



**Response by Energia to the Department of  
the Environment, Climate and  
Communications consultation on:**

***Offshore Renewable Energy: Maritime Area Consent  
(MAC) Assessment for Relevant Projects***

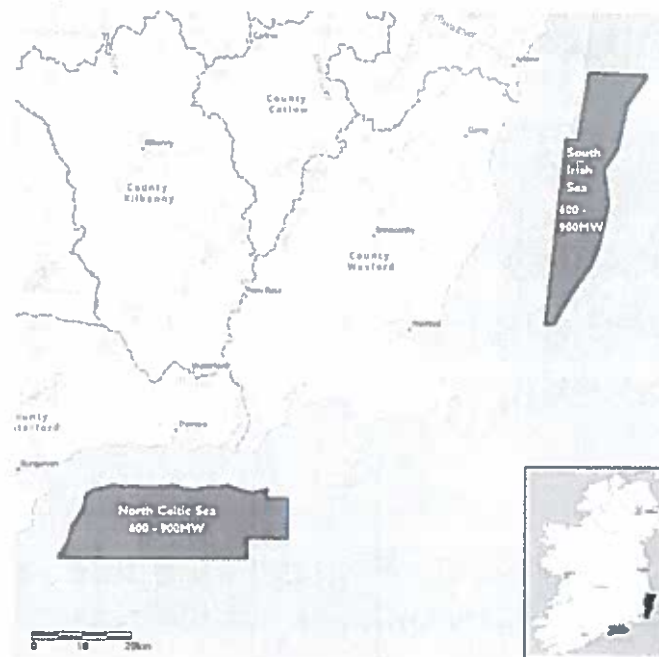
**18 February 2022**

## 1 Introduction

Energia welcomes the opportunity to respond to this consultation. Energia has a substantial and growing portfolio of renewable generation capacity throughout Ireland and has extensive experience in the design, construction, and operation of renewable energy developments. Presently Energia has 14 operational windfarms across the island of Ireland and an onshore development portfolio of 1GW, including 321MW of onshore wind projects.

Energia is also in the process of delivering the North Celtic Sea (600 - 900MW) and South Irish Sea (600 - 900MW) projects off the East and South coasts as shown below:

Figure 1 - Energia Phase Two Offshore Wind Projects



Both of Energia's projects have secured foreshore licences for site investigations and will complete environmental studies for the offshore array area by Q2 2022. The Environmental Impact Assessments for both projects are currently underway and subject to timely receipt of a Maritime Area Consent (MAC), both projects are currently targeting submitting an application for planning permission in Q3 2023.

Paradoxically, and despite the prioritisation and corresponding advantages afforded to all Relevant Projects on a somewhat arbitrary basis at a single point in time some years ago, Energia's two projects have progressed beyond the point of some of these Relevant Projects. The significant commercial and procedural advantages conferred on the Relevant Projects by both the Department and the Commission for Regulation of Utilities (CRU) on the basis of urgency and expediency, are at odds with the pace at which some of these projects have progressed.

While the focus of this consultation is exclusively on the Relevant Projects, it is necessary in the context of Ireland's 2030 targets to consider the interplay between the approaches and processes adopted for the Relevant and Phase 2 Projects. Energia's focus is steadfast on the delivery of both the North Celtic Sea and South Irish Sea projects for 2030, and to make a significant contribution to Ireland's 5GW

target. Recognising there remains numerous, significant challenges to be overcome by the Relevant Projects in delivering for 2030, this should similarly serve to amplify concerns over the achievement of the 5GW target and question the efficacy of arbitrary distinctions between all projects that can credibly deliver for 2030.

In a similar vein, and consistent with international experience, if having largely completed environmental studies (2 years) and having been awarded Foreshore Licences at both sites, we recognise that significant challenges remain to 2030 delivery, including for example the setting up of MARA, the proper resourcing of the planning and consenting system and supply chain capacity constraints, it should be increasingly apparent that projects must be able to clearly demonstrate, as opposed to merely claim, their credentials for delivery by 2030.

The achievement of Ireland's 2030 offshore ambition will in large part be determined by the decisions to be taken in the coming months, beginning with this consultation. The greater the disparity between the Relevant Projects and the Phase 2 Projects, and the longer there is no clarity for these projects, the more challenging the achievement of the 5GW target will become, given the risk profile, scale of investment and timing associated with offshore wind projects and the global competition for investment in this area.

Energia is a member of Wind Energy Ireland (WEI) and broadly support the points outlined in the WEI response to this consultation. This response is divided into two sections, the first responds to the consultation in general, the second contains our response to the specific consultation questions.

## **2 Importance of this consultation in the context of Phase Two projects**

### ***2.1 Timing for delivery of the 5GW target by 2030***

It is clear that the delivery of sufficient projects in order to meet the 2030 target of 5GW will be a challenge. For international context, UK Round 4 and ScotWind which are targeting delivery in 2030 and 2030 - 2032 respectively have allocated seabed (equivalent to the MAC process) in Q1 2021 and Q1 2022.

The Phase One projects will receive their MACs by Q3 2022 and, in the pathway proposed within this consultation response (as will be advocated by WEI in relation to the Phase Two consultation), Phase Two projects will receive their MACs by Q3 2023. A total of 30 and 18 months later than UK Round 4 and ScotWind respectively. This timing challenge is acknowledged within the consultation document and, rather than requiring commercial operation by 2030 for the Phase One projects, the milestone has moved to First Generation within the same timeframe.

A small number of the potential Phase Two projects, including Energia's North Celtic Sea and South Irish Sea are at a similar stage of development to a number of the Phase One projects and as such, remain credibly able to deliver for the 2030 target. However, fundamental to this ability to deliver is the timely establishment of MARA in January 2023 and the subsequent allocation of MACs in Q3 2023, following a competitive process, to the Phase Two projects.

### **2.1.1 Appropriate Phase Two MAC allocation process**

There will be a step change in the level of applications for MAC within the Phase Two process as compared with the Phase One process. There is currently 25GW of projects at various stages of development in Ireland which, as a result of the uncertainty posed by the enduring regime, will likely seek Phase Two status. Many of these projects have appeared over the past 12 months and are speculative without a credible pathway to delivery by 2030.

If this volume of applications progresses to the competitive MAC process it will cause a significant drain on resources within DECC, MARA and EirGrid and ultimately, frustrate the allocation of MACs to projects which have a credible route to 2030 delivery.

A smaller number of these projects, including Energia's North Celtic Sea and South Irish Sea, are well progressed and are, in some cases, at similar stages of development to a number of the Phase One projects. These projects, as noted in the consultation documents, are critical to the achievement of the 2030 targets.

In order to manage the resources of DECC (and subsequently MARA), EirGrid and all other stakeholders, it is recommended that a pre-qualification process, which incorporates a pass / fail assessment of the MAC Applicant (technical and financial) as well as assessment of a credible programme to 2030 delivery is introduced to ensure that only credible proposals are considered at the competitive MAC stage.

To support this and to remove overly optimistic or unrealistic timelines, it is recommended that fixed timelines are specified for activities outside of the Developers control. For example, a fixed assumption of x12 months for An Bord Pleanála (ABP) to process a development permission application. This would facilitate projects screening based on consistent, realistic assumptions.

Given the level of applications expected during the pre-qualification process and the benefit of implementing an independent process, there may be benefit in contracting external support to undertake this process on their behalf. A consultant with suitable experience from other jurisdictions would provide an independent and credible outcome from this pre-qualification process.

In the event that the deliverability 2030 criteria remains self-assessed by applicants i.e., without independent scrutiny, it is likely that MARA will be inundated with applications in Q1 2023.

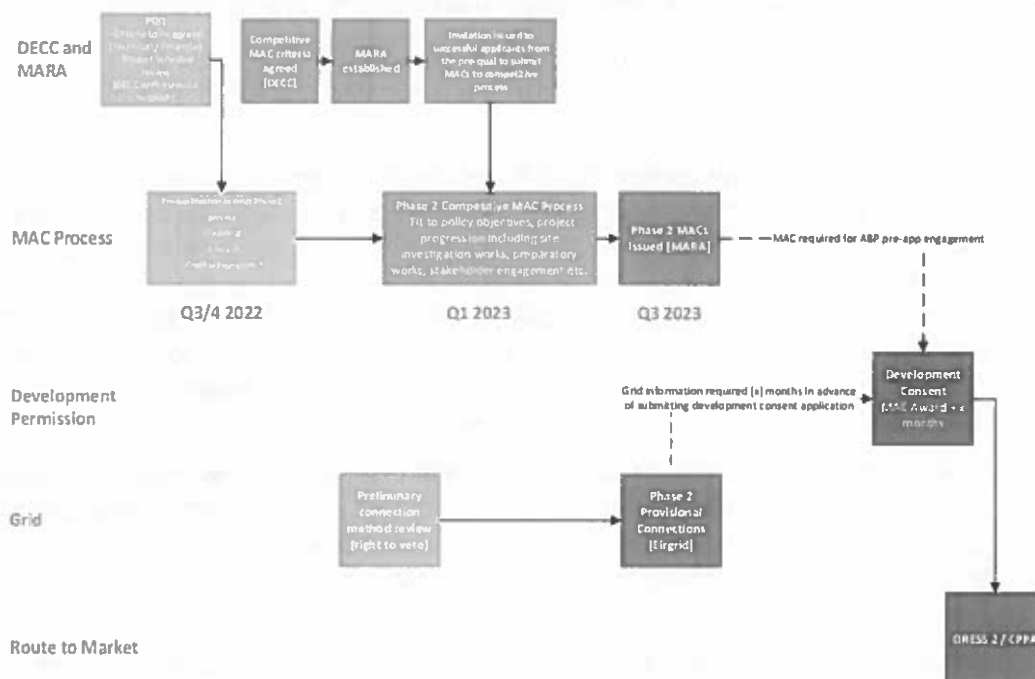
Following the pre-qualification process, the assessment criteria to be utilised in the competitive MAC process should be published in Q4 2022, in advance of the establishment of MARA. This will allow sufficient time for developers to prepare a MAC Application in Q1 2023 and also allow MARA to initiate the competitive MAC process shortly after establishment. Following the completion of the competitive MAC process, it is expected that Phase Two MACs would be allocated in Q3 2023.

In summary:

- In order to ensure that Phase Two projects are facilitated to deliver in line with the 2030 targets, a number of key steps are required:
  1. DECC undertake a pre-qualification process, by Q3 2022, to allow developers to gain access to the Phase 2 competitive MAC process

2. DECC set out assessment criteria, by Q4 2022, for the competitive allocation of MACs to Phase 2 projects
3. DECC establish MARA by no later than January 2023
4. MARA run the Phase 2 competitive MAC process
5. MARA allocate Phase 2 MACs by Q3 2023

The above is further summarised in the flowchart shown in Figure 2 below:



\*DECC to be supported by experienced consultants who have completed assessments for similar scopes in other proven jurisdictions

Figure 2 - Flowchart highlighting proposed MAC process and associated development pathway

## 2.2 Ensuring a level playing field between Phase One and Phase Two projects

Energia acknowledge that the scope of this consultation is the Maritime Area Consent Assessment for Relevant Projects. We note however that only a subset of Relevant Projects (Phase One) will ultimately be successful in obtaining a route to market via either the first Offshore RESS (O-RESS 1) auction or via a CPPA. There is a strong likelihood therefore that a number of Phase One projects will be among the participants in the second O-RESS auction (O-RESS 2) and possibly subsequent auctions.

Phase One projects unsuccessful in ORESS1 will likely seek to compete in ORESS2, therefore it is important to ensure a level of consistency in the assessment criteria for Phase One and Phase Two projects. Otherwise, there is a risk that projects that are entering the same auction round could potentially receive an unfair competitive advantage. A key aspect of the development framework which requires consistency is both the Development and Operational Levy applied to Phase One and Phase Two projects in order to ensure fair competition across all offshore projects and remain consistent between phases.

Energia welcomes a standard and annually paid Development Levy as set out within the consultation documents. Energia supports the WEI response in terms of the

Development Levy model presented by DECC and reiterate that the proposed levy is high, considering that Ireland is an emerging market. Key risks associated with the emerging market are presented in the WEI response, however in the context of Phase Two, there is an additional grid capacity risk that developers need to carry for a longer period than Phase One projects and indeed well beyond international typical practice. In summary, as outlined in EirGrid's '*Shaping our Electricity Future Roadmap*' the Irish grid is severely constrained, meaning that Phase Two developers will need to compete for this capacity and will only receive certainty around this capacity when a project has secured both development consent and a route to market.

To mitigate the increased risks in the Irish offshore wind market, it is recommended that the Department (DECC):

- **Include a cap on the period for which the Development Levy is paid.** The pathway for the delivery of offshore projects in Ireland through the consenting and grid system is in its infancy. As such, there may be cases where a project, for reasons outside the control of the developing entity, is significantly delayed i.e., the period to receive planning or a judicial review. Capping the period for which the Development Levy is paid will provide greater financial certainty to the developing entity at the outset of the development phase and to the business case as the project enters a competitive auction process.
- **Develop a more risk averse pathway for the post-Phase Two regime.** Energia do not believe it is efficient, or in line with ORE Policy to necessitate developers to relinquish their MAC if a route to market cannot be ascertained after a certain time period if the project continues to remain viable and is progressing through the development phase.

It must be recognised that by such time developers will have already committed significant resources to the project, progressing for example seabed surveys, ecological surveys, and the broader consenting process. Facilitating these 'unsuccessful projects' in an enduring regime will deliver lower cost projects in this phase, whilst lowering the risk to developers of earlier offshore projects. This continuous pipeline of projects is critical to attracting and maintaining a supply chain in Ireland and will avoid the inevitable hiatus in the delivery of projects associated with a hard transition to the enduring regime.

For this reason, it is important that none of the criteria decided upon serve to confer upon these projects an unfair advantage vis-a-vis subsequent phase projects.

### ***2.3 Parallel development of Phase Two MAC criteria***

It is critical to ensure that Phase Two projects are not unduly prejudiced by the timelines involved in applying for a MAC is to parallel the development of the Phase Two competitive MAC criteria with the set-up of MARA. This will enable MARA to run the Phase Two MAC competition swiftly, upon establishment. In the interim, Developers can work towards this timeline and start to collate and prepare their MAC application, again avoiding a lag in the processing of applications, in support of the 2030 target.

In support of this paralleled approach, it is worth noting that the following information proposed in this Phase One MAC Assessment consultation will need further consideration before they are assumed applicable to Phase Two projects:

- Phase Two projects are less likely to have the same level of certainty on items such as MEC, wind turbine details or cable route co-ordinates as Phase One projects
- Evidence of Grid Connection alignment with EirGrid
- Preliminary step recommended to facilitate efficient MAC process and to support development consent activities)

## **2.4 Maturity of the Offshore Industry in Ireland**

In responding to this consultation Energia are conscious of the comparatively nascent status of the offshore wind industry in Ireland with regard to the rest of Europe and the need to remain competitive and attractive to international financing and supply chain. Risks for developers are likely to be higher than neighbouring jurisdictions, due to among other factors, the comparable lack of project scales and the risk profile of new developments. Careful consideration is therefore needed of additional risks and costs placed on developers by virtue of the planning/consenting process.

The lack of comparative maturity in the offshore development industry in Ireland, should also be reflected in the weighting applied to the consenting process for MACs. While it is clearly important that an applicant demonstrate a sufficient level of technical competence with regard to developing projects, it is important that the consenting process also recognise that technical competence can be brought in via third party expertise. Financial capability by contrast, is more inherent within an organisation. Indeed, Energia would argue that an organisations financial capability should carry greater weight, given the level of uncertainty related to the development of offshore projects in Ireland in the early phases and thus the greater likelihood for projects to encounter unforeseen costs. We further elaborate on these points in our responses in Section 3.

## **3 Response to Specific Consultation Questions**

Energia are generally in agreement with the WEI response in relation to this consultation however further detail is provided for context in relation to particular sections.

### **3.1 Section 3.1.3 – MAC Technical Capability Assessment**

Energia believe the specific requirements set out relating to individual team members are overly prescriptive and will limit the ability of Irish team members to play significant roles in the delivery of projects within the sector. The individual team members for a given MAC Applicant will vary as the project progresses and as the project's need changes, the MAC process must be flexible enough to consider this.

In relation to the assessments (technical and financial) that will be undertaken as part of the MAC process, Energia understands a Supporting Entity may be utilised to meet the technical and / or financial requirements as set out in the MAC process.

Given the nascent nature of the offshore sector in Ireland, it is beneficial to utilise the technical expertise that has been gained from the UK and markets further afield. Energia support this inclusion and suggest, in line with international experience, that evidence of typical owner's engineer contracts would serve as useful evidence to the engagement of a Supporting Entity.

It is recommended that the Supporting Entity Guarantee is related to the function that the Supporting Entity is providing.

If the Supporting Entity is providing financial support, the Supporting Entity shall provide the guarantee solely as set out in Appendix K of the Financial Viability Assessment. If the Supporting Entity is providing technical support, the Supporting Entity shall provide the guarantee solely as set out in Appendix F of the Technical Capability Assessment.

Flexibility should also be considered on requirements for experience in engineering and project management. Prior experience developing large onshore wind projects for example should be germane in the consideration of an organisation's technical competence. Likewise, experience of successful grid asset development and consenting applications in other jurisdictions should also be relevant considerations for technical competency.

The detail of Appendix B requires individuals to seek references from either current or previous employers in order to prove relevant experience in relation to the various stages of project development, construction and operations. This potentially poses a number of challenges (outside of GDPR considerations):

- Companies are often reluctant to provide proof of experience or employment for previous employees. Staff may also have subsequently moved to other companies and may not be able to provide background.
- A number of companies which may be requested to provide evidence of experience may be competitors both internationally and within the Phase 2 process and thus are not incentivised to provide references

Energia recommends self-assessment in relation to previous experience with a penalty if this is subsequently found to be inaccurate.

### **3.2 Section 3.1.4 – MAC Financial Capability Assessment**

Section 4.5 of the Financial Viability Assessment Guidance sets out a requirement for a Cash Cover greater than 1.0x when compared with the Total Outstanding Financial Commitment from the point of the MAC Application. The scale of the Total Outstanding Financial Commitment will be in excess two billion euro and, given the level of project uncertainty at the point of MAC Application, funding of this level will not yet be committed. As such, this is not an appropriate measure to apply at the point of MAC Application.

It is typical that offshore wind projects, of the scale envisaged in Ireland, will require debt financing in order to fund the construction and operations stage of the project.

A more suitable assessment would be to require sufficient Cash to cover the development spend to the point of project development consent or financial close / FID. This ensures the MAC Applicant has sufficient resources to support their spend to a suitable point to introduce debt financing by way of project finance or alternative means.

### **3.3 Section 3.3.1 – Levy Framework**

The proposed Operational Levy is aligned with other markets and is considered acceptable to Energia.



Energia supports the WEI position in relation to the level of the Development Levy and suggests that this figure is reduced in line with the context provided within the WEI response.

Furthermore, it would not be in the best interest of price competition for the price and terms of the levy to differ between Phase One and Phase Two projects. The same rate and cap should therefore apply to all Phase One and Phase Two projects. Energia also support WEI's suggestion that the development phase permitted within a MAC should be 10 years. This will provide the developers with certainty on their development timelines and is better aligned with current practises in other jurisdictions.

Separately, Energia believe it would not be efficient, nor in line with ORE Policy to accept projects having to effectively 'give-up' their MACs if a route to market cannot be ascertained in Phase One or Phase Two. Doing so exposes developers to a risk that their consenting costs are entirely sunk if they do not establish a route to market within what is already a challenging timeframe. It should not be overlooked that there is already an associated cost to failing to acquire a route to market for a RESS auction (The capital outlay associated with providing a Bid bond), tying a MAC's duration to this outcome therefore amounts to doubly penalising unsuccessful auction participants, imposing a greater risk to the entire industry that must ultimately be paid for via outturn RESS prices.

Facilitating these 'unsuccessful projects' in an enduring regime may deliver lower cost projects in subsequent phases, whilst also lowering the overall risk profile of the consenting/development process for Phase One and Phase Two developers.

Lastly, Energia presume that the relevant area used to calculate the levy amount should exclude the submarine export cable route given that this asset is to be transferred to EirGrid once operational. Clarity is required on this subject and likewise on the MAC transfer process for this element of the project.

### **3.4 Section 3.3.2 – Application Fees**

We believe that the most appropriate fee model is set out in Option 2 and involves the payment of a handling fee based on the likely calculated workload in processing MAC applications. We expect this would be a fee capped at a maximum level of c.10,000 EUR.

There is an administrative cost associated with the consideration of each MAC application and it is reasonable to conclude that applicants should have to bear that cost.

Energia further support the WEI position in relation to this point.

### **3.5 Section 3.3.3 – MAC Application Window**

As set out in Section 2.1.1, it is critically important that MAC Applications for Phase 2 projects are processed in a streamlined and efficient manner. In line with the proposal to undertake a prequalification process in Q3 2022, it is anticipated that this process would signal the commencement of an overall MAC process for Phase 2. Following on from a suggested issue of criteria for assessment of a competitive MAC process in Q4 2022 Energia suggest a three-month notice period for submitting of MACs in Q1 2023 is provided. This would provide sufficient time for MAC Applicants to prepare suitable applications for submission to MARA.

In a competitive MAC process an application window is not anticipated. Phase 2 MACs will be submitted within a number of days and assessed as a batch. Therefore, it is not anticipated that MARA would remain open to receiving MACs for an extended period i.e., longer than one week.

### **3.6 Section 3.3.4 – Duration of a MAC**

Energia supports the WEI position in relation to the duration of a MAC and supports a period of 60 years is appropriate.

### **3.7 Section 3.3.5 – Additional consultation questions**

Energia recognise the significant importance placed upon stakeholder engagement by DECC in the establishment of an offshore wind sector in Ireland. As such, Energia support the consideration of the level of stakeholder and public engagement which a MAC Applicant has undertaken in the assessment of their application for the Phase Two MAC process.