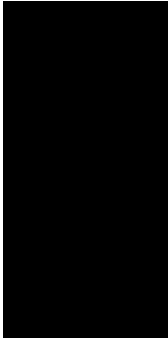


Final Determination Report	
Application for a Maritime Area Consent (MAC) under Section 75(1) of Maritime Area Planning Act 2021 (the Act)	
Application Details	
MAC Holder:	Iarnród Éireann (IE)
MAC Reference No:	MAC20230005
Date Application received:	20 March 2024
Application Details	Iarnród Éireann has applied to construct, operate and maintain port facilities and a small boat harbour at Rosslare Europort, Co. Wexford.
Recommendation	To Grant, with conditions, the MAC sought.

Document Control			
Prepared By:		MAC Manager	02/07/2025
Reviewed & Approved by:		Head of Maritime Area Consenting	02/07/2025
Final Report Version 1:		MAC Manager	02/07/2025

I refer to the minded to documentation that issued to Iarnród Éireann on the 17 April 2025. On the 07 May 2025 Iarnród Éireann submitted supplementary material to MARA in response to the minded notice in relation to the reasons attached to conditions in the draft MAC. In accordance with Section 82(7)(b)(ii) MARA must give consideration to the supplementary material before making a determination. Details of the supplementary material provided and consideration thereof is set out below.

Supplementary material:

Iarnród Éireann provided the following comments in their supplementary material:

1. Holder

“Can the Holder for this MAC be extended to include Córas Iompair Éireann (CIÉ)?

By way of statutory background, under the Transport (Re-organisation of Coras Iompair Éireann) Act, 1986 Córas Iompair Éireann was re-structured and Iarnród Éireann-Irish Rail was required to be incorporated pursuant to the Companies Act 1963 and subject to the provisions of the 1986 Act. Under the 1986 Act the operational assets of CIÉ were transferred to Iarnród Éireann-Irish Rail whilst all property assets remained vested in CIÉ. It is for this reason that we require the Consent to be issued to both CIÉ and IÉ.”

MARA Response

As part of the assessment of the MAC application Iarnród Éireann underwent a fit and proper test in accordance with Schedule 2(2) of the Act, including a financial capability assessment. Iarnród Éireann are listed as a non-commercial state body on the Register of Public Sector Bodies in Ireland which is maintained and updated by the Central Statistics Office (CSO), while CIÉ is classified as a commercial state body. As per MARA's Financial Capability Assessment Guidance¹, the financial capability assessment for non-commercial state bodies differs to that for commercial entities. Non-commercial state bodies are not subject to financial capability assessment tests. Accordingly in order to include CIÉ as a joint MAC Holder, CIÉ would need to undergo a full fit and proper assessment including a financial capability assessment. It is considered that such an assessment cannot be completed at this late stage, following the issuance of the minded to documentation.

It should be that a MAC does not confer on a holder any estate or proprietary interest in the consent area and a MAC is not considered a property asset.

Where Iarnród Éireann and CIÉ required the MAC to be granted to both parties, Iarnród Éireann and CIÉ may make a joint MAC application to MARA to assign the MAC under Section 85.

¹ https://www.maritimeregulator.ie/wp-content/uploads/2025/02/Financial_Capability_Assessment_Guidance_for_Maritime_Area_Consents_V4.pdf

2. Term.

“This is stated to be 45 years. In the Reason for Condition, it is stated that “the Term” is considered having regard to the typical life cycle of the Permitted Maritime Usage, the management of state resources and the assessment of all or any effects of the Permitted Maritime Usage. We would request the Term to be extended to 99 years or at the very minimum 67 years because the adjoining reclaimed land is held under a Foreshore Lease which has 67 years left to run on its term. It would make practical sense to have both run for the same duration such that any potential renewal process when the Term expires can be dealt with at the same time. The capital investment required to reclaim such a substantial area would further support a Term of longer duration than the proposed 45 years.”

MARA Response

An unduly longer MAC term could lead to the possibility of the infrastructure no longer being fit for purpose and requiring rehabilitation well in advance of the expiration date of the MAC. The MAC term should therefore align with the design life of the proposed infrastructure plus the term required to obtain development consent, undertake detailed design, construct and rehabilitate the maritime area.

Design life can be affected by environmental degradation, material degradation and changing external conditions. While a design life for civil engineering structures of this nature can be of the order of 50-100 years, achieving 100 years would be unusual without significant maintenance and or replacement. The applicant has not provided suitable evidence and justification in relation to design life which would support a significant extension of the proposed MAC term.

Considering the above a design life of 50 years would seem appropriate. In addition to the design life, when considering a MAC of this nature and scale, the term should include the maximum allowable timeframes for the following:

- Submission of development permission application (in alignment with MAC condition) – 1.5 years;
- Achieving planning consent (statutory objective is 18 weeks but allowing for an extended timeframe for further information requests and oral hearing) – 1 year;
- Substantial completion (in alignment with standard planning condition) – 5 years; and
- Decommissioning and rehabilitation including amendment and replacement of the Rehabilitation Schedule (if required in accordance with Section 97) – 2.5 years

Whether or not the MAC aligns with the existing foreshore lease is not a consideration when determining a MAC application made under Section 75(1) of the Act.

Considering the above a total MAC term of 60 years is deemed appropriate. The Particulars Schedule of the recommended final MAC has been updated to the revised the term accordingly.

3. Levy

“The Levy amount is not defined in the Particulars Schedule. As this is a document with a lifespan of 45 years (possibly longer if the Term can be extended as per the above request) for good order the Levy amount should be included in the Particulars Schedule.

The Levy amount is stated to be €570,850 annually in the MARA letter of the 17 April 2024 and is stated to have been calculated in accordance with the Levy Framework. IÉ are of the view, in the first instance, that given that the proposed Maritime Use envisaged here will play a considerable role in furthering the Ireland’s National Climate goals that indeed the Levy should be waived in its entirety and a nominal Levy should be imposed in the Consent. It is noted that there is a discretionary scope within the legislation for MARA to make such a decision.

Without prejudice to the aforementioned request for a full waiver, IÉ consider the Levy amount to be too high when compared with rental payments under foreshore lease arrangements currently in place at the Port and there is no allowance for quantum (i.e. larger sized properties are usually let at lower levels of value per unit of area than smaller sized properties).

The proposed Levy for the planned dredging area is at the same rate as the planned reclamation area, this approach appears not to consider the fact that the planned dredging area will be available for other maritime users. IÉ request that MARA re-consider the Levy for the dredging area as follows:

- That the portion of the Levy applicable to the planned dredging area be re-designated as “Undeveloped Amenity Land” as it will be available for other maritime users; and*
- That this portion of the MAC be surrendered once initial dredging works have been completed.”*

MARA Response

The Levy Framework is updated annually in line with the December figure for All-Items Harmonised Index of the Consumer Price (HICP) values in relation to Ireland, with reference to EuroStat data. Additionally, Section 92(4)(c) allows for amendments to the Levy Framework

to be applied to existing MAC holders. Therefore, as the applicable levy is subject to change over time, inclusion of the levy amount in the Particulars Schedule is not considered appropriate.

The Levy Framework was agreed between MARA and Minister for Public Expenditure, National Development Plan Delivery and Reform in 2023. MARA is obliged to keep the levy framework under review and amend accordingly. If the levy framework is amended or replaced, changes must be applied to existing MACs and new MACs unless the framework specifies otherwise. A review of the existing Levy Framework is currently in the early planning stage. This process will involve engagement with stakeholders whose feedback will be considered when making recommendations in relation to any changes to the framework. Iarnród Éireann will be consulted as part of this process and can make submissions to MARA in regard the levy framework and levy waiver at this time.

Regarding the reclassification of the Capital Dredging activity area as “Undeveloped Amenity Land”, from the perspective of the Planning and Development Act, capital dredging works would constitute development, and the Maritime Area in question would have a change in use from natural maritime area to a dedicated navigation channel. Accordingly, MARA does not consider that the proposed maritime usage meets the criteria for “Undeveloped Amenity Land”. Accordingly, no change to the levy as applied.

The applicant may submit an application to MARA to surrender the Capital Dredging area of the MAC after the dredging works are completed. It should be noted that any amendment to the MAC may require an amendment to the planning consent.

It should also be noted that the MAC Levy Framework has been updated for 2025, in line with the December figure for All-Items HICP values in relation to Ireland, and the MAC Levy for MAC20230005 is currently calculated as €593,684.93 per annum.

4. Levy Payment Date

“As drafted, this is stated to be “One month after the Commencement Date” and on every succeeding anniversary thereafter for the Term. The Commencement Date is TBC but would appear to be linked to the date of the grant of the MAC. Section 4 of the draft MAC provides that the commencement of the right to occupy is subject to the grant of planning permission and all required authorisations.

It is further noted that the MAC can be terminated in the event that planning permission is not granted and all avenues of appeal in respect of that particular application have been

exhausted which would mean that a new MAC would be required were a revised application for planning permission lodged. This would mean that the Levy would have been paid for the period of time that the initial planning application was going through the appeal process only to have the MAC terminated and a new application for a new MAC commenced with a view to submitting a revised planning application and paying another annual levy on top of the money already expended.

With regards to items 3 and 4 above, a key driver for the proposed Rosslare Europort ORE facility is the potential role it can play in supporting the achievement of Ireland's offshore renewable energy targets as set out in the government's Climate Action Plan. Rosslare Europort is ideally situated to support ORE developments in the Irish and Celtic seas and IÉ has invested significantly in bringing the project to statutory consent stage with additional funding secured from the Connecting Europe Fund (CEF). However, funding has not yet been secured for the construction phase of the project and if there is a requirement to pay the Levy proposed in advance of securing planning permission, it could pose a significant financial risk for IÉ if the project was to be held up in the planning process.

Without Prejudice to IE's request, at paragraph 3 above, for the inclusion of a nominal Levy amount only, for the reasons above, we request that MARA apply a moratorium delaying the Levy Payment Date until the consented commercial development is operational. This would seem appropriate given that the Levy is designated as applying to Commercial Development, yet any commercial revenues would only be forthcoming at the operational phase."

MARA Response

The MAC Levy takes effect from the date the MAC is granted, as outlined in the Levy Framework. MARA is responsible for regularly reviewing the Levy Framework and making necessary amendments. If the framework is modified or replaced, the changes will apply to both existing MACs and new MACs, unless the framework states otherwise. Further details in relation to the Levy framework are provide in response to item 4 above.

5. Financial Close

"IÉ request that more flexibility is granted here particularly as this is linked to the automatic termination provisions at 23.2. It is expected that a large portion of the Funding is coming from the state and not through commercial channels. We request that Financial Close is directly linked to when the consented commercial development is operational."

MARA Response

Considering the above factors, a timeframe of five years to achieve Financial Close from the date of granting of Development Permission is deemed appropriate. This duration allows Iarnród Éireann a reasonable timeframe to secure the necessary project funding while safeguarding against hoarding in the maritime area. The Particulars Schedule of the recommended final MAC has been updated to revised the timeframe accordingly.

Iarnród Éireann can apply to extend the financial close timeframe by six months by submitting an application for a non-material amendment. This option can be used twice, allowing for a total extension of up to 12 months, if deemed appropriate. Additionally, the applicant has the option to apply for a material amendment to extend the period. There are no application fees associated with non-material amendments, however application fees apply for material amendments, calculated based on the overall project costs for the maritime area. In the case of any such application, the MAC holder would be required to provide sufficient evidence to demonstrate that they are likely to be able to achieve financial close within the proposed extended timeframe.

6. Exclusivity

“Section 3.4 (a) provides the following rights “To occupy the Consent Area on a non-exclusive basis for the purpose of carrying out the Permitted Maritime Usage strictly in accordance with the conditions attached to this Consent and the requirements of the Act”. The Consent Area is required for the Permitted Maritime Usage in connection with the operation of Rosslare Europort. CIÉ/IÉ request that the right of occupation be granted on an exclusive basis in light of the location of the Consent area and the proposed usage. Exclusivity is required to safeguard port operations. There would appear to be discretion within section 83 of the Act to allow for the occupation to be on an exclusive basis. NB: CIÉ/IÉ occupy other reclaimed parts of the Port on an exclusive basis under existing Foreshore Leases”.

MARA Response

Section 83 of the Act prescribes the following provisions supplementary to grant of a MAC:

“(1) The MARA shall, in granting a MAC, specify, in the grant, whether the specific part of the maritime area the subject of that MAC, as the MARA thinks appropriate—

(a) is for the exclusive use of the maritime usage the subject of the MAC,

(b) is not for the exclusive use of such usage, or

- (c) may or may not be for the exclusive use of such usage contingent on circumstances that may arise after the granting of the MAC.*
- (2) A provision of the grant of a MAC that purports to provide for the renewal of the MAC shall be void.*
- (3) Section 82 shall not be construed to prejudice the generality of any power under the Act of 2000 to attach conditions to a development permission.”*

There is currently no provision in the Act that permits MARA to grant exclusive occupation of the maritime area to a Holder. Section 83(1) of the Act requires MARA, when granting a MAC, to specify whether the particular part of maritime area covered by the MAC is for the “*exclusive use of the maritime usage the subject of the MAC*” or not. Accordingly, it is considered that MARA cannot grant any ‘exclusive occupation’ of the maritime area. MARA may however grant a MAC for “exclusive use” for a specific permitted usage.

It is considered that in order to safely and securely operate the port, the Holder will require exclusive use of the MAC area, particularly that relating to the reclaimed area for port infrastructure (Area A of the enclosed recommended MAC Map). Accordingly, it is recommended that Area A of the Consent Area be grant in accordance with Section 83(1)(a).

It is considered that the remainder of the Consent Area (Area B) which is proposed for capital dredging may also be used for navigation and other maritime usages. Section 83(1)(c) provides MARA discretion and flexibility to specify that a MAC “*may or may not be for the exclusive use of such usage contingent on circumstances that may arise after the granting of the MAC*”. Taking the lifecycle of the proposed maritime usage into account, it is reasonably foreseeable that, the Holder may be required or may seek to exclude access to parts of the MAC area on a temporary basis. For example, during dredging, construction, decommissioning and rehabilitation phases of projects for health and safety reasons. Such temporary/ short-term exclusions may be mandated by the planning authority or other authorities or legislation for specific purposes and durations. It is considered that exclusive usage of Area B for the full term of the MAC is not merited, particularly given the recommend term of a MAC is 60 years. Furthermore, the National Marine Planning Framework (NMPF) promotes co-existence and co-operation. Accordingly, it is recommended that Area B of the Consent Area be grant in accordance with Section 83(1)(c).

Condition 3.4 of the recommended final MAC has been amended as follows:

- 3.4 This Consent permits the Holder, subject to condition 4 and the conditions otherwise herein contained:*

- (a) To occupy the Consent Area for the purpose of carrying out the Permitted Maritime Usage, strictly in accordance with the conditions attached to this Consent and the requirements of the Act;*
- (b) To use of Area A of the Consent Area on an exclusive basis for the purpose of carrying out the Permitted Maritime Usage strictly in accordance with the conditions attached to this Consent and the requirements of the Act;*
- (c) To use of Area B of the Consent Area on a non-exclusive basis for the purpose of carrying out the Permitted Maritime Usage, strictly in accordance with the conditions attached to this Consent and the requirements of the Act, except where use on an exclusive basis is required and provided for under another authorisation or enactment.*

Furthermore, the MAC Map illustrating the Consent Area as provided in Appendix 1 of the draft MAC has been amended to demark Area A for exclusive use in accordance with Condition 3.4(b) above and Area B for non-exclusive use in accordance with Condition 3.4(c) above.

No changes are recommended to the wording of the reasons for conditions as proposed within the minded to determination notice.

7. Public Engagement Plan

“CIE/IE have no issue with clause 10 save that where operationally sensitive information is shared with the Grantor that same is not made available to the public without the written consent of the Holder.”

MARA Response

Condition 10 does not obligate MARA to publish the public engagement plan itself. Instead, the MAC holder is responsible for preparing and publishing the plan, subject to MARA's approval. Consequently, the MAC holder maintains control over the plan's publication, including the scope of disclosed information, provided it has been approved by MARA.

8. Rehabilitation (Section 19)

“As part of the Consent Area will form reclaimed land that will be developed on, the Holder will require comfort that it will not be necessary to restore any reclaimed land back to the sea given the level of investment and resources that will have been expended on developing that reclaimed land for long term port uses beyond the term of the draft MAC. It is noted that the

Rehabilitation Schedule will not be appended until after the Development Permission is granted so comfort is requested at this juncture.

IE are proposing to re-use the facility and continue operations beyond the Term of the draft MAC.

Can MARA confirm if IE's proposal for re-use of the infrastructure satisfies the rehabilitation obligation in accordance with Section 96(2)(d) of the Maritime Area Planning Act 2021 and amend the MAC accordingly.

Is a Rehabilitation Schedule required to be appended to the application for Development Permission in this instance?"

MARA Response

The obligations on the Holder of a MAC in relation to rehabilitation of the maritime area are a mandatory provision of the Act. Section 19 of the draft MAC appended to the minded to notice mirrors the requirements of Section 96 of the Act. The obligation to rehabilitate may include but is not limited to the re-use of infrastructure for the same or another purpose. MARA do not have the scope to limit the generality of the obligation to rehabilitate the maritime area within the meaning of the Act.

For MACs submitted to MARA under Section 75(1) of the Act, the responsibility for assessment lies within the remit of the planning authority. Where a MAC application for a proposed maritime usage was made under Section 75(1) of the Act, according to Section 75(5) the associated application for the development permission must include a rehabilitation schedule (as defined in Section 95).

The relevant planning authority should be consulted at the application stage for further advice.

9. Third party arrangements

"The Permitted Maritime Usage recognises that there will be the construction, use, operation and maintenance of a small boat harbour. The Holder may need to enter into third party agreements with the small boat harbour users as per previous arrangements in place with the current small boat harbour users. We request MARA to provide clarity as to whether the Holder can enter into Licence Agreements with third parties to facilitate certain elements of the Permitted Maritime Usage such as dealings with the small boat harbour users, the RNLI

and the ORE maintenance contractors without having to invoke the official assignment process under the MAC.”

MARA Response

There is no restriction on a MAC holder entering into third party agreements to carry out or support aspects of the permitted maritime use, provided that any such third-party activities remain within the scope of the permitted use under the MAC. Regardless of any third-party agreements, the MAC holder will retain responsibility for compliance with the terms of the MAC. Therefore, it will be a matter for the MAC holder to consider whether an assignment of a part of the MAC area to a third party is appropriate. This may be a full assignment or assignment for the MAC to be held jointly between two or more parties.

Recommendation

It is recommended to finalise the MAC with conditions attached, as per the above amendments. Reasons for the conditions attached thereto are recommended to issue as per those issued under the minded to notice. It is recommended to issue a final determination notice in relation to the above application in accordance with Section 81(3) of the Act.

A final determination notice, the final MAC and reasons for conditions attached thereto are attached for your approval.

Signed:

