

# Supplementary position paper on MPDM Bill

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## 1 Introduction

The Irish Wind Energy Association is grateful for the opportunity to have met with the Joint Oireachtas Committee on Housing, Local Government and Heritage (the "JOC") to discuss the General Scheme of the Marine Planning and Development Management Bill (the "MPDM").

Having reviewed the new FAQ document published by the department and considered some of the points made by JOC members during our meeting we decided it could be helpful to produce a short supplemental paper providing additional information on the following topics:

- i. Surveying & Licencing;
- ii. Design Envelopes;
- iii. Pre-MAC Consultation;
- iv. ABP pre-planning consultation;
- v. Timelines / Milestones for MAC.

We would be happy to discuss this material with JOC members at their convenience and we will also be copying this document to the relevant officials in the Department of Housing, Local Government and Heritage and the Department of Environment, Climate and Communications.

## 2 Surveying & Licencing

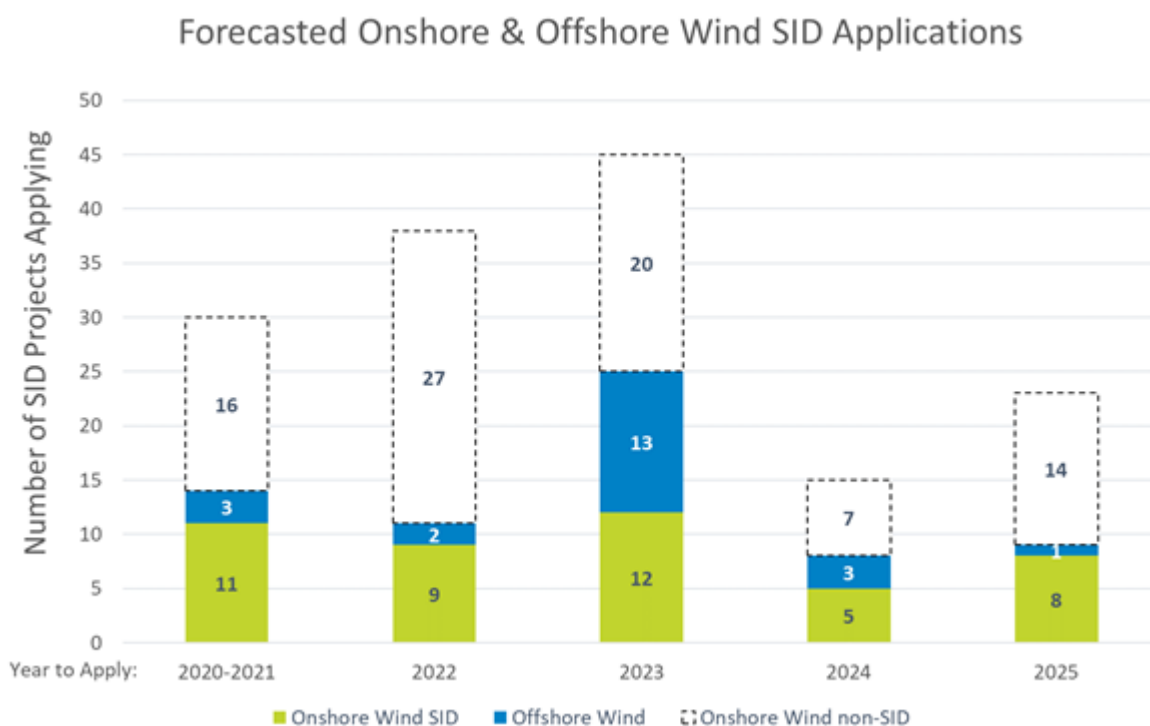
The FAQs (November 2020) state that consideration is being given to maintenance dredging being excluded from requiring a Maritime Area Consent ("MAC"). However, there is no reference to whether a MAC will be required for marine environmental surveys. These surveys, like maintenance dredging, require no permanent occupation and should be excluded from the requirement for a MAC to simplify and streamline the process.

A licence is typically personal to the licensee and it should be possible to transfer and assign it with the agreement of the licensor. Planning permission typically "attaches to the land" which could cause difficulties as it is assuming exclusivity or control which is not suitable for temporal surveys. Consideration should be given to how approval is provided for how equipment is attached to the seabed e.g. wave buoys or FLIDAR, which are fairly minor considerations.

IWEA has concerns at bringing marine environmental surveys into the planning system. If this approach is adopted, it is unclear who will be responsible. Clarity is required on what non-intrusive activities are considered exempt from requiring planning permission. In those cases, what process is being proposed and what steps will be involved?

While the FAQ document states that Local Authorities will be responsible for marine environmental surveys, does that apply to the Nearshore only as the FAQ also states that An Bord Pleanála will have responsibility for all development located entirely beyond the Nearshore? Marine environmental surveys for certain offshore wind projects will cover the area within and beyond the 12 nautical mile limit.

IWEA is concerned at the suggestion that An Bord Pleanála will have responsibility for these surveys. The Board’s workload is about to increase dramatically as applications for offshore wind energy projects are received (see table below).



If An Bord Pleanála is required to take on licencing site investigation works they will need significantly increased resources or expanded external panels.

If the Local Authorities have responsibility, the concerns regarding resourcing and expertise remain as well as questions over whether a consistent approach could be applied.

It is unrealistic to expect that each coastal local authority will have the appropriate marine expertise to determine these applications in the first instance and then to consider them consistently. It is also important to note that most offshore projects will span more than one local authority jurisdiction and some will be outside the 12 nautical mile limit.

While the existing Foreshore Licensing procedure has its challenges, these are primarily related to the time taken to process applications. This is ultimately a resourcing issue.

In light of this, and acknowledging the requirement to bring foreshore licencing in under the MPDM legislation, IWEA suggests responsibility in this area should be given to the new Office of Marine Development Enforcement, which like the EPA, could be both a licencing and enforcement body.

An example of this approach can be seen in the UK, where the Marine Management Organisation (MMO)<sup>1</sup> is the Marine Licencing Authority for a variety of activities including dredging, construction, maintenance, use of explosives etc. with 90 per cent of applications decided within 13 weeks (including a 4 to 6-week public consultation). Seabed survey licences are issued separately by the Crown Estate and licences are typically processed in 4-6 weeks.<sup>2</sup>

- **IWEA recommends that all marine licence and seabed survey licences should be the responsibility of the Office of Marine Development Enforcement.**

### 3 Design Envelopes

During our meeting with JOC members there were several questions regarding the concept of design envelope flexibility. We thought it would be helpful to JOC members to provide practical examples of how this approach has successfully worked in the UK offshore energy sector where this is referred to as the Rochdale Envelope approach in English and Welsh case law.

The inclusion of this provision is important because of the combination of the time it takes to develop offshore wind projects and the rapid evolution of wind energy technology.

Many of our members have had the experience of reaching the end of the project development process only to find that the turbine technology available when they started is now out of date and, in some cases, no longer available. This leads to lengthy delays while consent variations are sought.

The Environmental Impact Assessment design envelope, which is referred to as the Rochdale envelope approach in The Planning Inspectorate Advice Note Nine,<sup>3</sup> provides flexibility for changes in the market including advances in technology.

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<sup>1</sup> <https://www.gov.uk/guidance/do-i-need-a-marine-licence>

<sup>2</sup> <https://www.thecrownestate.co.uk/en-gb/what-we-do/on-the-seabed/seabed-survey-licences/>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/05/Advice-note-9.-Rochdale-envelope-web.pdf>

The Neart na Gaoithe Offshore Wind Farm Environmental Statement (NNG)<sup>4</sup> provides the following explanation and is an example of an offshore wind farm consented in Scotland (emphasis added):

*“The adoption of the Rochdale Envelope approach allows meaningful EIA to take place by defining a ‘realistic worst case’ scenario that decision makers can consider in determining the acceptability, or otherwise, of the environmental impacts of a project. As long as a project’s technical and engineering parameters fall within the limits of the envelope and the EIA process has considered the impacts of that envelope and provides robust and justifiable conclusions, then flexibility within those parameters is deemed to be permissible within the terms of any consent granted, i.e., if consent is granted on the assessed maximum parameters of a development, any parameters equal to or less than those assessed is permitted to be constructed. The principle of Rochdale permits the developer or applicant to provide broad or alternative project engineering and construction parameters, of which one or a selection of the scenarios or parameters will ultimately be constructed. The ‘realistic worst case’ scenario assumes that one or other of the parameters will have a more significant adverse effect than the alternative. Where a range is provided, i.e., turbine outputs or blade tip heights, the most detrimental is assessed in each case.”*

Examples of this being put into practice include **Hornsea 1 offshore wind farm** in England<sup>5</sup> where the maximum design envelope granted was for 400 turbines but the number actually built was 174. Furthermore, the maximum design envelope tip height was 325m but the turbines actually have a tip height of 200m.

Similarly, the developer of the **Walney Offshore wind farm extension** in England was originally granted a maximum of 207 turbines at a maximum tip height of 222m. The project was completed with 87 turbines at 195m tip height. Additionally, with this project the maximum parameter for the use of monopile foundations was a diameter of 9m. However, due to local seabed conditions, the actual diameters used for the monopile foundations were 5.7m and 6.2m.

<sup>4</sup> [https://marine.gov.scot/sites/default/files/chapter\\_6\\_-\\_the\\_approach\\_to\\_eia.pdf](https://marine.gov.scot/sites/default/files/chapter_6_-_the_approach_to_eia.pdf)

<sup>5</sup> [https://hornseaproject3.co.uk/-/media/WWW/Docs/Corp/UK/Hornsea-Project-Three/General-Documents/HOW3\\_Habitat-Regulations-Assessment-Screening-Report.ashx?la=en&hash=C1FE5D0585C80956FC22B397546FC1448A878342&hash=C1FE5D0585C80956FC22B397546FC1448A878342](https://hornseaproject3.co.uk/-/media/WWW/Docs/Corp/UK/Hornsea-Project-Three/General-Documents/HOW3_Habitat-Regulations-Assessment-Screening-Report.ashx?la=en&hash=C1FE5D0585C80956FC22B397546FC1448A878342&hash=C1FE5D0585C80956FC22B397546FC1448A878342)

The **Neart na Gaoithe Offshore Wind Farm**<sup>6</sup> is a Scottish example of where a consent variation<sup>7</sup> and addendum were submitted as minor adjustments to the design envelope from the original consent in 2014.

The flexibility in the planning legislation and also MAC timeframes will be important to allow for circumstances where technology changes rapidly and to facilitate a design envelope approach in Ireland for offshore wind energy development.

IWEA believes that the design envelope approach used within the world-leading UK offshore wind energy market is compliant with the EIA Directive (85/337/EEC) and should be provided for in the updated MPDM Bill.

- **IWEA recommends the adoption of a Design Envelope approach which allows a developer to describe the project within a number of agreed parameters for the purposes of an EIA and provide its environmental reports based on the maximum extents of the parameters, i.e. a ‘worst-case’ scenario.**

## 4 Pre-MAC Consultation

The revised FAQ as published in November 2020, states:

*“Pre-application This is an informal process where prospective applicants should engage with the relevant Minister, interested State stakeholders, and the public to lay strong foundations for passage through the process. Such engagement helps strengthen proposals, highlight potential issues and allowing for early resolution in advance of a formal application. The scope of this process will be largely dependent upon the nature, scale and location of any given proposal.”*

Industry recognises the importance of consultation and particularly the need to consult at an early stage of a project. Most, if not all, of the offshore wind projects under development at the moment have already begun engaging with local people, the fishing community and other key stakeholders. Developers recognise that communication and consultation are key to the success of any project.

However, it should be recognised that different developers could be assessing the viability of the same site at the same time for different projects. If both parties are required to engage with the public in advance of applying for a MAC this will lead to confusion and unnecessary concern with key groups of

<sup>6</sup> [https://marine.gov.scot/sites/default/files/chapter\\_6\\_-\\_the\\_approach\\_to\\_eia.pdf](https://marine.gov.scot/sites/default/files/chapter_6_-_the_approach_to_eia.pdf)

<sup>7</sup> <https://marine.gov.scot/ml/section-36-consent-variation-neart-na-gaoithe-offshore-windfarm-revised-design-firth-forth#:~:text=Section%2036%20Consent%20Variation%20-%20Neart%20na%20Gaoithe,Wind%20Farm%2C%20approximately%2015.5km%20east%20of%20Fife%20Ness>

stakeholders and the public. The level of consultation needs to be managed sensibly to ensure speculative engagement is not damaging to the industry as a whole and impacting upon 2030 targets.

It is also important to recognise that the type of consultation must reflect the stage the project is at. Enforced engagement at too early a stage when a project is not fully defined can lead to confusion as certain information may simply not be available at that point in time.

- **IWEA recommends that the department clarifies what is required in this process of pre-application, what parties are considered as ‘interested State Stakeholders’, what level of consultation is expected with the public at this stage of development and how it differs from the engagement already underway on Irish offshore wind energy projects.**

## 5 ABP pre-planning consultation

The revised FAQ as published in November 2020, states:

*“For large-scale projects it may be necessary to engage with An Bord Pleanála in a formal pre-application consultation. It will be necessary to secure a MAC prior to this engagement.”*

Pre-application discussions with An Bord Pleanála are key to informing a prospective applicant on the key considerations the Board may have in relation to a proposed development. Such considerations could potentially require additional survey work or studies which in turn could lead to potential delays in preparing an application to the Board.

However, IWEA is concerned about the requirement for a conditional MAC before engagement with the Board can take place. This is of particular concern for the Phase 1 and Phase 2 projects. These projects are at an advanced stage of development and early engagement with the Board is a priority for these projects to be ready to submit a comprehensive planning application and be ready for the offshore RESS auction next year.

It is worth reiterating the point made by the IWEA delegation at the meeting with the JOC and in the recent [Building Offshore Wind report](#) – offshore wind farms which do not receive planning permission before the end of 2025 will not be built by 2030. Time is of the essence and therefore a transitional arrangement should be drafted to allow this important pre-application engagement between certain projects and the Board.

- **IWEA recommends that developers be permitted to start pre-application consultation with the Board before the conditional Marine Area Consent is in place, thereby mitigating potential future delays to these projects.**



## 6 Timelines / Milestones for MAC

We note the inclusion of a new provision relating to the operation of the MAC within the updated FAQ document. This states that 'if planning permission is refused the proposal cannot progress and the MAC terminates.' IWEA believes that this provision is neither reasonable nor proportionate.

An offshore wind energy project could be refused planning permission for a wide range of reasons. There is every possibility that the reason(s) for refusal may be adequately addressed by amending the original design or implementing new or improved mitigation measures.

At the point of planning refusal a developer will have invested in the order of €40-50 million and this outlay will have to be written off if there is not a second opportunity to secure planning permission.

IWEA believes that a more balanced solution can be struck by setting the term of the conditional MAC for a period of 10 years, subject to satisfying agreed milestones (see the table on the next page for sample milestones). If these milestones are not hit, then the department can exercise its right to revoke the conditional MAC.

This would incentivise a developer to reach the milestones whilst limiting the opportunity for the holding party to simply hoard this exclusive interest in the seabed. This approach is consistent with the Agreement for Lease approach taken by the Crown Estate in the UK, a well-established and mature offshore wind market.

It will allow the developer sufficient time to suitably amend the design and submit a revised planning application while still within the 10-year timeframe provided for within the conditional MAC.

We are also conscious that decisions by the planning authority may be subject to Judicial Review ("JR"). We do not believe that a developer should lose a conditional MAC because a delay due to a JR means it is not possible for them to reach a milestone. In effect, a JR should have the effect of 'stopping the clock' on the term of a conditional MAC.

Milestone	Evidence	Duration	Max extension
Evidence of site development commencement. Geotechnical*, geophysical, bird and marine mammal surveys	Signed contract and contractor reports showing evidence of activity on site.	18 months**	6 months
Planning permission application submitted to ABP	Confirmation of planning number from ABP	5 years	12 months

- **IWEA recommends that a developer should be permitted to submit a further planning application if refused permission provided it is still within the overall 10-year term of the conditional MAC and that the timelines set out in the conditional MAC should be protected from the effect of a JR being initiated.**

**ENDS**

**17 December 2020**