



**Submission re:**

**Consultation to Inform a Grid  
Development Policy for Offshore Wind  
in Ireland**

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Contact information:

For further details please contact by email only:

Email: [REDACTED]e

[REDACTED] of the Irish Environmental Network

Postal Address: IEN, Macro Centre, 1 Green Street, Dublin 7

Telephone: 00353 (01) 878 0116

[REDACTED]

# 1. Introduction

This initial public consultation to inform a grid development policy for offshore wind in Ireland is most welcome. This is particularly given: the importance of our Marine Environment; Ireland's many legal obligations in respect of the protection of marine habitats and species; the requirement to conduct effective stewardship of the many demands upon it, currently and into the future; and the potential for the marine environment to assist us address many opportunities including in respect of climate change targets and the necessary move to more efficient and sustainable energy usage.

While a number of specific questions have been posed in the consultation document, it is regrettable that there is no free form input requested, and that only variations on the options offered are invited. This is particularly of concern given certain of the assumptions and omissions in the considerations presented, which it is submitted are necessary to inform the overall context in which these proposals can be viewed and responded to fully.

Therefore, some of such comments are presented here, and can be taken into consideration in relation to the questions posed as appropriate. However in a number of instances they need to be considered as stand alone considerations.

## 2. Specific Comments:

### **Compatibility of the various options with the Maritime Spatial Planning Directive.**

The Consultation document and the Navigant report assert that any of the four options proposed are consistent with the Draft National Marine Planning Framework, (DNMPF), which has been presented as Ireland's Maritime Spatial Plan as required under the Maritime Spatial Planning Directive<sup>1</sup>, (MSPD). However, it remains our assertion and concern that the DNMPF is not consistent with the obligations under the MSPD. The MSPD, put simply, requires the implementation of Maritime Spatial Planning and a Maritime Spatial Plan. While affording some flexibility to Member States, it is also very specific and precise on core requirements, processes and deliverables. It is submitted that the DNMPF is not a plan for the purposes of the

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<sup>1</sup> Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning

Directive, given the mandatory elements specified as requirements set out in Article 8(1) of the MSPD, and the associated processes and requirements involved for its specification. This view is set out in detail in the Environmental Law Officer of the IEN submission made on the consultation on the MSPD earlier this summer, to the then Department of Housing Planning and Local Government.

The failure to provide a plan of identifying “the spatial and temporal distribution of relevant existing and future activities and uses” as required under the Directive, is without question a fatal flaw. It is also a deeply problematic one given the obligation to have this in place by 31 March 2021, as it is hard to see how any consents can be lawfully granted absent such a plan, and moreover in the intervening period given the transposition requirements of the Directive.

A further fatal issue must be the approach proposed by Ireland in respect of MPAs in the context of the objectives set out for the MSPD, Article 1.1 where each element is specifically prefaced by the word “sustainable” ie, *“sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources”*.

In the EU Court of Justice’s classic and purposive interpretation on the obligations and compliance thereon – it is reasonable to assume respectfully, that the Court will invariably turn to the Directive’s fundamental obligations to inform its deliberations and conclusions. It is hard to see how any national marine spatial plan could be considered to be compatible, without properly assessing and specifying and implementing key conservation elements, such as MPAs and ensuring their viability can be assured from the outset, and against which all other activities can then be viewed as “sustainable”.

So to try to properly evaluate if the various grid connection options proposed are truly compatible and feasible with the DNMPF as proposed, is a bit like trying to evaluate if a particular type of clothes ( the DNMPF) is suitable to wear for an activity ( grid connection model) you want to engage in, when the clothes aren’t actually clothes at all. There may be some material there, and the stitching holding it together is tacked here and there, but there are whole bits of material and stitching missing, and in fact when you check - the overall clothes pattern is missing so you don’t know what you type of clothes you are going to end up with.

The feasibility of the more developer led models or options for the grid policy are cast into serious doubt in the context of such failures and delays to implement the MPA’s in particular. The Court of Justice has been increasingly focused and clear on

obligations to remedy failures of breaches of EU law. In the context where such EU law breaches are as obvious and clear as these are – the potential for state liability to provide comfort to economic operators is of course less likely, as the CJEU highlighted and clarified again very recently in c-261/18.

In that context, it may be more feasible to ensure potential areas which should have been designated aren't encroached upon, through the more state led models, and to ensure development does not proceed apace of Ireland's proper implementation of the MSPD. Ultimately, the developments in the marine environment will be compromised if a legally compliant Maritime Spatial Plan and Maritime Spatial Planning are not put in place. The fundamental thrust of the MSPD is for a plan led approach, and the importance of that cannot be understated in the context of the approach to marine development, where such a plan and planning approach compatible with the MSPD is the baseline against which grid connection policies have to be viewed and implemented. In the absence of such – it is impossible to properly comment on the policy options proposed.

The issue is compounded by the status of the Marine Planning and Development Management Bill. This legislation is at Heads of Bill stage, and has not been subject to the scrutiny of the Oireachtas, or the engagement of Public Representatives in the Oireachtas with the wider stakeholder community.

### **Relevant Projects:**

It is noted that certain of the options are viewed in respect of their comparative compatibility or otherwise with the seven key drivers identified and utilised in the Navigant report, including "relevant projects"

While it is accepted that transitional provisions to an extent are necessary to accommodate projects caught between move to different legislative and other policy frameworks – key concerns arise in respect of what are referred to as "relevant projects, and the current approach."

The Press Release<sup>2</sup> on the DCCAE website from May 19<sup>th</sup> 2020 with the announcement of the then Ministers Bruton and English indicating approval for a number of specific projects to be considered as "relevant projects".

They are detailed as follows:

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<sup>2</sup> <https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Ministers-English-and-Bruton-Announce-the-Transition-of-Offshore-Renewable-Energy-Projects.aspx>

“The projects that have been approved are, as follows:

- Oriel Wind Park,
- Innogy Renewables, (2 projects Bray and Kish Banks),
- Codling Wind Park, (2 projects, Codling I and Codling II),
- Fuinneamh Sceirde Teoranta, (Skerd Rocks),
- North Irish Sea Array Ltd, (North Irish Sea Array)

It is clarified that:

“The announcement of the transition of these projects means that they can continue to work and update a number of aspects of their projects so that they will be in a position to apply under the new marine planning regime, once enacted, which will be introduced by the Marine Planning and Development Management Bill, 2020.”

And also clarified that:

“These are offshore wind projects that either applied for or were granted a lease under the Foreshore Act 1933, or offshore wind projects that are eligible to be processed to receive a valid grid connection offer.”

Specifically they are described as follows:

“The Transition Protocol gave guidance to the sector regarding the treatment of certain offshore wind projects (“Relevant Projects”) in the context of the MPDM Bill, 2020 that complemented the existing and on-going extensive dialogue with the developers of such projects.

Relevant Projects were defined as:

(a) offshore wind projects which applied for (and substantially advanced) or were granted a lease under the Foreshore Act 1933, as amended (the Foreshore Act) in respect of which material changes are proposed to that which was originally applied for and assessed under the Foreshore Acts, which changes require further assessment; and/or

(b) offshore wind projects which have a valid connection agreement from Eirgrid or are confirmed by Eirgrid as eligible to be processed to receive a valid connection offer.”

So to be clear, it appears **an un-enacted** piece of legislation is being used as the basis for the conferred status.

A closer inspection of these projects highlights that for a number of them – really old and now very out of date applications had been made, and more recent foreshore

applications for geophysical surveys etc. have been processed, with this activity underway for some.

However for others – the public consultation for their application for a geophysical survey hasn't even been concluded – with one running for nearly another month to 15 August 2020.

The nature of such priority / status, and the basis justification for it, and the extent to which consideration for accommodation of them will inform future policy deliberations and decisions, has to be of key concern. This is particularly given the lack of transparency and consultation on the approach to designate them as "relevant projects", which also happened during the height of the Covid-19 pandemic. This is also particularly so given the issues surrounding a number of the applications, and the standard of public participation thereon.

For example concerns must arise around the inadequacy of consultations lasting for 4 weeks only, on such large and complex matters, with project information available in Garda stations, and where certain of the consultations are being run over the height of the traditional holiday period. Notwithstanding, it would appear clear that subject to decisions yet to be made by the Developers following their surveying activity, that Development Consents will need to be applied for, and sought under the amended EIA Directive, 2014/52/EU. So the extent to which there is a presumption these projects are being advanced and need to influence selection or consideration of the selection of the grid policy choices is of key concern – as there is no certainty any or all of them will get a lawful consent.

Further detail supporting such concerns can be provided – but it is readily available on the Department's website.

### **Decommissioning and Circular Economy**

In the consideration of options it is of concern that little or no adequate consideration is given to the issue of decommissioning, and the requirement for bonds associated with the potential costs for remediation and recovery of no-longer functioning assets. The scale of development envisaged is significant, as is the material involved. It cannot be considered to be acceptable to strand or effectively dump these assets at sea. Relevant considerations include: the potential for negative impacts on the marine environment to arise consequent on the failure to maintain them and/or their ongoing impacts; and/or the compromise of future uses of that marine space, and/or the failure to responsibly recover and re-use materials in line

with EU obligations, and principles regarding a sustainable and responsible approach to materials usage.

It would seem likely that a more state led approach might be more likely to be able to manage a full-life cycle approach, and to realise economies of scale associated with such operations. But regardless it is submitted these are further dimensions which should be fully explored prior to any consideration or decision on the policy options.

### **NGO engagement**

The extent to which there has been a disproportionate level of engagement with the industry in the development of these proposals has to be of core concern. The term “NGOs” appears once in the Navigant report, on page 31 in the list of stakeholders. However there does not appear to be any reference to any specific engagement with the eNGO sector in the preparation of the report and the consideration of the environmental dimension and factors considered therein or in the other considerations.

It is submitted that there has been a significant failure on behalf of the department responsible for this consultation, which was initiated by the then Department of Communications Climate Action and Environment on June 10<sup>th</sup> 2020, prior to the announcement of the new Government. It is ironic that a Department with “Environment” in its title, failed entirely to facilitate and engage with the key stakeholder group for the environmental sector, the eNGOs in this consultation.

In stark contrast to this, are the many and various references to engagement with industry stakeholders in relation to the various steps associated with this process and indeed within the model options in the consultation document and in the Navigant report.

The lack of specificity of environmental considerations in the report by Navigant is of concern, particularly when compared with the other considerations.

### **Participation**

Further to the comment above, it is submitted that: the efforts taken to publicise and facilitate engagement and dialog on such an important consultation are of concern. The Consultation was originally announced by Minister Bruton it on 10<sup>th</sup> of June and was intended to run for a mere 3 weeks – just as the economy and society started to open a little after the worst of the Covid-19 pandemic lockdown. Regrettably this



seems to reflect and signal a real failure to respect wider views on these matters. During that time many people were and indeed still are working from home with reduced internet facilities, and also still having to look after children and/or struggling to adjust to the economic impacts of the pandemic on their lives and livelihoods. The consultation was admittedly extended to July 22<sup>nd</sup> – but the extent to which this has mitigated adequately or at all the original issues with it and the lack of facilitation and engagement on it are of serious concern.

### **Cumulative impacts & quality of decision making ....**

There have been serious issues with both the quality of legislation particularly in respect of large developments – with Ireland’s transposition of the updated EIA Directive being started so late and which is still incomplete and imperfectly transposed. Even in the context of the planning sector – the regulations were transposed over a year late and remain incomplete and/or at issue. One only has to consider the numerous issues with Ministerial offshore oil and gas related consents granted for example to Providence Resources, and the current experience of the number of Strategic Housing Development Consents being quashed as flawed by the Courts and/or conceded by An Bord Pleanála to be concerned at the quality of decision making by public authorities even in the context of what the state considers to be important development. The extent to which those involved in such decisions have a real vested interest may be a factor. Which begs the question how in the context of a state-led model would such issues become manifest and hamper progress in the proper development of renewables.

However, regardless – the state will invariably be involved in consents and decision-making and on balance the extent to which cumulative impacts may be able to be more thoroughly assessed has to be a key consideration in preferring a more centralised option. Additionally there are economies of scale which can be realised in the development of shared infrastructure and assets which may not be realised when developers are watching margins and focused only on specifying requirements which are sufficient for their needs alone. Additional complexities arise consequent on potential competition arising for hired or shared assets with additional complications arising for more and more cables and connections in the sea.

The effective sterilisation of areas of the sea from other uses has to be considered in this context in addition to the risk posed by underwater traffic, noting of course the near miss incident of the north east coast earlier this week with a UK nuclear submarine. The further factor of the UK’s exit from EURATOM and the lack of

independent supervision of movements of nuclear materials in and out of the UK including through and close to Irish waters has to be a further factor of concern in relation to the management of proliferation of assets and infrastructure in the marine and how this has to be managed efficiently as possible and with consideration for the additional security burden this places on the under-resourced Irish Naval Service.

The extent to which such security considerations can be supported under all the options needs to be fully addressed prior to any decision on the options.

### **ESB**

The extent to which a state led model is truly "state led" has to be of key concern given the experience with the ESB to date. We are mindful of the issues experienced with treating the ESB and sub-companies of it as public authorities for the purposes of FOI and AIE, and also the difficulties encountered with the Derrybrien windfarm project as highlighted in the further recent judgment on this case by the Court of Justice in c-216/18. The accountability and transparency of the bodies involved acting for the State must be addressed and clarified in order for the options to be capable of being objectively assessed or commented upon.

### **Public benefit**

The extent to which the State ( the tax payer) is required to invest in the development of infrastructure to facilitate the development of offshore renewables and the extent to which it financially benefits, as opposed to the industry is not adequately addressed across the options. However the quite extraordinary ROI for the industry has to be considered, particularly in the context of the recession we now face, the potential resources available to the State to invest a green energy initiative, and to maintain that investment in the public interest. The extent to which the public ultimately accrue benefit under each option should be transparently addressed and this is inadequate for the purpose of a policy decision. Such benefits also need to include environmental ones naturally as well as fiscal ones.

### **Landfall development**

The extent to which the models address the wider and more complex issues of grid connections on the land side is inadequately addressed in the options analysis and clearly is an area where significant issues arise.

**Questions: See comments above.**

1) With respect to key driver (i), cost levels, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

2) With respect to key driver (ii), environmental impact, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

3) With respect to key driver (iii), future proofing and technologies, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

4) With respect to key driver (iv), required infrastructure, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

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5) With respect to key driver (v), compatibility with Relevant Projects, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

6) With respect to key driver (vi), social acceptance, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

7) With respect to key driver (vii), facilitating the timely development of offshore wind capacity to achieve the 2030 target, which of models 1,2,3,4, or variant of these, delivers the most satisfactory results? Which features of the model, or variant, are the most influential for your given choice?

8) Rank the key drivers in order of importance 1-7, which have the greatest impact on

the choice of model.

9) How important is it for Ireland to develop an indigenous offshore wind energy industry? How best can an indigenous industry be developed?

10) How should onshore and offshore grid connections be optimised? For example, should consideration be given to common hubs for adjacent projects?

11) Are there any further considerations which might reduce the cost to the consumer?

12) Currently, developer compensation is not provided for delayed delivery of grid connections to renewable generators connecting to the network. Should developer compensation arrangements be provided for delivery of offshore grid connections to renewable projects? Similarly, who is best placed to bear the outage risks under the various options?

13) Are there any further drivers which should be considered when assessing a grid delivery model suitable for offshore wind development in Ireland?

14) Overall, which model, or model variant, is most appropriate as an enduring grid delivery model for offshore wind in the Irish context?

15) It is accepted that a transition towards the chosen enduring grid delivery model will be required to leverage the development of the Relevant Projects in the short term.

Taking into account the high level roadmaps set out at Figures 5 and 6 above, what should this transition look like?