, Dublin, D02 TR60

T +353 (0)1 [REDACTED]
[REDACTED] [@transport.gov.ie](mailto:[REDACTED]@transport.gov.ie) www.gov.ie/transport

From: [REDACTED] <[REDACTED]@wicklowcoco.ie>

Sent: Wednesday 22 December 2021 12:50

To: [REDACTED] (Housing) <[REDACTED]@housing.gov.ie>

Cc: [REDACTED] <[REDACTED]@wicklowcoco.ie>

Subject: FW: WicklowCoCo Reminder. FS007188 RWE Renewables-Dublin Array, S.I. - Notice of Public Consultation

Dear [REDACTED],

I refer to your email of the 20/12/2021 regarding Foreshore Application FS007188 and wish to advise that Wicklow County Council has no objection to the proposal but would recommend the inclusion of the following conditions:

With respect to notifications / public awareness, Wicklow County Council recommends that the licence includes conditions whereby the applicant / licensee:

- 1) Notifies Wicklow County Council's Marine Officer at Wicklow Harbour Office prior to the commencement of each stage of the site investigations.
- 2) Liaises with Wicklow County Council's Marine Officer with regard to the publication of a local marine notice. The local marine notice should give a general description of operations, commencement dates and planned completion dates.

With regard to water pollution and protection of the marine environment Wicklow County Council recommends the inclusions of following requirements:

- 3) Regular observations for the presence/absence of oil/water pollution in the vicinity of works and the maintenance of a register/log of such observation. The register/log should include incidents reported.
- 4) A marine pollution response plan with capability for fast mobilisation should also be included.

Kind regards,

[REDACTED]

[REDACTED] | **Administrative Officer**
Planning, Development and Environment

Wicklow County Council, County Buildings, Wicklow Town, Co. Wicklow A67 FW96

Telephone: +353 (0404) 20100 Ext: [REDACTED]

Email: [REDACTED]@wicklowcoco.ie

Website: www.wicklow.ie

From: [REDACTED] <[REDACTED]@agriculture.gov.ie>
Sent: Friday 14 January 2022 12:31
To: [REDACTED] (Housing)
Cc: Foreshore
Subject: Our Ref: FW.4.51 – RWE Renewables Ireland - Site Investigation Works for the proposed Dublin Array Offshore Wind Farm off the coast of Dublin and County Wicklow

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Our Ref: FW.4.51 – RWE Renewables Ireland - Site Investigation Works for the proposed Dublin Array Offshore Wind Farm off the coast of Dublin and County Wicklow
DHLGH Ref: FS007188

Dear [REDACTED],

I refer to your request for comments/observations from the Dept of Agriculture Food and the Marine. Please include the following conditions in any site investigation licence that issues.

- Marine Engineering Division noted that there are increasing numbers of proposals for the Irish Sea and that as with those applications, appropriate monitoring and measures and best practice must be followed during the to ensure that the proposed survey works do not cause any direct or cumulative negative impacts on FHC access and navigation, environmental sites, aquaculture and fishery harbour operations.
- BIM noted it is likely that these works could impact the activity of vessels in many fisheries from inshore boats such as whelk, lobster, crab, shrimp, razors etc. as well as whitefish trawlers plus some scallop/queen scallop activity. Every effort should be made by the proposers of this project RWE Renewables Ireland to engage/consult with the fishing and aquaculture sector in the area concerned directly through their Fisheries Liaison Officer before and during the survey. These should include, *inter alia*, the Producer Organisations, SE RIFF, NE RIFF and the two major processors that purchase fisheries products in the area, Sofrimar Ltd. and Errigal Bay with details of the proposed site investigations and not just rely on the publication of a Marine Notice when the site investigations take place.
- The main concern for the SFPA is a pollution event. The applicant is in direct communication with the SFPA Howth Office and is also aware that should an event occur then SFPA Howth is to be contacted immediately via sfpahowth@sfpa.ie or by

telephone to [REDACTED] at 087 [REDACTED] (direct contact and out of hours because of Covid19).

Regards,

[REDACTED]
Aquaculture and Foreshore Management Division
Department of Agriculture, Food and the Marine
National Seafood Centre
Clonakilty
Co. Cork
P85 TX47
Email: [REDACTED]@agriculture.gov.ie



██████████ ██████████
Foreshore Unit,
Department of the Housing, Local Government and Heritage,
Newtown Road,
Co. Wexford
7th February 2022

Prescribed Bodies Consultation - Environmental Report

Re: FS007188 Foreshore licence application for Site Investigation for the proposed Dublin Array wind farm of the coast of Counties Dublin and Wicklow.

Applicant: RWE Renewables Ltd.

Dear ██████████

Your email of the 16th of November 2021 refers to this licence application for Site Investigation for the proposed Dublin Array wind farm of the coast of Counties Dublin and Wicklow.

Part of the proposed works will take place within and adjacent to a number of Natura 2000 sites. A number of the Special Protection Areas (SPA) are nationally and internationally important sites for wintering species and for breeding sea birds. Wetlands and the designated Annex I intertidal habitats are important feeding grounds for such species. This area too has Special Areas of Conservation (SAC) in which the Annex I habitat Reefs [1170] is designated. There are few examples of this habitat along the eastern sea board.

Assessment Process

The Minister for Housing, Local Government and Heritage, is responsible for carrying out environmental screening and any environmental assessments determined as being required following screening, in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**), Directive 2009/147/EC (**Birds Directive**) and Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**), in respect of applications under the The Foreshore Act 1933, as amended. Outside of the Directives, the Minister is also required to consider environmental issues in respect of applications under the Foreshore Act 1933, as amended.

Habitats Directive

The Appropriate Assessment process (AA) is an assessment of the potential for adverse or negative effects of a plan or project, in combination with other plans or projects, on the conservation objectives of a European Site (Natura 2000 site). The focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives.

Article 6(3) and 6(4) of the **Habitats Directive** place strict legal obligations on Member States to regulate the conditions under which development that has the potential to impact on European Sites can be proceed. It requires that an Appropriate Assessment be carried out of plans or projects, not directly connected with or necessary to the management of a site as a



European Site, but which are likely to have a significant effect thereon, either individually or in combination with other plans or projects. An AA Screening assessment is carried out to determine whether a plan or project is likely to have a significant effect on a European Site.

- Article 6.3 states that: *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*
- Article 6.4 states: *“if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”

In giving effect to the above as a matter of Irish law, the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows:-

Regulation 42(1) of the Birds and Natural Habitats Regulations states that: *“A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site”.*

Regulation 42(2) provides that: *“A public authority shall carry out screening for Appropriate Assessment under paragraph (1) before consenting for a plan or project is given, or a decision to undertake or adopt a plan or project is taken”.*

The Birds and Natural Habitats Regulations further provide as follows at Regulation 42 (6) and 42 (7):-

6. The public authority shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

7. The public authority shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or



necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

Furthermore, under section 42A (13) of S.I. No. 293 of 2021 an Appropriate Assessment, including the specified public consultation, must be carried out before the public authority makes a decision to undertake or adopt the proposed plan or project.

Risk Assessment for Annex IV Species

Outside of designated Natura 2000 sites, the waters around Ireland's coast are a suitable habitat for a number of species listed under Annex IV of the Habitats Directive (92/43/EEC). Article 12 of the Habitats Directive affords strict protection to those species listed in Annex IV of the Directive wherever they occur. Where necessary a Risk Assessment for adverse effects of the proposed works on Annex IV species must be undertaken and a report produced. This assessment is separate to that undertaken under Article 6.3.

The purpose of the Risk Assessment is to examine the possibility that the proposed project either individually or in combination with other plans and projects, may result in the deliberate disturbance or destruction of any of the species listed in Annex IV which may be present in the works area. The Risk Assessment should take into account the status (e.g. as indicated in the latest Article 17 reporting for Ireland, NPWS 2019) and sensitivities of relevant Annex IV species to potential impacts associated with the proposed project.

The **Risk Assessment for Annex IV Species** should be precise, with definite findings, mitigation and conclusions removing all reasonable scientific doubt as to the effects of the proposed project on any Annex IV species.

EIA Directive

In Ireland, in accordance with Directive 2011/92/EU, as amended by Directive 2014/52/EU (hereafter, the EIA Directive), projects that are likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location must be subject to an EIA.

Article 4 of the EIA Directive requires that projects listed under Annex I must always have an EIA while projects listed under Annex II shall be subject to an EIA if (i) determined on a case-by-case basis or (ii) they exceed certain thresholds set by each Member State. Thresholds have been set for Annex II projects in Irish legislation. Projects which do not meet the threshold may still require an EIA if the project is likely to have significant effects on the environment. Annex I and Annex II projects have been transposed into Section 5 (Parts 1 and 2) of the Planning and Development Regulations 2001, as amended.

Section 13A(1)(b)(i) of The Foreshore Act 1933, as amended, requires that an EIA be carried out for all developments of a class specified in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations where the development exceeds the relevant quantity, area or other limit specified in that Part, or where no quantity, area or other limit is specified. Section 13A(1)(b)(ii) of the Foreshore Act states that an EIA shall be carried out when a development is of a class specified in Part 2 of Schedule 5, but does not exceed the relevant threshold (i.e. sub-threshold) and the Minister determines that the proposed development would be likely to have significant effects on the environment. Therefore, it is necessary to examine such projects on a case-by case basis.



In the case of Annex II projects that are determined on a case-by-case basis, or sub-threshold, an EIA screening is required to determine if the project will have significant effects on the environment. Under Article 4(4) the developer (applicant) is required to submit information on the characteristics of the project and its likely significant effects on the environment. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. Subsequently, in accordance with Article 4(5), the Minister is required to make a determination, which shall be made public, that:

1. Where it is decided that an EIA is required, states the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III (Schedule 7 of the Planning & Development Regulations 2001) of the EIA Directive; or
2. Where it is decided that an EIA is not required, states the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III of the EIA Directive, and, where proposed by the developer, states any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Non-statutory Environmental Report

Where projects do not fall under a class that require an EIA or an EIA Screening, and in-keeping with good governance, a Non-statutory Environmental Report assessing the environmental effects of the proposed works on the receiving environment is required. This report will document the current state of the environment in the vicinity of the proposed activity in order to quantify the effects, if any on the environment, and if applicable to highlight how mitigation will be implemented to minimise impacts on the environment. The EPA Guidelines on the Information to Be Contained in Environmental Impact Assessment Reports (2017) indicates the relevant topics to be covered in this report.

Independent Environmental Consultants (IEC)

Owing to the scale and complexity of the environmental assessment required, and taking account of the available resources within the Department, I recommend that Foreshore Section of DHLGH engage a suitable qualified IEC. The IEC must conduct an independent assessment of the information provided by the Applicant, having regard to the Habitats Directive, the Birds Directive, the Birds and Natural Habitats Regulations, the EIA Directive, Non-statutory Environmental Reports and relevant jurisprudence of the EU and Irish courts. The IEC shall ensure that The Minister has all the environmental assessments required to allow them to make decisions on applications under The Foreshore Act 1933, as amended in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**), Directive 2009/147/EC (**Birds Directive**) and Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**).

Conclusion/Recommendation

In principle I have no objections to this application. As outlined above, I recommend that Foreshore Section of DHLGH engage a suitable qualified IEC.

On completion of the Public and Prescribed Bodies Consultation and the work of the IEC, I will furnish my Appropriate Assessment Screening Determination and Environmental Report. If the Minister adopts and approves these reports and a determination is made that a Stage 2 Appropriate Assessment is required a public consultation will be held on the Appropriate



Assessment. My Final Environmental Report with Determinations which may include any case specific conditions will follow having regard to the information obtained during public participation.



Marine Advisor, Environment.