



MAC Assessment Criteria Consultation
Offshore Energy – Environment and Consenting Division
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Emerald and Western Star Floating Wind Response to the Public consultation on the Maritime Area Consent (MAC) Criteria Consultation

1 Introduction

The Emerald and Western Star projects welcome the opportunity to engage with the Department of the Environment, Climate and Communications (DECC) and provide feedback on the Public Consultation for Maritime Area Consent (MAC) Assessment for Phase One Projects.

Both projects propose up to 1.3GW floating wind farm each off the south and West coast of Ireland. In both cases the projects are being developed in joint venture partnership by Simply Blue Group and Shell New Energies. Emerald will utilise the site of the decommissioned Kinsale gas platforms in order to produce clean energy for Ireland; Western Star will be located off the west coast of Clare at a minimum distance of 35km from Loop Head.

In both cases a phased delivery strategy is planned with the first c. 400MW deployed by 2030 and the remaining delivered for 2032. Both projects plan to contribute to Ireland's 5GW by 2030 offshore wind target.

Although we are positioning both projects for Phase 2, we believe this consultation is very important as it will frame the criteria and process for MAC for Phase 2 projects. In addition, we believe that the experiences of some of our team members from Shell arising from their success in Scotwind will be beneficial to share with the DECC. Suggestions made in this consultation are based on experience and aim to help shape a pragmatic way forward for Marine Area Consents.

Consultation Questions

Q1. 3.1.3 MAC Technical Capability Assessment

Consultation Question: 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?

Overall EMR and WSR are supportive of DECC's approach to assess the technical capability of MAC applicants to deliver large scale offshore renewable energy projects but would highlight that:

- The guidance must allow for a range of types of organisations which will develop the offshore wind farms and will back the developers both financially and with expertise. Also, some of this expertise could be brought in through third party contract.
- Some of the information that is requested as part of the MAC application form cannot be provided at the MAC application phase of the project. For example, determining turbines in detail will not happen until the Financial Close process post consent.
- There is also detail requested in the Appendices which will be considered as commercially sensitive in relation to technology and project timing. It will be important that the appendices are considered commercially sensitive and exempt from Freedom of Information requirements.

Q2. Technical Assessment Criteria

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

Whilst EMR and WSR are supportive of DECC's approach to assess the technical capability of MAC applicants to deliver large scale offshore renewable energy projects, we consider the criteria to be overly prescriptive and ambitious; and will significantly reduce the opportunity for local, Irish entities and team members to be awarded MAC's and lead development teams.

The prescriptive nature of the technical capability criteria does not acknowledge that the majority of renewable energy projects will be developed by Special Purpose Vehicles (SPV's). These SPV's which are dedicated project development teams, are subsidiaries to parent company's ("supporting entities" per the guidance). Hence by the nature of their structure, they may not be able to meet the corporate experience criteria outlined and all applicants will have to rely on supporting entity project experience. In addition, it should be highlighted that all SPV's will retain technical advisors, owners engineers and major contractors throughout project development who will be key to the successful delivery of these projects.

The prescriptive nature of this criteria also risks limiting the involvement of financial investors (as opposed to technical partners). Financial investors may have reduced requirements to return on capital compared to technical partners and this is a key factor in ensuring the levelised cost of energy (LCOE) remains as low as possible for the consumer.

It is vital that the need for flexibility in how the projects satisfy the criteria is inherent in the assessment process. Especially as there will be potentially quite distinct differences between the projects and how they and their supporting entities are formed.

Q3. Templates in Appendix A to F

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

EMR and WSR consider the templates sufficiently clear, though, to reiterate there is a need for flexibility in how the projects are to satisfy the criteria and how the templates are populated. Also, there is some detail which cannot or should not be expected to be firm at the time of MAC application, such as wind turbine models.

Section 4.3 of the Consultation Document provides that the MAC Applicant must provide an outline of delivery timelines that demonstrates how the offshore wind project will achieve first generation in advance of the 2030 targets. It further provides that the timeline provided is expected to demonstrate an understanding by the MAC Applicant with respect to both development of offshore wind farms and the expected timeframe of the consenting framework in Ireland. The template refers to the "Delivery Timetable" for certain key development milestones. It must be noted that at this stage, the MAC Applicants can only provide indicative dates.

EMR and WSR request clarity on the following aspects

- Appendix B - Table 2; Contact Details for confirmation of information provided. The purpose of requiring this information must be made clear and to ensure compliance with GDPR requirements.
- Appendix C - Delivery timeframes – Department must acknowledge that these are indicative at best and largely outside the applicant's control. In addition, aspects of this information may be considered commercially sensitive, both in terms of the relationship with competitors, but in relation to financiers and suppliers.
- Appendix D – Documentation List; the guidance should include a list of the anticipated documents.

Q4. 3.1.4 MAC Financial Capability Assessment

Consultation Questions: 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?

Appendix F requires specific details of "committed" funding of the project. At this early stage (and without a ORESS contract yet), this level of detail seems excessive. EMR-WSR suggest that the request is for the Applicant's expectation as to how it will be funded e.g. approximately x% debt and x% equity as the level of working capital facility etc. will not be known at the application stage.

Q5/6. Relevant Person Assessment (pp- 25)

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

A standard project ownership structure for the development, construction and operation of an offshore wind project is to create a special purpose vehicle/project company to which all licences, consents, contracts, etc. are held. This structure is used to facilitate joint ventures or consortium arrangements whereby the combined expertise, financial strength, and experience of two or more companies are pooled to deliver complex infrastructure projects such as an offshore wind farm. This structure is also key to accessing the most competitive lending rates and is an essential structure used in a “project finance” or non-recourse type funding model. It is therefore likely that the financial and technical capability assessment of these projects will be based on an assessment of the consortium members or supporting entities.

We recommend that where a project special purpose company structure is the entity deemed to be the “Relevant Person” that a description of the consortium structure be required as part of the assessment.

We also recommend that any supporting entity should be way of a formal partnership agreement such as a Joint Venture, or other shareholding in common arrangement in a project company, not through a commercial consultancy contract arrangement.

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?

EMR and WSR submits that the requirement for an explicit sponsor guarantee in respect of financial obligations under the MAC lease is overly onerous, as the sponsors will be sufficiently commercially motivated to deliver the project within the required parameters and timelines, by virtue of their own vested interest in and financial commitment to the project. As such, the financial viability test of the sponsors as Supporting Entities of the MAC Applicant, as well as their technical capability and track record in offshore wind development, should give sufficient comfort as to their commitment to the project and ability to deliver.

The Consultation and the Guidance for the Financial Assessment of Maritime Area Consent Applications are not clear either in the extent of cover expected of the Supporting Entity guarantee or the period for which it should be required. Regarding the extent of cover, in Section 3.3 of the Guidance, it is stated that “Where the Relevant Person proposes to rely on a Supporting Entity, confirmation is required stating 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”. While Appendix K states that “the purpose of the Guarantee is to ensure that the financial commitments or obligations in respect of the MAC will be discharged in full and on time”. We note that “total financial commitments” is not capitalised therefore we assume that it refers only to financial obligations under the MAC, i.e. the levy payments due, and not Total Outstanding Financial Commitment as defined on page 21 and referred to within section 4.5.

EMR and WSR submits that if a guarantee is to be required then the parameters of that guarantee need be very clearly defined and limited so as to reasonably reflect the specific credit exposure borne by the Government in respect of a project/sponsors’ MAC obligations only; noting that separate performance securities and financial

guarantees will be provided to various obligees such as relevant planning authorities, EirGrid and CRU, so the State's credit risk to the project is appropriately allocated under these various mechanisms.

Following precedent in other markets, the guarantee should be calculated by reference to a fixed number of levy years, we suggest [1-2] years is reasonable.

The guarantee also needs to consider that as of financial close the project will be fully capitalised. Project level guarantees will, at that point, be provided via the project finance debt facilities and as such, the sponsors will no longer remain directly obligated to the Government in this regard.

EMR and WSR further asserts that the requirement for a guarantee should fall away as and from Commercial Operation Date (COD) of the project. At this stage, the project will be operational, will have its own turnover and will be sufficiently creditworthy so as to be able to meet the liabilities which were previously guaranteed on its behalf.

Bearing the above in mind, we suggest the following amendments / clarifications in respect of the Supporting Entities guarantee:

1. the MAC guarantee should cover [1-2] years of MAC levies, calculated on a forward-looking basis
2. at financial close, the guarantee may be provided via project finance bank debt facilities, where the project opts for project finance;
3. at COD, any project finance bank guarantee should no longer be required as the project will then be sufficiently creditworthy so as not to need any support by guarantee

Q7/8/9. Assessment Criteria (pp. 25/26)

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

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?

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?

1. Going concern status, without material uncertainty (subject to adequate mitigation)

This is an appropriate metric.

2. Net Assets greater than €[50] million*

This is an appropriate metric.

3. A current ratio greater than [0.65]

This is an appropriate metric.

4. Gearing of [90]% or less

This is an appropriate metric.

5. A cash cover ratio of greater than [1.0] X (i.e. cash resources greater than the forthcoming three years of the Relevant Person's commitments, across all of its ORE projects in Ireland)

Phase 1 may have issues with the requirement to provide cash over for a period of 3yrs from the date of application for a MAC. As it is possible that a project will have reached the construction phase within three years of receipt of a MAC. However, EMR-WSR consider it an appropriate metric for Phase 2.

6. Cash resources greater than €[50] million*

This metric is appropriate when applied to an assessment against a supporting entity/s consolidated accounts.

Q10. Assessment Outcome

Consultation Questions Do you consider that the outcome of the financial viability assessment is adequately clear?

The financial metrics proposed are clear and a fair way to assess the financial strength of project developers seeking a MAC, subject to the comments above in relation to required details for the project structure. The metrics proposed can be used to clearly show whether a MAC applicant and its supporting entities meet these criteria or not.

Q11. Assessment Outcome

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?

The Relevant Authority should be able to clearly identify the sources of funding being made available to an applicant and be able to consider the corporate structures involved in both the project company and supporting entities. Flexibility is needed to ensure that the often-complex structures of the project holding companies and their supporting entities can be considered.

Q12/13. Other Financing arrangements

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

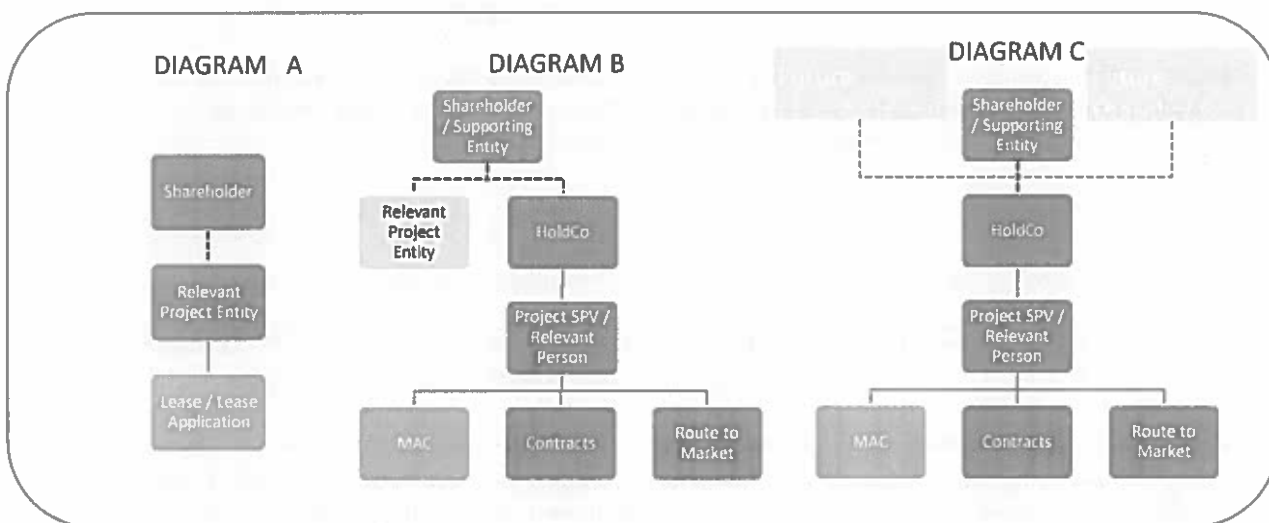
Corporate Structuring so as to facilitate Project Finance

Given the multi-billion euro investments required of large scale offshore wind projects, many projects will be financed on a non-recourse project finance basis with a club of banks providing finance. It is important that the corporate structure of a large scale offshore wind project facilitates finance arrangements, and this typically requires a "HoldCo" which sits in a corporate structure directly above a "Project SPV", with the Project SPV holding the MAC / Lease, Construction & Operation Contracts, Route to market, etc (typical arrangement depicted in Diagram B below). Also, given the scale of finance required, risk profile, etc, it is likely that additional shareholders will be added to the project as it nears Financial Close (typical arrangement depicted in Diagram C below).

To the extent that a developer has not yet implemented the necessary arrangements to facilitate project finance (see a typical pre-finance arrangement depicted in Diagram A below), now is the optimum time to address this, rather than having multiple MAC holders re-engaging with DECC / MARA at a later date seeking changes to MACs so as to enable Financial Close.

So as to ensure that project corporate structures are set up for efficient project financing, it is important that the proposed MAC application process:

- Permits a "Project SPV" who is not the "Relevant Project Entity" to apply for a MAC, on the basis that both the Project SPV and the Relevant Project Entity are wholly owned by the same "Supporting Entity" (as per Diagram B below)
- Permits a HoldCo or several holding companies to be introduced in the corporate structure of the "Supporting Entity" (as per Diagram C below).



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 assessment problematic?

The detail in Appendix F Source of funds is too detailed. Applicants will not know debt tranches at application stage.

Q14. 3.2.3. Public Interest

Consultation Question Are there any other public interest considerations which the Department should consider at MAC application stage?

EMR and WSR believes that further clarification needs to be made on what exactly this question is requesting.

Q15. 3.3 Additional (non-assessment) areas of the MAC regime

Consultation Question 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**

The proposed operational levy is aligned with other markets and is considered acceptable.

However, the development levy is considered high in an emerging market. The most relevant comparable example is in the recent Scotwind process where successful parties have agreed to pay £100,000 per square kilometre, upfront for a 10-year option fee. This equates to approximately €12,000 per annum per square kilometre. This is more reflective of an equivalent market.

The risks associated with a high development levy, that we can see evolving are:

1. Confidence regarding timelines are low- if a per annum amount is set and the system taker longer than anticipated to establish then costs overall will increase. There may also be issues with regards to litigation for these costs, especially where delays are due to inefficiencies in the system
2. Competition for supply chain is high- other neighbouring markets have already commenced projects to meet their 2030 targets, Ireland will be in competition with these markets for access to turbines, towers, nacelles, ports, construction sites etc. Again, this will drive timelines to extend and so overall costs.
3. These costs will ultimately end up back with the consumer- if they are set too high per annum at the outset it will be difficult to pare them back when delays in the system or the supply chain emerge.

Rather than the current proposed level of €20,000/km²/annum- it is suggested that a lower level is set to 2030 to help the market establish and then a higher level is imposed thereafter. This will allow the system and projects to establish and will also incentivise projects to deliver pre-2030. A suggested amount could be €12,000/km²/annum as a starting point raising to a high level, reflective of market conditions, after 2030

It is also recommended that there is a cap on the development levy, mitigating the impact of third-party delays on the delivery programme. Building this mitigation into the design of a MAC from the outset will help avoid what could become a significant administrative burden as developers attempt to 'stop the clock' for delays that are outside of their control.

If such a levy was to be set for Phase 1 a similar level must be proposed for phase 2 and to ensure a 'level playing field' no additional charges with respect to a security should be imposed. It is suggested 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 practices in other jurisdictions. If the incentive costs pre and post 2030 is set within this timeline, developers will be in a position to manage this.

It is assumed that the levy framework will exclude the submarine export cable route given that this asset is to be transferred to EirGrid once operational.

Q16. 3.3.2 Application Fees

Consultation Question 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 believe that the most appropriate application fee is €10,000. This equates to the payment of a handling fee based on the likely calculated workload in processing MAC applications. 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. Our preference would be to ringfence this money to ensure that it is allocated to the processing of MACs and supports the need to appropriately resource the system. Appropriate provisions for ringfencing this money should be considered for inclusion in secondary legislation.

Q17. MAC Application Window

Consultation Question 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.

It is critically important that all applicants have sufficient time to consider the final assessment criteria to enable the required information to be collated appropriately. If the adopted criteria is published immediately prior to the opening of the application window then we are of the view that a period of two months is potentially insufficient for some or all of the applicants to make robust applications. A fairer arrangement would involve the publication of the final assessment criteria with the application window opening one month later. This period of advance notice would allow the necessary time for all applicants to carefully consider the extent of information required and make arrangements to put it in place.

Q18. 3.3.4 Duration of a MAC

Consultation Question 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**

EMR-WSR would consider 30 years an extremely short duration for a MAC. If this period was not to change it will limit the lifespan on offshore wind projects and preclude any opportunity for repowering of offshore wind in Ireland.

Looking at the periods involved, from offer of MAC to the Commencement date is likely to be a minimum of 5 years for some phase 1 projects, but more likely-10 years for most projects in an emerging system (planning, route to market, procurement, financing and construction all need to be concluded with the risk of judicial review of planning consent adding greater duration). This would leave a remaining period of 25 years or less, a figure which could be reduced further to allow for time for decommissioning.

Whilst once this may have been equivalent to the expected duration of an offshore wind farm, that is no longer the case. We would cite the World Bank's [report](#) on Key Factors for Successful Development of Offshore Wind in Emerging Markets which highlighted the significant importance attached to certainty of tenure, and the need for lease periods "to reflect project development and operation timescales".

The report notes that in existing markets "leases are being issued to cover >50 years), which can enable project life extension or repowering, allowing developers to plan beyond the current typical 25-year operating life of offshore wind turbines."

With respect to the typical 25-year operating lifetime, we would suggest that technology developments mean that this estimate is likely to already be low, with 35 years now possible. This is reflected in the World Bank report which notes "offshore wind project operating lives are now anticipated to be between 25 and 35 years"

A period of 30 years, in comparison, could see projects having to decommission whilst equipment still potentially has a decade left in which it could continue to operate, something which would be hugely counter-productive to Ireland's decarbonisation aims and will push up costs. 30 years is so short, indeed, that the period in which there is additional opportunity for projects to generate revenues post-ORESS contract will be less than a decade, ensuring the vast majority of costs will need to be picked up by the PSO during the ORESS contract periods. This will all put upwards pressure on ORESS prices in Ireland and could widen the disparity in cost between offshore wind in Ireland

and neighbouring jurisdictions. To fully transition our energy system and economy to net zero we need renewables to be cost effective. A 30-year MAC duration is unlikely to be conducive to this aim.

It is notable that in the UK the process has recently increased to provide seabed for a period of 60 years to take into account increased lifespans and the potential for repowering. The opportunity to repower will, in decades to come, be key to ensuring progress made in decarbonising the energy sector and economy is not lost and to ensure that the consumer will benefit from projects which can make use of existing infrastructure. Given the advancements in technology, with potential lifespans of 35 years, we would suggest 60 years would be needed to truly give projects an opportunity to repower and utilise fully the development (taking into account consents and decommissions periods) both now and in the future. Should DECC wish to baseline duration of MACs against an international market, this should at minimum be the 60 years now being provided for under the UK processes (i.e. the England and Wales Round 4 process and the Scotland Scotwind process)

Q19 3.3.5 Additional Consultation Questions

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

Phase 2 perspective

Delivering offshore wind projects by 2030 is challenging. The challenge for Phase 2 projects is the fact that the processing of MAC applications needs to await the set-up of MARA. Phase 2 will also include a step change in the number of projects applying (to MARA). However, the risk of delays can be mitigated by developing appropriate interim measures.

In support of the Phase 2 policy objective to deliver the remainder of the 5GW offshore wind by 2030, the following is recommended:

- Development of a pre-qualification phase by Q3 of 2022:
 - o Identify projects that can demonstrate ability to deliver by 2030 (Delivery timelines)
 - o Facilitate projects to progress through Development Permission process
 - o Promote pre-qualification of Floating Offshore Wind projects in Phase 2, by confirming a pot for FLOW in ORESS 2.

An efficient prequalification stage, probing key project criteria will quickly identify those projects that can deliver by 2030. It is expected that Phase 2 will need to deliver 3GW of offshore wind by the end of this decade.

- To support the prequalification process and the development of appropriate programmes or 'delivery timeframes', it is recommended that guidance is provided to developers, specifically on activities outside of their control, so that the assessment is based on similar programme assumptions. For example, a fixed assumption of x12 months for ABP to process a development permission application.

Phase 2 – Competitive MAC Assessment

- Competitive MAC criteria developed in advance of MARA (Phase 1 criteria adapted to Phase 2):
 - Paralleling the development of the Phase 2 competitive MAC process will allow MARA to run the competition swiftly, upon establishment. Projects can work towards this timeline and start to develop their MAC application data, again avoiding a lag in the processing of applications, in support of the 2030 target.
- Details included in this Phase 1 MAC Assessment consultation that need further consideration for Phase 2 include:
 - Phase 2 projects unlikely to have certainty on items such as MEC, wind turbine details or cable route co-ordinates
 - Detailed stakeholder engagement assessment
 - Evidence of Grid Connection acceptance by EirGrid (preliminary step recommended to facilitate efficient MAC process and development consent activities) or evidence of alternative route to market, for example Hydrogen development.

MAC Retention

- Develop a more risk averse pathway for the enduring regime. It is neither efficient, nor in line with ORE Policy to expect projects having to effectively ‘give-up’ their projects if a route to market cannot be ascertained in Phase 1 or Phase 2. Developers will have invested in both the development levy and in consenting and survey activities and may be unsuccessful simply due to the need to identify winners and losers in an auction.

Facilitating these ‘unsuccessful projects’ in an enduring regime may deliver lower cost projects in this phase, whilst lowering the risk to developers of earlier offshore projects.

- Noting that Phase 1 projects unsuccessful in ORESS1 may seek to compete in ORESS2, it is important to ensure a level playing field across all projects. This will also ensure that funding is made available to state resources to support the timely delivery of offshore wind projects, in line with energy policy.

Phase 2 Survey > 12 nm

Once MARA is established, it is critical that the licensing system is streamlined and effectively resourced in parallel. This is to ensure that Phase 2 projects, that are located outside the 12 nm, are licensed to conduct their surveys from 2023.

Supply Chain

It is important to signal the opportunity within the offshore renewable industry and associated supply chain and its ability to create and maintain high value jobs within regions and coastal communities as well as the potential to support jobs and companies indirectly. This will become an increasingly important factor as projects move away from the East coast to the South and West coasts where coastal communities are much more dependent on



traditional sectors. The direct and indirect job opportunities offered by the offshore renewable sector will be much more valuable to maintaining coastal communities on these coasts and may become vital in the face of reduced opportunities in other sectors.

Energy Security

In the EU's Global Strategy, energy is identified as a sector in which the Union should become strategically autonomous. It is clear that the high strategic and security value of the European energy sector does not align with the fact that the 'EU and all its member states are net importers of energy'.

The goal of decreasing the EU's energy-supplier dependencies is evidence of the EU's policy of strategic autonomy as it drives towards a greater diversification strategy, ensuring security of energy supply facilitating greater freedom of political choice and action. There is an inextricable link between how the EU is approaching strategic autonomy in the energy sector and the world leadership it is giving in tackling climate change striving for net zero in carbon by 2050 through its supports for renewable energy.

Ireland can be a key enabler for EU strategic autonomy in the energy sector with diversification in areas such as offshore renewables and green hydrogen.

EMR-WSR thank you again for the opportunity to contribute to this important process and welcome the opportunity to discuss this submission further with you.

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Company Directors:

