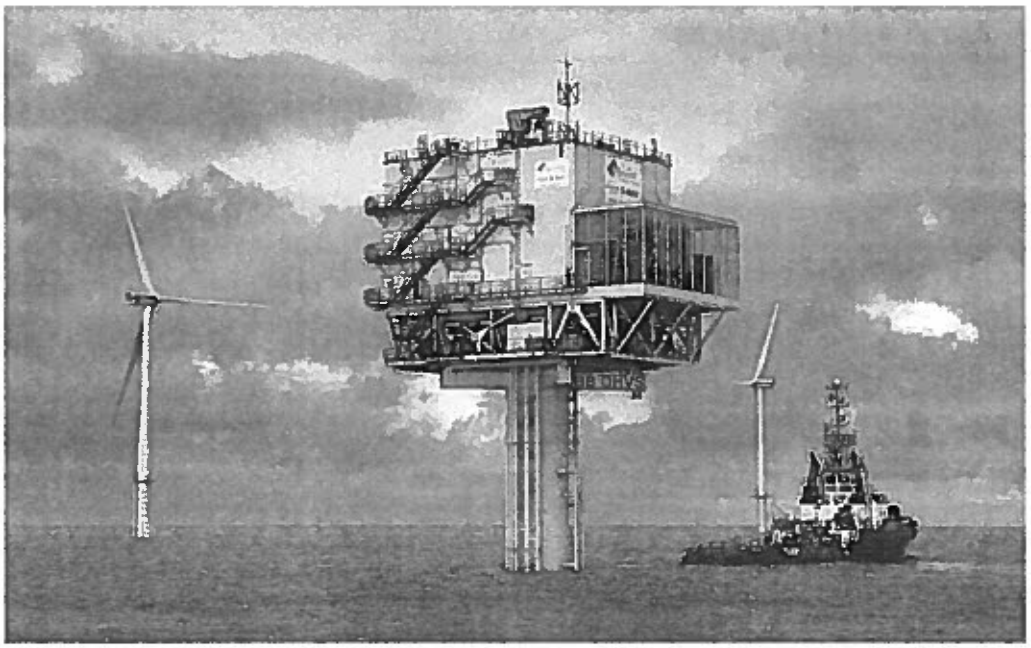
Confidential: Consultation Response to Maritime Area Consent Assessment for Relevant Projects

Mainstream Renewable Power

18 February 2022



MAINSTREAM RENEWABLE POWER

Date: 18 February 2022

MAC Assessment Criteria Consultation
Offshore Energy – Environment and Consenting Division
Department of Environment, Climate and Communications
29-31 Adelaide Rd, Dublin
D02 X285

By email: oreconsenting@decc.gov.ie

Dear Sir/Madam,

RE: CONSULTATION RESPONSE MARITIME AREA CONSENT ASSESSMENT FOR RELEVANT PROJECTS - COMMERCIAL IN CONFIDENCE

Mainstream Renewable Power ("**Mainstream**") is an Irish independent renewable energy developer and considered a world leader in the development of offshore wind. Mainstream has developed over 5GW of offshore wind capacity, including 25% of the UK's offshore wind plant. Mainstream is developing one of Asia's largest offshore wind farms in Vietnam, and working on offshore wind energy opportunities across Europe, Asia Pacific and on both coasts of the United States of America, United Kingdom and Ireland.

Mainstream welcomes the opportunity to participate in the consultation on the Maritime Area Consent Assessment for Relevant Projects ("**MAC assessment**") published on 22 January 2022 in order to contribute its expertise and experience as one of the leading developers off Offshore Wind internationally. While Mainstream recognises that the focus of this consultation is on Phase 1 Relevant Projects, we believe our insight will be beneficial to the Department and MARA as they continue to roll out Ireland's ambitious offshore development programme.

Please refer to Attachment 1 for Mainstream's responses to certain consultation questions.

If you have any queries about Mainstream's submission, please do not hesitate to contact [redacted] at [redacted] or on [redacted]

Yours sincerely,

[redacted]

MAINSTREAM RENEWABLE POWER

ATTACHMENT 1 - MAINSTREAM SUBMISSION ON THE CONSULTATION RESPONSE MARITIME AREA CONSENT ASSESSMENT FOR RELEVANT PROJECTS

General Comment

We presume but request clarification that MACs granted are exclusive for offshore wind energy. From a developer's perspective, exclusivity is necessary to justify deployment of developer capital and to provide certainty for lenders in order to progress with financing agreements.

The current focus of the MAC assessment criteria is on the entity holding the project for the duration of development, construction and operation. The assessment criteria for granting a MAC should not consider from the milestone of Final Investment Decision (FID) to operations but instead focus on the period of development to achieving FID. Different business models are currently unfairly excluded and potentially discriminated against by the unjustified focus on construction and operation at such an early stage of development. There are wider ramifications of these criteria to be considered and the risk that they may artificially create a specific model that would limit the involvement of financial investors. For example, while the IRR for a development company to develop, build and hold might require a margin of 8-9%, financial investors, such as a pension fund brought in at FID, may have reduced requirements to return on capital compared to technical partners (5-6%). This is a key factor in ensuring the levelised cost of energy (LCOE) remains as low as possible for the end consumer.

As part of the application process for a MAC to the Minister facilitating the assessment of the Relevant Project MACs, the application should include a declaration from the applicant confirming they still qualify as a relevant project by reference to the original co-ordinates under the foreshore act and/or the criteria originally defining them as a Relevant Project.

Consultation Questions

Section 3.1.3: Areas where applicants will be assessed on a pass / fail basis – MAC Technical Capability Assessment

1. To what extent do you consider that the Guidance sets out a technical capability assessment process that is effective, efficient and transparent? Are there any specific aspects of the Guidance that you consider require further clarification?

We would request that DECC provides further clarity as to what is required from a consortium. This clarification would be best achieved by DECC using an example of a hypothetical situation. For example:

- The entity which submits the MAC application (i.e., the MAC applicant) is a joint venture DAC (set up specifically for the offshore project) owned by a consortium with 50% interest (Party A), 40% interest (Party B) and 10% interest (Party C).

- The MAC applicant has contracted with an experienced project management consultant in the offshore sector to provide project delivery and operational experience.

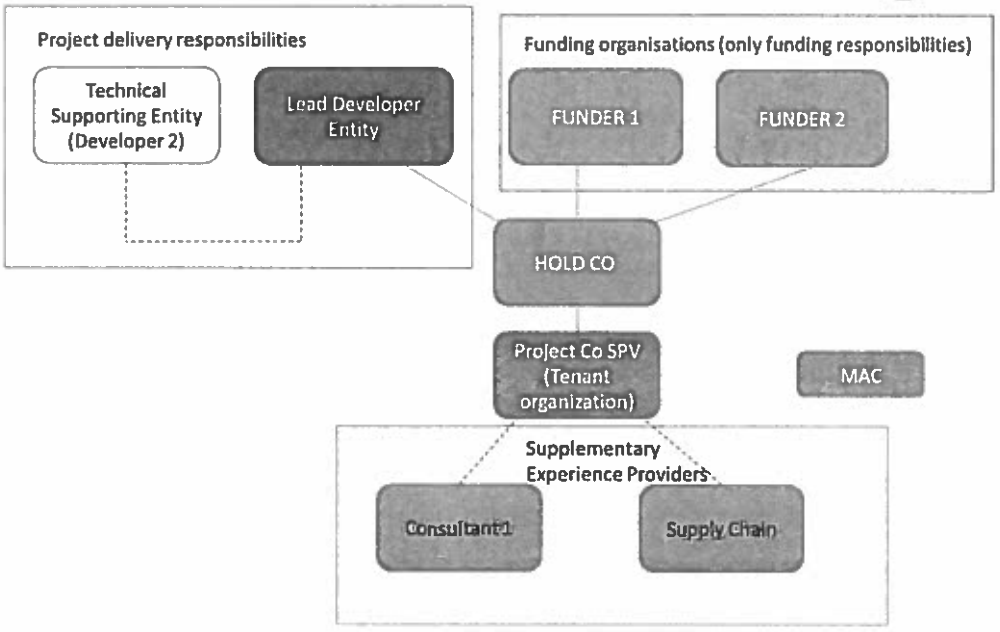
The example would then run through what is required from each entity (and in what proportions given that a 'proportionate' assessment of each member based on a 'self-assessment' is the underlying aim of the Consultation) and in particular would answer the following queries/comments:

- In relation to the MAC Technical Capability Assessment, can members of a consortium pool their corporate experience in delivering an offshore wind farm to meet the relevant requirements set out in Section 4.1 of the Technical Guidance (we note the Senior Team Members experiences can be aggregated). We note that it might be difficult for a single MAC applicant to meet all requirements (i.e., 12 months continuous experience at each of the development, construction and operational stages of an offshore wind farm) and may require reliance on Supporting Entities / Supporting Entity Guarantees (which in our view cause further issues, as set out below). In the context of a consortium this may result in multiple members of the consortium relying on the same Supporting Entity.

- The concept of a Supporting Entity is not clear. In particular, it would be helpful to know if a Supporting Entity is required to be a subsidiary / member of a group of companies, or whether this can be a third party contractor (in terms of technical Supporting Entities). If a MAC applicant has contracted with a third-party project manager / asset manager to help manage the development and operation of the offshore wind farm, would said project manager / asset manager's experience be counted towards the technical capability criteria at Section 4.1 and Section 4.2 of the Technical Guidance (and can a third-party consultant (or their designated representative for example) be deemed to be part of the Senior Project Team)?

- It is suggested that a distinction is made between financial entities/equity partners funding the SPV's and the delivery team which encompasses permanent and contract staff and consultancies (excluding major survey contractors).

- There should be a distinction between entities providing technical and financial support and a mix of technical and financial. There should be a method for identifying in the application a categorisation. A technical entity for example would not be subject to financial assessment. A financial entity providing only that support would not be subject to technical assessment. Where an entity is both and identified as such, they would be subject to both technical and financial assessment. Please see diagram below to explain a typical offshore wind farm structure.



The distinction between entities could be further supported by the use of a table to set out the roles and responsibilities. Please see example below.

Project Partner	Company No. and place of incorporation	Registered Office	Name and contact info. For responsible officer	Windfarm delivery responsibility role (Y/N)	Capability/ Experience role (Y/N)	Funding role (Y/N)	Role as equity owner (or equivalent) of Tenant Organisation (Y/N)	Role as (direct or indirect) parent of equity owner of Tenant Organisation (Y/N)
Company X				Yes	Yes	Yes	No	Yes
Company Y				Yes	Yes	Yes	Yes	No
Company Z (supply chain)				No	Yes	No	No	No

- The criteria by which an amendment is considered "Material" that triggers a reassessment would benefit further clarification.

2. Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?

Section 4.1 on corporate experience asks for experience at the following stages:

a) **Development Stage**
b) **Construction experience**
c) **Operational stage experience**

The criteria of construction and operational stage experience should not be included as a pass/fail at the early stage of a MAC assessment. This does not allow for previous experience using alternative models of development. The key to achieving consent will be an experienced offshore delivery team. This level of detail of construction and operation experience is not necessary at MAC application stage as it does not clearly demonstrate the ability of a developer to successfully consent a project. Such a requirement is also unfairly discriminatory against different business models and inhibits innovation i.e., supply chain partners as part of the delivery model.

Recommendation: We would therefore suggest removing construction and operational experience from the MAC criteria assessment requirements.

Section 4.2 MAC Applicants Commitment to Project

Section 4.2 would benefit from additional clarification as to what is considered a "Senior Manager". An alternative criterion would be to review the delivery team experience as this would be a more accurate assessment of whether the team has the ability to deliver.

The criteria of 10 years offshore experience for senior members of the team to have development, construction and up to first power can unfairly exclude parties with experience under alternative development models and does not account for the longer timeframes for development and auction processes.

Recommendation: We would recommend construction and operation experience are not used as criteria for assessment as this is not reflecting a team's ability to deliver consent and build a project using an alternative model and use development delivery team experience.

In any event, given the sequencing of leasing rounds/processes in other jurisdictions worldwide, 15-20 years' experience is more appropriate to reflect the fluctuating nature of the offshore wind sector.

Recommendation: We would also recommend the experience window of 10 years is expanded to more than 15 years or a time limit is deleted from the criteria.

There is no clear justification or rationale for the criteria of 10 years' experience of the Irish planning system. We would like to understand the logic of this criteria given the new Maritime Planning Act 2021 has introduced a new offshore planning regime, which has not yet been tested. We believe this is not a suitable criterion for determination of success of a delivery of an offshore wind farm project. Additionally, it is not appropriate for DECC (or MARA in due course) to potentially, in effect, carry out a preliminary assessment as to the projects likely success or failure to obtain development consent (e.g., by reference to the planning experience of the team), as the assessment of the project's planning viability and suitability rests solely within An Bord Pleanála's and the Coastal Planning Authorities jurisdiction and remit.

Recommendation: In light of a new consenting regime for offshore wind in Ireland, we would suggest criteria should be expanded to include the wider team lead resources i.e., consent managers, engineering lead, financing lead and other disciplines who are key resources to the delivery of a successful project. We would recommend that this criteria is specific to development stage only. Similarly, we would also widen the criterial timeframe from 10 years to 15+ years.

Recommendation: We would recommend the following additional criteria be included in the MAC assessment:

- **Given that this phase is open to Relevant Projects only, it is important that a criteria is included that ensures that applicants still meet the definition of a Relevant Project. This criteria should be confirmed through a requirement that Relevant Projects confirm adherence to original lease/other boundaries, which in most cases, was a foreshore lease boundary. For applicants not subject to a foreshore lease, they should satisfy the other criteria through which they originally qualified as a Relevant Project. This is in the interests of fairness and transparency, to prevent over expansion boundaries and address public concerns[1].**

- **An evaluation of international best practice development standards being applied to the project (1 A4 page).**

- **A declaration should be requested from and be provided by the applicant to confirm the project will operate in accordance with international best practice standards and confirm that all proper processes and procedures are and have been followed, including confirmation that all data collection, documents, and information is and has been obtained lawfully and in accordance with applicable Irish and EU laws and industry standards. This declaration ought to be required to ensure the robustness of data and information submitted to the Minister (and MARA for Phase 2 projects) in advance of any potential legal challenges including as a result of issues whereby surveys are undertaken outside 12nm without a licence.**

Section 4.4 Innovation

We note innovation in this context, is around delivery and de-risking the project delivery to 2030. For future projects, consideration could be given to innovation in the form of knowledge transfer and wider positive ecological, social and economic impacts.

3. Do you consider the templates sufficiently clear to understand the specific information being requested in each case?

[1] Save Our Seafront Holding Public Meeting on Ireland's Sustainable Future, 1st November 2021.

Please refer to previous responses to questions. Supporting guidance would be welcomed and additional clarification is required. Further comments are given below.

Appendix B

Page 19, Appendix B, Table 2, requests contact details for confirmation of information provided. We would like to highlight that data protection rules will prevent any previous employer from responding to such a request. Many internal company policies, if they are agreeable to being contacted, would ask that any request is given to Human Resources, and if they do not respond to a request, we would query, how will the application be treated.

We believe this is an unnecessary and overly cumbersome criteria particularly where companies have been incorporated by other companies and no longer exist, or the senior person has worked for a consortium that no longer operates under that SPV.

Note, the use of the word alternative suggests that Table 2 is an alternative to Table 1, however the language is not consistent and would benefit from further review and clarification.

Recommendation: We would recommend an approach similar to other jurisdictions for technical criteria such as demonstrating wider company experience in development leading to achieving consent.

Appendix D

This section would benefit from a pre-populated table of required documents and setting a maximum page length or wordcount to support the resourcing of the process.

Appendix E

See previous comments in Appendix B regarding experience. The nature of technical capability self-assessment and documentary evidence would benefit from further guidance. We assume for Table 1, that the technical self-assessment documentary evidence required will rely on independent press releases, CfD auction results and planning consents granted or similar. Further clarifications would be welcome in the MAC process guidance.

In relation to evidence of experience, we assume further guidance will be published to explain the documentary evidence is the submission of CVs, however, data protection considerations need to be considered.

Section 3.1.4: Areas where applicants will be assessed on a pass / fail basis – MAC Financial Capability Assessment

4. To what extent do you consider that the Guidance sets out a financial viability assessment process that is effective, efficient, and transparent? Are there any specific aspects of the Guidance that you consider requires further clarification?

Please see below.

5. Do you consider the Guidance is sufficiently clear to understand which parties within a consortium need to submit documentation for assessment?

In relation to the MAC Financial Capability Assessment, how would the calculations set out in Section 4 of the Financial Guidance be applied to each consortium member proportionally? Taking the example previously given above, would Party C be required to have net assets of €5m (10% of €50m)?

- Would a consortium member with a small stake still need to meet the Current Ratio / Gearing tests? It is difficult to envisage how an aggregated approach could be applied to these tests.

We believe that DECC providing such a practical example would make it clearer for applicants and also reduce the administrative burden for DECC (and MARA in Phase 2 if applicable) having to request further information when MAC applications are received.

- Further guidance is required as to what constitutes a "Material" amendment.

6. Are there any specific aspects of the pro-forma Supporting Entity Guarantee that would prevent you from undertaking your ORE Project(s)? To what extent do you consider the Relevant Authority should be able to recover costs under the guarantee?

Please refer to our earlier comment around clarification on "Supporting Entity". In relation to the Financial Capability Assessment, more clarity is needed as to the form of Supporting Entity Guarantee (it is a very high level in Appendix K). Section 3.3 of the Financial Guidance provides that the Supporting Entity *"will guarantee the obligations of the Relevant Person to complete the proposed ORE Project(s) if the Relevant Person is unable to meet its Financial Commitments"*). This is extremely broad and parent company guarantees / bank guarantees will usually be limited in quantum and time. Section 3.3 of the Financial Guidance suggests each consortium member would, in effect, be underwriting the whole Offshore Renewable Energy (ORE) Project (and not just liabilities for levies and / or decommissioning obligations under the MAC itself). The form of Supporting Entity Guarantee does not specify whether there will be any financial liability limit or indicate how long it will need to be in place (e.g., for the development phase or operational phase). We think that in terms of quantum the more sensible

approach would be for the Development Levy to be secured as opposed to this extremely broad and unlimited obligation suggested in Section 3.3 of the Financial Guidance. DECC should clarify if this is actually the intention. DECC should also clarify as to whether this overall quantum could be provided by more than one Supporting Entity (e.g., the Development Levy is €10,000,000, would two supporting Guarantees (in aggregate guaranteeing to €10,000,000) satisfy this requirement?).

It is also unclear how this Supporting Entity Guarantee interacts with the joint and several provisions at Section 2.8 of the Financial Guidance. If each Supporting Entity relied on by each consortium member is required to provide a guarantee underwriting the whole project on an individual basis (as specified in Section 3.3 of the Financial Guidance) this is in effect joint and several liability. Further clarity by DECC would be useful in this respect perhaps also by utilising the hypothetical MAC applicant example suggested earlier in this response.

We also note that the joint and several provisions (Section 2.8 of the Financial Guidance) refer to underwriting the "*Total Outstanding Financial Commitments*," and this term relates to outstanding financial commitments for the "*forthcoming three* years." This appears to suggest some limit on liability for consortium members but seems at odds with the requirement for a separate guarantee from each Supporting Entity which will need to separately underwrite the offshore project.

In relation to the Financial Capability Assessment, it is not clear whether the MAC applicant and the Supporting Entity are required to provide source documentation. Section 3.1 (Source documentation) states that if the Relevant Person is relying on a Supporting Entity "*the above requirements only apply to the Supporting Entity*". Section 3.3 (information required when relying on a Supporting Entity) states that "*Relevant Persons that are relying on the resources of Supporting Entities are still required to provide the source documentation specified at section 3.1*". DECC should clarify this in the final decision.

Additionally, the requirement for an "*enforceability*" opinion requires some clarification. The assumption is the law of the Supporting Entity Guarantee will be Irish law (this should however be clarified in Appendix K by DECC). Can DECC further clarify that it is a due capacity and authority opinion which will be required? This approach would be in line with market norms for Irish renewable development where Irish law governed parent company guarantees are provided by non-Irish entities. This should be clarified in Appendix K.

7. Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?

For two main reasons we would consider that criterion 4.5 "cash cover" from Annex 2 is inappropriate.

Firstly, this criterion is removed from what is the normal project cycle. A key milestone in the life cycle of a project is attaining financial close/financial investment decision. To attain this milestone, a project would be fully consented and have an ORESS or alternative route to market in place. At this point the project would go to the market to seek financial support to fund the construction phase of the project.

From that perspective asking the supporting company to have access to funds to meet the total outstanding financial commitments when it is several years from a fully consented bankable project is not in line with market norms or expectations.

Secondly the focus on existing cash/loans as a source of funding ignores that the funding entity will continue to trade throughout the development phase. Instead of relying on existing cash reserves to fund spend the company will use the cash generated from revenue generating activities to fund the ongoing development costs.

Appendix F

Page 30 requests information to be supplied in accordance with a summary of sources and uses of funds sheet. At the MAC application stage, it is too early to provide this level of granularity on funding sources. An alternative to be considered would be submitting a development budget to consent for review.

Recommendation: We would recommend deletion of the Summary Sources and Uses of Funds Sheet and replace with submission of a consenting budget.

8. Are there any quantitative metrics within the criteria that you consider should change? For example, the current and gearing ratios have been deliberately set at levels that would identify companies at significant risk of financial distress. Should these metrics be more stringent?

Further to the above, instead of there being a requirement to have the funds to bring the project to COD it could be replaced with a focus on having the cash reserves to bring the project to consent. This is a key milestone for the project and would greatly reduce the risk. In established ORE processes in another jurisdictions, it was on this period that the financial capability concentrated on. Once consented, the project would find it much easier to attract further finance either from a finance provider or from an investor if required.

Although it would be ideal to have companies ringfence funds prior to MAC consideration the letter of commitment/guarantee that a supporting company will support the MAC holder to reach FID is a sufficient requirement.

A source of funding that should also be considered is annual revenue. Again, for example, while not perfect, in other jurisdictions, the operating profit has been accepted as a potential source of funding. To achieve the basic grade of scoring for example, the average operating profit would have to be five times the maximum spend for any one year in the period to consent.

Recommendation: Consideration should be given to use of annual revenue as a source of funding. If revenue is considered, then it would need to be assessed over a longer time period e.g., 5 + years due to the nature of the sector and different business models.

Additional consideration should be given to the use of tax compliance criteria and ensuring that appropriate anti-money laundering due diligence checks, including EU and International sanctions checks are complied with as part of the assessment of the source(s) of funding.

9. The net assets and cash criteria assess the financial capacity of Relevant Persons to deliver ORE Projects at scale. To what extent do you consider these metrics will limit market competition, including from new entrants?

The cash criteria as it stands would greatly limit market competition. There is a lack of clarity as whether the cash cover is assessed for the first three years of the project only or for a longer period. We believe further explanation and justification for this approach would be beneficial for clarity.

10. Do you consider that the outcome of the financial viability assessment is adequately clear?

Section 5.1 of the Technical Guidance / Section 6.2 of the Financial Guidance notes that the Relevant Authority *"may provide feedback at its discretion"* in relation to an unsuccessful assessment. This does not meet the transparency objective of the Technical and Financial Guidance and does not align with standard fair procedures required of public bodies, whereby providing reasons for decisions is best practice. The maintenance of fair procedures is particularly important given that *"it remains at the sole and absolute discretion of the Relevant Authority to determine whether an Applicant or Holder has the financial viability required and meets the fit and proper person test"* (emphasis added). In the absence of providing reasons / feedback to applicants, the exercise of this discretion risks undermining DECC's stated aim of establishing a *"financial viability assessment process that is effective, efficient and transparent"*. We suggest that reasons (even at a high level) regarding an unsuccessful MAC application should be provided, particularly considering the administrative burden of a MAC application and to meet DECC's own transparency objective.

11. Do you consider that the Relevant Authority has too much / too little flexibility to ensure that Relevant Persons with the financial capability to deliver ORE Projects pass the financial viability assessment?

Please see response above as to reasons required for transparency for any decision.

12. Do you consider that the financing arrangements listed in the Guidance are appropriate? Should any other financing arrangements be identified in the Guidance?

Section 5 of the Financial Guidance sets out the *"potential funding arrangements that may represent extenuating circumstances in relation to the financial viability criteria and the evidence that may be required"*. Can DECC provide more clarity here (again perhaps by way of a hypothetical example) of how this could work in practice. Is the intention that a MAC applicant / Supporting Entity (as applicable) can, via other evidence, negate the need to satisfy these financial criteria (e.g., gearing, cash cover/reserves). More clarity here would be helpful.

It is also unclear how these sections interact with Appendix F which requires an applicant to set out funding arrangements being proposed. Can DECC set out what it would expect in a response for Appendix F noting that projects will likely not have financing in place at MAC application stage and this would more likely be procured after the MAC, development consent and grid connection agreement are received.

In our view and following discussions with some lenders, a requirement that a *"copy of an executed loan agreement between the Relevant Person and the lender along with an executive summary of the key terms should be provided"* is most likely not feasible in circumstances where specific financing terms (conditional upon MAC or not) are unlikely to be negotiated or agreed so early in the process and in the absence of key consents. Please note these agreements are commercially sensitive. A MAC applicant would not have the requisite certainty in relation to project risk to persuade a lender to enter into a loan agreement or agree key terms without the acquisition of a MAC and/or other consents.

13. Do you consider that the other financing arrangements provide adequate flexibility for companies to demonstrate their ability to demonstrate their financial viability in the future? For example, financial close for ORE Projects may occur several years after the grant of any MAC. To what extent is the timing of the financial viability problematic?

Please see responses above. As indicated, the fact that financial close may occur several years after the grant of the MAC creates fundamental problems in demonstrating financial capability in the future. A suggested alternative is that an applicant can show that it has the experience within the team/company of raising the finance required to develop and consent a project.

Section 3.2.3: Areas where information will be sought from Relevant Projects but will not be assessed – Public interest

14. Is there any other public interest considerations which the Department should consider at MAC application stage?

We would see this as being included as ungraded criteria and provided for visibility to the Department. We would recommend this includes for innovation, skills, and supply chain actions. Building the offshore wind sector and innovating towards a renewable future will create jobs and a demand for new skills.

Section 3.3.1: Additional (non-assessment) areas of the MAC regime – Levy Framework

15. The Department invites feedback on the below proposed levy model for Relevant Projects:
- Operational Levy: 2% Gross Revenue/annum
- Development Levy: €20,000/km2/annum

16. Which of the two options is the most appropriate for the Relevant Projects? Are there any other application fee models which would be more appropriate?

We would suggest the development levy is capped to account for any delays by Government in resourcing, clarity on timeframes in regulations for planning consents and potential EirGrid delays to delivery of grid infrastructure to deliver projects onto the grid. Developers should not be unfairly penalized by having to pay development levies over a more prolonged period due to factors outside of their control, which factors risk significantly delaying the development timeframe.

The operational levy that is proposed at the upper limit of industry norms. Given the infancy of the Irish market, to encourage investment consideration could be given to alternative models such as the US market wherein a 1% operational levy is offered for a five-year period (then reverting to 2%) for companies with significant supply chain commitments.

We would have concerns that having higher levies could serve to create higher bid prices which will be passed onto the public via the PSO levy.

DECC should consider strategically how a level playing field will be maintained for Phase 1 Relevant Projects not successful in ORESS 1 auction and future competition if levies change.

Section 3.3.3: Additional (non-assessment) areas of the MAC regime – MAC Application Window

17. Is two months a reasonable duration for the MAC application window? If not, how long should the Department keep the MAC submission window open for? Responses should be informed by the readiness of applicants to submit all information required at MAC application stage, as outlined in this consultation.

Any call for MACs should be accompanied by a notice period in order to prepare the documentation for submission. A two-month window may not be necessary if appropriate notice to compile the documentation is given.

Section 3.3.4: Additional (non-assessment) areas of the MAC regime – Duration of a MAC

18. Based on international practice, a period of thirty years is often cited as a common duration for maritime area consent (or equivalent authorisation). Is thirty years an appropriate duration for a MAC? Responses should have regard to:

    - Time required to apply for other consents
    - Time required to complete site investigatory works
    - Procurement
    - Supply chain considerations
    - Construction time
    - Reenergisation
    - Decommissioning

We offer the following explanation of the English and Scottish approach in order to respond to the period suggested of 30 years, which we believe should be extended to a minimum of 60 years.

The first four bullet points above are considered in the development period in the Agreement for Lease which is offered by The Crown Estate[2]. The Crown Estate state *"The Wind Farm AfL option must be exercised within ten years of signing the Wind Farm AfL"*. There is also a separate document which gives the option period in the Transmission AfL and ends at the same time as the Wind Farm AfL, because of the requirements of the Offshore Transmission (OFTO) regime [3]for the transfer of the transmission asset to a different entity. The Wind Farm Lease once enacted (last 3 bullet points) will provide rights for construction, operation and decommissioning of the project for up to 60 years. **In comparison to what has been granted by The Crown Estate, the equivalent MAC would be 70 years for all of the critical steps.**

By way of further comparison, the Netherlands grant a permit (akin to a lease) to the developer of 30 years, however, in advance of doing so the Dutch Government will have undertaken the site investigation works and the consents necessary to build the windfarm. The sites are auctioned with approvals in place. The developer has then procurement, construction and post construction, operations considerations only. **To align with the Dutch methodology the MAC would then be granted for 40 years to account for the development, procurement, and supply chain considerations.**

We would suggest that the 30-year proposed figure is extended to account for the development, procurement, and decommissioning periods. An appropriate duration for the MAC is particularly essential in circumstances where section 83(2) of the MAP Act 2021 provides that *"A provision of the grant of a MAC that purports to provide for the renewal of the MAC shall be void"*, thus arguably limiting the ability of the Minister / MARA (in due course) from providing for any extension of duration of an existing MAC.

It is also worth acknowledging that planning permissions for many large-scale projects are generally granted for a period of 10 years, with an operating life of 25 years included as a planning condition in the case of onshore wind farms for example, giving a total of 35 years. The current design life of turbines (rotor nacelle) is 30 years. Given the increased scale and developing technology of offshore wind farms, and including for decommissioning, a 60-year period for MACs is considered the minimum appropriate period.

It is assumed that the term "re-energisation" is meant to accommodate first power and the operational period of the wind farm. It would be helpful if this term could be further clarified by replacing with terms further in line with industry terminology. It would be helpful to accommodate life extension prior to decommissioning. It may be helpful for the Government to outline its initial thinking on repowering.

We would recommend a minimum of 60 years for a MAC and consideration given to 80 years to accommodate life extensions and repowering.

To allow for extensions to the MAC period in line with Oil and Gas leases, an amendment should be made to Section 83(2) of the MAP Act to allow for extensions of time given to the MAC holder to

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[2] Available at: tce-r4-information-memorandum.pdf (thecrownestate.co.uk)

[3] UK Generators build the transmission assets and then transfer them to OFTOs at construction completion.

consider phases of decommissioning, life extension and repowering if a shorter MAC period is the preferred way forward.

The following table is given for clarity on expected timeframes for each stage of an offshore wind farm.

Activity	Duration
Development- permits for licences, site investigations, EIA, consent, CFD auction/route to market. (FID)	8-10 years
Procurement for major equipment	2 -3 years
Pre construction surveys, Construction (dependent on size of wind farm)	3-4 years
Operation phase	30-35 years
Life extension	Dependent on many factors and scenarios
Decommissioning	3-4 years
Repowering	30-35 years

Section 3.3.5: Additional consultation questions

19. Are there any specific aspects of the assessment methodology that you consider requires further clarification?

Section 2.5 of the Technical Guidance provides that where there is, amongst other things, a "*change of control*" of a MAC Holder, a technical capability assessment will be performed on all parties which retain an interest, including the existing MAC Holder. Section 2.6 of the Financial Guidance contains the same proviso, but also provides that a "*significant change in control occurs where there is a change in the entities that control, or have a significant influence on*" the MAC Holder. Further, the Financial Guidance notes that a financial assessment is not required for listed companies with a market capitalisation greater than €100 million "*where a change in significant influence occurs*". No thresholds are given as to what is considered a "significant" change in control and clarity is needed in that regard. We also presume (but would welcome confirmation) that this requirement is referrable to the provisions of Schedule 2 of the MAP Act 2021, which refers to "a *person who exercises control (within the meaning of section 11 or 432 of the Taxes Consolidation Act 1997) in relation to the body*" (emphasis added), and thus imports the same threshold for "*control*" as meaning:

> "*the power of a person to secure*
>
> *(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or*
>
> *(b) by virtue of any powers conferred by the constitution, articles of association or other document regulating that or any other company,*

that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership."

It is not clear how the definition provided of a 'significant change in control' interacts with a 'change in significant influence' referred to later in Section 2.6 of the Financial Guidance. DECC to provide further clarity in the final decision.

Discretionary feedback and transparency on unsuccessful assessment: See response to question 10.

Section 2.12 of the Financial Guidance notes that the Relevant Authority requires Relevant Persons to provide a statement confirming that they have appropriate insurances in place for risks associated with the project(s) *"which cover potential contingent liabilities that may be incurred in the event of an unforeseen scenario"*. However, the assessment of such insurance cover and contingent liabilities is outside the scope of the Financial Guidance.

The requirement is currently vague. In addition, it is unlikely that the requisite insurances would be in place at the MAC application stage. DECC to provide further clarity as to these requirements and if outside the scope of the Financial Guidance where will further guidance be provided?

In respect of the Insurance requirement, we suggest an approach similar to other global offshore processes whereby the applicant would be required to effect and maintain third party and public liability insurance in the sum of, for example, £25m. We would suggest that the requirement would be to have something similar to this in place prior to any invasive site activities.