

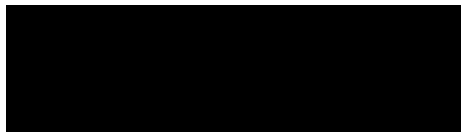
Submission on MUL Application MUL250013 GDDP/ North Dublin Agglomeration



Above: Aerial photo of the proposed discharge site showing turbidity.

Submission by:

Sabrina Joyce-Kemper & Catherine McMahon



Date of submission: 23rd February 2026

Submission

1. Failure to secure Foreshore Licence or Marine Area Consent for GDD project.

1.1 This submission is made by Sabrina Joyce-Kemper and Catherine McMahon, both of whom were observers on the Greater Dublin Drainage planning application ABP 312131 which was granted on the 9th July 2025. This submission is in response to the MARA consultation notice re an application ref MUL250013 for a Maritime User Licence for Borehole surveys for the Greater Dublin Drainage project.

1.2 This submission concerns the lawfulness of the consent sequence adopted for the marine elements of the Greater Dublin Drainage project (“GDDP”), and in particular whether development consent under the Planning and Development Act 2000 (as amended) was sought and granted in breach of the mandatory statutory precondition established by the Maritime Area Planning Act 2021 (“MAP Act”).

1.3 The MAP Act introduced a new statutory framework and phasing governing development within the maritime area. That framework is structured as a two-stage regime. First, an applicant must obtain a Maritime Area Consent (“MAC”), which confers the right to occupy a defined part of the maritime area for a specified maritime usage. Secondly, and only thereafter, the applicant may seek development permission under section 291 of the Planning and Development Act 2000, as inserted by section 88 of the MAP Act.

1.4 Section 75(1) MAP Act provides in mandatory terms that where development permission is required for a proposed maritime usage in a part of the maritime area, a person “shall not seek” such permission unless he or she is the holder of a MAC in respect of that part for the purposes of such usage. Section 89(1) MAP Act reinforces this position by providing that a person “shall not make an application” for permission for development in the maritime area under section 291 of the 2000 Act unless the applicant is the holder of a MAC for the maritime site concerned. Section 291(1) of the Planning and Development Act 2000, as amended, expressly makes the entitlement to apply for maritime development subject to section 89 of the MAP Act.

1.5 The language used by the Oireachtas is unequivocal. The requirement to hold a MAC prior to applying for development permission is framed as a statutory prohibition. It is not expressed as discretionary, it constitutes a condition precedent to the making of a lawful planning application in respect of development within the maritime area.

1.6 The marine outfall element of the GDD project comprises a six-kilometre pipeline extending offshore, including a diffuser structure and permanent occupation of the seabed. Construction methods involve tunnelling and dredging within the maritime area, and the operational phase involves the continuous discharge of treated effluent through marine infrastructure. Such works constitute “maritime usage” within the meaning of the MAP Act and plainly require development permission under the Planning and Development Acts. They are not listed in Schedule 3 MAP Act as exempt maritime usages. No regulation made under section 75(2) MAP Act has been identified which exempts

wastewater pipelines or diffuser structures from the marine outfall element of the GDD project fell upon commencement of those provisions. requirement to obtain a MAC. It follows that within the scope of sections 75 and 89 MAP Act

- 1.7 Publicly available information¹ indicates that the only specific transitional mechanism provided for under the MAP Act concerned Phase One offshore renewable energy projects. Those projects were expressly afforded a statutory pathway for transition from the former foreshore regime to the new MAC regime. No equivalent statutory transitional arrangement has been identified for wastewater infrastructure projects, including the Greater Dublin Drainage project.
- 1.8 The foreshore licence application FS006843 in respect of the GDD outfall was lodged in April 2020 under the former Foreshore Act regime. It has not been granted. It has not been determined. It has not been subject to statutory public consultation. There is no evidence of a completed foreshore consent capable of being preserved, nor any designation order or statutory instrument transferring that application into a MAC under the new regime. In the absence of an express saving provision applicable to GDD, the project became subject to the mandatory MAC requirement once the relevant provisions of the MAP Act entered into force.
- 1.9 If, at the date on which the maritime planning application was made or determined, no MAC was held in respect of the marine occupation, then the statutory condition precedent imposed by section 89 MAP Act was not satisfied. In those circumstances, the application could not lawfully have been made under section 291 of the Planning and Development Act 2000. The competent authority would have lacked jurisdiction to entertain and determine that element of the development. Where a statute provides that a person shall not make an application unless a specified condition is met, the absence of that condition is a jurisdictional defect. A decision made in the absence of compliance with a mandatory statutory precondition is ultra vires.
- 1.10 The consequences extend beyond domestic administrative law. The marine outfall involves permanent occupation of the seabed within and adjacent to designated European sites, construction impacts including dredging and underwater noise, and long-term operational discharge into the marine environment. Article 6(3) of the Habitats Directive requires that any plan or project likely to have a significant effect on a European site be subjected to appropriate assessment in view of the site's conservation objectives, and that consent be given only after it has been ascertained that the project will not adversely affect the integrity of the site.
- 1.11 If no MAC was in place defining the occupation footprint, construction envelope, and operational parameters of the marine elements at the time development consent was granted, then the full maritime project envelope was not lawfully regularised. In those circumstances, the competent authority could not have carried out a complete and legally coherent assessment of the implications of the project as a whole. A subsequent Maritime Usage Licence application confined to site investigations cannot cure a failure to comply with the foundational statutory requirement governing occupation of the maritime area. Nor can it enable a lawful cumulative or in-combination assessment where the principal maritime occupation has not been authorised in accordance with the MAP Act.
- 1.12 It has been suggested² that section 75(4) MAP Act permits a MAC to be obtained within two

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years of the grant of planning permission. However, section 75(4) is subject to Schedule 3³ usage which cannot be applied to the GDDP 312131 consent and therefore cannot be read so as to nullify the express prohibition in sections 75(1) and 89(1). Statutory provisions must be construed harmoniously. An interpretation which allows development permission to be sought and granted in the absence of a MAC would render the mandatory language “shall not seek” and “shall not make an application” devoid of legal effect. Absent an express transitional provision applicable to this project, such an interpretation cannot be sustained.

- 1.13 In summary, the marine outfall constitutes maritime development requiring a MAC. No MAC was held at the time development consent was sought or granted. No statutory transitional arrangement has been identified which preserved the project outside the MAC regime. The mandatory statutory precondition imposed by sections 75 and 89 MAP Act was therefore not satisfied. In those circumstances, the development consent insofar as it relates to the maritime area is unlawful, and the current Maritime Usage Licence application cannot retrospectively cure that defect.
- 1.14 For these reasons, it is respectfully submitted that the competent authority cannot lawfully process or determine the present application without first addressing the fundamental issue of compliance with the Maritime Area Planning Act 2021 and the mandatory requirement to secure a Maritime Area Consent prior to seeking development permission for maritime development. The competent authority cannot carry out a lawful cumulative AA, EIA and water Framework Directive assessment on a MUL for Licence that is supposed to be subservient to a parent MAC or Foreshore Licence when that MAC / FS licence does not exist.

Yours sincerely
Sabrina Joyce-Kemper &
Catherine McMahan.

² <https://www.gov.ie/en/department-of-climate-energy-and-the-environment/publications/maritime-area-consent-mac/>

³ <https://www.irishstatutebook.ie/eli/2021/act/50/schedule/3/enacted/en/html#sched3>