



BY EMAIL ONLY
oreconsenting@decc.gov.ie

18th February 2022

Email [REDACTED]

Consultation into Maritime Area Consent Assessment for Relevant Projects

Dear Sir / Madam,

Thank you for providing us with the opportunity to respond to the above consultation. RWE Renewables is one of the world's leading renewable energy companies. RWE Renewables Ireland is operating and developing several renewable projects in Ireland, across a range of renewable energy technologies including onshore wind, offshore wind and battery storage systems.

We welcomed the enactment of the Maritime Area Planning Act, 2021 and the work underway to realise and implement the new functions and statutory processes contained therein. We very much welcome the constructive engagement provided by DECC in regards the content and proposed format for the MAC assessments.

With regards to the proposals set out in the consultation, we believe there are several issues which require further amendment and or clarification. These include:

- A lack of clarity as to how different project structures will be accommodated in the MAC process, particularly for projects which have two distinct parts based on previous foreshore authorisation applications. We recommend that the secondary legislation must include the ability for the relevant Minister to facilitate either dual or joint applications where considered appropriate by the Applicant(s) for a single MAC. In addition, or as an alternative, the Minister should reserve the right to consolidate the relevant maritime usages into a single MAC grant following consultation with the Applicant.
- The proposed MAC lease length – 30 years is too short given the existing asset lifespan of current offshore assets. Furthermore, the proposed lease length is designed to incorporate consenting and construction timeframes as well as the operational and decommissioning phases of the wind farm. In this regard, 30 years is too short – we would recommend a similar approach to that taken in the UK (AR4 and Scotwind) which allow for a 60-year lease once all the key consents needed have been granted.
- The absence of any information describing the rights and obligations of a MAC holder creates uncertainty about the matters which Applicants need to be prepared to address when a draft consent will be issued by the Department for execution in the event of successfully securing a MAC. This uncertainty could be mitigated through a

'template' MAC being made available in advance of the application window opening. This is particularly important with regards to the spatial part of the MAC covering the seabed area for transmission infrastructure export cables. Matters which require careful consideration include for example, subsea utilities crossings and co-existence, given that these assets will be transferred to EirGrid post energisation.

- To ensure the first ORESS auction can be competitive it will be critical to ensure a non-distortive approach is applied to the MAC process and this must apply to the content and requirements / conditions for all Phase 1 MAC holders, as well as the timing of the Award of the MAC. Projects which have greater uncertainty as to the outcomes of the GCA process (both anticipated conclusion and timing of that conclusion) are at a disadvantage compared to those with a more obvious/simple conclusion. Applicants who secure MACs earlier have a distinct advantage in (1) optimising their bids for the auction (2) commencing their development consent pre-application consultation with An Bord Pleanála (3) being able to provide clearer project definition to interested stakeholders, including the general public and marine space users.

Our key concern is the requirement to provide coordinates for the export cable route (or alternatives) as part of the MAC application process will negatively impact the Dublin Array project, both in terms of timing for the MAC application (and a prolonged approval process for the application due to the interface with the GCA process) as well the financial risk associated with having to confirm much larger cable route corridors to cover all export cable route eventualities.

Please also note our specific comments regarding the Relevant Person requirements, as set out in the Maritime Area Planning Act, 2021. We would welcome the opportunity to discuss these with you in more detail.

If I can be of any further assistance, please let me know.

Best wishes

[Redacted signature]

[Redacted name]

RWE Renewables

RWE Renewables Ireland response to Maritime Area Consent Application Consultation

As set out in the covering letter, we have some concerns as to the MAC applicant, please see further details below, and thereafter in our response to question 4 – we believe this issue must be urgently addressed:

Maritime Area Consent Applicant (Relevant Person)

Having regard to *Part 4* of the Maritime Area Consent of the *Maritime Area Planning Act, 2021* references to the application for, and award of a Maritime Area Consent (MAC), refer to the singular, e.g. Section 79(1) "a person may make an application" and Section 79(4) "a person may not make a MAC application unless it is (a) a company...!"

Post award of a MAC in the context of a future development consent application Section 287(1) defines that a 'prospective applicant' is a person who is

- (a) having regard to subsection (3) of section 286, is eligible to apply for permission to carry out development to which this Chapter applies, and
- (b) proposes to make an application under section 291 for such permission.

Having regard to the above points, it appears that only one entity can apply for and be awarded the MAC for a development site and only that same singular entity can apply for development consent.

In the context of projects which meet the definition of a relevant maritime usage (as per *Chapter 10 Special MAC Cases, Section 100*) which have two distinct components (e.g., separate foreshore authorisations or applications) and which are now being progressed as a single project, particular attention needs to be paid to this circumstance. If a project has two distinct components it could be interpreted that each of these components should be subject to a separate MAC application and award process and consequently separate development consent applications. This would be inefficient and confusing for all parties.

To address this, an appropriate step would be to consider assignment of one of those MACs to the other MAC holder. However, *Section 85 of the Maritime Area Planning Act, 2021* provides for the assignment of a MAC with the prior written consent of MARA (not the Minister, as no rights were reserved in *Section 101(3)* to approve assignments during the transition phase). Therefore any such assignment process could delay a development consent application beyond what is currently envisaged.

We therefore recommend the urgent development of a solution which would enable the Minister to manage this issue. A potential solution to avoid such an unintended consequence could be achieved through the Ministerial invitation for MAC applications as envisaged under *Section 101(1)*. The Minister (through Regulations or otherwise) could facilitate either dual or joint applications where considered appropriate by the Applicant(s) for a single MAC and/or the Minister could reserve the right to consolidate the relevant maritime usages into a single MAC grant following consultation with the Applicant.

Question 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?

RWE's comments regarding Consultation Section 3.1. – Areas where applicants will be assessed on a pass/fail basis:

3.1.1 Consistency with Offshore Renewable Energy Policy

RWE recognise the importance of describing the nature of the intended development and how it aligns and contributes to the climate action targets for 2030, the National Marine Planning Framework and associated offshore renewable energy policies.

The inclusion of the planned Maximum Export Capacity and maximum energy output in GWh/annum is appropriate as it provides an indication of the intended scale of the development site. However, any evaluation needs to recognise the relative development immaturity of a project at the point in time at which the MAC application is made. The aspiration for the project will be refined through the completion of the Grid Connection Assessment process, customisation of the design through the environmental impact assessment process and other activities such as design optimisation for ORESS and the outcomes of the development consent processes.

The provision of indicative timelines should be consolidated; (or cross-referenced to,) with the request to set out the proposed delivery timelines in the Technical Assessment Criteria as set out in *Section 3.1.3 MAC Technical Capability Assessment* of the consultation document.

There is also no elaboration of what is expected under 'wind turbine technology' and it is recommended that further clarification is provided, recognising the intention of the application is not to include 'project specific details' (as set out in *Section 3.1.1*). Please confirm whether this just requires the confirmation that the project will be fixed or floating?

3.1.2 Geographic Boundaries of the Proposed Project

The Department's intention as set out in *Section 3.1.2* is for the applicant to provide accurate geographic coordinates. The consultation document recognises that '*whilst some project-level detail may not be available at MAC stage, all Relevant Projects must be within the coordinates of the original lease application*'. The following issues need to be considered when considering the geographic boundaries of a proposed project.

1. Confirmation of the proposed wind farm project boundaries is a reasonable and appropriate request.
2. Provision of coordinates for the proposed transmission cable **will not result in a consistent response from Relevant Projects**. Projects are still awaiting the outcome of their updated Grid Connection Applications as submitted to EirGrid in September 2020. The absence of certainty over the outcomes from the Grid

Connection Assessment (GCA) process provides variable levels of certainty concerning the location(s) of connection to the existing electricity transmission network. This means that certain projects are not in a position to define accurate geographic coordinates for their proposed transmission cable routes.

A potential solution to the above would be for MAC applicants to confirm the wind farm project boundaries (as per point 1 above) and to provide indicative corridors for transmission infrastructure. These corridors would then be finalised when the GCA process has concluded and be included in the final MAC as awarded. To ensure that all Phase One Projects are treated equally, MACs should only be awarded to Phase One Projects when the GCA process has been concluded for all Projects, as projects should not be disadvantaged due to earlier delays within the grid processing framework outside of Developers' control. All projects had to apply by the same September 2020 deadline.

Having regard to the proposed Levy Framework (Section 3.3.1 of the Consultation Document) it is noted that the proposal is for a development levy rate of €20,000/km²/annum.

Based on calculations we have undertaken to date the windfarm area for the proposed Dublin Array project is approximately 59 square kilometres. To include sufficient flexibility in the transmission infrastructure corridors to try to manage the uncertainties (and be subject to the associated development levy) associated with the outcomes of the GCA process would result in an additional development area of an equivalent marine space or even larger dependent on proximity to a number of different connection nodes on the electricity grid. Due to the existing uncertainty and the fact that the transmission infrastructure is being developed on behalf of the State (i.e., for EirGrid as the TSO/TAO) it would not be fair for projects to pay development levies for the MAC areas associated with various options for transmission infrastructure whilst this uncertainty continues.

These additional costs would ultimately have to be passed to the electricity consumer and is an unnecessary cost burden. We note the different approach used in the UK, whereby for our Dogger Bank South site which was successful in AR4 - there are currently 3 potential cable routes, but these are not included within the lease option fees.

A pragmatic solution to this issue is to ensure that post the GCA process (and critically pre-MAC award/execution), relevant parts of MAC applications (prior to award) - such as a drawing indicating the area of marine space; which is the subject of the consent, should be allowed to be revised to reflect the final outcome of the GCA decision, subject to any such changes being limited to the export cable route only and not the windfarm site area.. This will then ensure there is no liability on project developers to pay development levies on the proposed transmission infrastructure corridors.

It may also be worthwhile clarifying how the positions of offshore substations (largely a transmission asset) ought to be treated and if should be included within the array area or with the transmission corridor.

Q2) Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?

3.1.3 MAC Technical Capability Assessment

Corporate Experience in Delivering an Offshore Wind Farm

RWE concur with the appropriateness of applicants being required to demonstrate experience in the development, construction, and operation/maintenance of an offshore wind farm. Due to the complexity and range of issues that can be encountered during these different phases, we consider that sufficient experience would only be demonstrated if the proposed duration of such experience recognised the typical duration of these phases of offshore wind farm delivery. This would typically be 5 to 7 years for development phase, 2 to 3 years for construction stage and 25 years+ for operational/maintenance stage. To this extent, to have adequate experience it is suggested that the minimum criterion be increased to 36 months at development stage, 24 months at construction stage and 36 months at operational/maintenance stage.

The basis of the recommendation for 36 months at development stage is that the process of securing the necessary licences, procuring and delivering offshore site investigations (geophysical or geotechnical) or even multi-annual bird and marine mammal surveys could take between 24 and 36 months. These are minimum requirements for any development stage project to meaningfully progress a project.

Similarly, during the construction and operational phase of an offshore windfarm project to gauge technical capability in delivering a project, 12 months experience would not provide the exposure to the range and complexity of matters arising during these phases of project delivery.

MAC Applicant's Commitment to the Project

RWE concur with the appropriateness of the criteria as suggested. Inclusion of specific reference to experience in the development and construction of the necessary transmission infrastructure (offshore and onshore) is recommended in the evaluation rather than just reference to '*offshore wind development*' and '*renewable energy development*' which could be interpreted solely to relate to the generation assets. This is particularly important in the context of the policy decision for the transmission assets to the design, constructed, commissioned, and handed over to the TSO/TAO EirGrid.

Delivery Timelines

RWE agree with the inclusion of a requirement to submit an outline of delivery timelines demonstrating the coherence and understanding of the necessary activities and interdependencies to achieve first generation in advance of the 2030 target.

It should be noted however that the template included in **Appendix C Delivery Timelines** of the annex *Technical Assessment Capability Guidelines* is limited to a simple table and does not clarify how or where the Applicant is required to set out their understanding of the critical programme constraints and areas of uncertainty as indicated in **Section 3.1.3 Delivery Timelines** of the main Consultation Document.

Innovation

RWE agree with the inclusion of a requirement to submit an outline of delivery timelines demonstrating the coherence and understanding of the necessary activities and interdependencies to achieve first generation in advance of the 2030 target.

Templates in Appendix A to F

Q3) Do you consider the templates sufficiently clear to understand the specific information being requested in each case?

Yes, we believe these are sufficiently clear.

Q4) 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?

Section 3.1.4 – MAC Financial Capability Assessment

The requirements overall appear reasonable, however there are a few areas which appear contradictory and require clarity. These points are as follows:

- Section 2.3 states that *“the party committed to delivering the ORE Project is deemed the Relevant Person”*. Further clarity is required to what is meant by *“committed”* here.
- Section 2.6 covers the topic of *“Change of Control”*. Does this apply to internal restructurings? Please can you provide a specific definition so applicants can assess the impact of any internal restructurings.
- Section 2.7 refers to a Supporting Entity which can be *“directly or indirectly linked”*. Is there a specific definition of what falls under this term?
- Section 3.2 specifies that *“the Relevant Person must provide information in relation to the viability tests”* which appears to contradict the Section 2.7 which states *“the Supporting Entity(ies) and not the Relevant Person will be subject to the financial viability assessment”*. The intentions of the terms detailed above require clarification and amending, as necessary.
- Furthermore Section 3.3 also suggests that the Relevant Person relying on a Supporting Entity must also provide all information. Again, this seems to remove flexibility of the Supporting Entity providing information on the Relevant Person’s behalf and again requires clarification and subsequent amendment.

Relevant Person Assessment

Q5) Do you consider that the Guidance is sufficiently clear to understand which parties within a consortium need to submit documentation for assessment?

Section 2.8 refers to *“party whose resources are being relied on”* when determining who the Relevant Person. Is this to be interpreted as the party who is funding the project? Or are there further areas to consider? **This needs clarification.**

In addition, it appears that Section 2.7 which covers the topic of the *Supporting Entity* providing the financial viability information conflicts with Section 3.1 which states that the Relevant Person needs to provide information (by widening the definition of what is deemed a consortium member) and then going on to say that the Supporting Entity needs to provide this information. We recommend that the wording is more specific and relates to consortium members whose resources are being relied upon to remove any doubt in who is to prepare the information.

Please also see our earlier comments on Relevant person within our response to question 4 and our comments on page 3 of this response.

Q6) 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?

No - we do not believe there are any aspects within the Supporting Entity Guarantee that would prevent RWE from undertaking our ORE Project and we accept the proposals set out regarding cost recovery.

Financial Assessment criteria

Q7) Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?

We believe the financial assessment criteria as set out appear appropriate, on expectation that our concerns in question 4 have been clarified and that the party that is committed - is the one who is checked only.

Q8) 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?

We believe the metrics appear reasonable as they are.

Q9) 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 criteria included is similar to the requirements that has been experienced in other markets and therefore there should be no reason why these requirements will limit market competition.

Assessment Outcome

Q10) Do you consider that the outcome of the financial viability assessment is adequately clear?

No - we do not. We would seek clarification as to whether there is any communication between the Applicant and the Responsible Authority once the information has been submitted. If there is a mistake/oversight in the information that has been submitted an option to rectify the issue would be preferred.

Q11) 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 guidance appears to be comprehensive, however it is unclear what circumstances could lead to an unsuccessful application and therefore confirmation of these are appropriate.

Other financing arrangements

Q12) Do you consider that the financing arrangements listed in the Guidance are appropriate? Should any other financing arrangements be identified in the Guidance?

No, we don't. The Uses table contained in Appendix F appears far too detailed for this stage of the project. It is unlikely that we will have this level of detail by the time the application is submitted in April. We believe a high level Devex/Capex split would be more reasonable at this stage.

Q13) 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?

We believe that the alternative arrangements outlined are adequate.

General comments on Section 3.2 - Areas where information will be sought from Relevant Projects, but will not be assessed

3.2.1 Stakeholder engagement

We agree with the proposed frequency and believe it is critical that all projects within Phase 1 are provided with a standardized template / response so that all the MAC Applications are assessed fairly and on the same basis.

3.2.2 Grid Connection

Whilst we agree in principle with the approach to be used for the Grid Connection Assessment, although it is currently unclear at what point different projects will start to receive them, given the expected twin track approach to be used to allocation capacity at different connection locations.

We would recommend DECC and CRU confirming to EirGrid that the connection Assessment process will require EirGrid to provide an acknowledgement for the completed application upon its receipt; given the criticality of the timing issues associated with the GCA information which will need to be included in the MAC. This is to ensure a non-distortive approach can be maintained.

Q14) Are there any other public interest considerations which the Department should consider at MAC application stage?

In addition to the expected requirement for projects to provide a brief statement outlining any sustainability, equality or inclusivity practices, we believe it could be beneficial for Applicants to **demonstrate** their relevant experience - this could include the development, funding and administration of community benefit funds under this criterion, given the significant sums that will likely be administered.

Section 3.3 Additional areas for consultation

3.3.1 - Levy Framework

Q15) 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**

As the award of a MAC will be critical for projects seeking to prequalify for the first ORESS auction, it is imperative that the terms relating to the costs and duration of the MAC and associated levy framework apply equally to all Phase 1 projects in order to ensure a competitive, efficient, and fair ORESS1 auction outcome.

Please see also our response to question 1 and the outstanding question regarding the seabed area size associated with the export cable corridor route / s and whether this would also be liable for the proposed Development Levy charge. **This must be confirmed in advance of the MAC application window opening.** In addition, any proposals as to how any transfer of the associated MAC to EirGrid to cover the Offshore Substation Platform and cables would be managed under a separate MAC.

If the cable corridor is included within the total area liable for the Development Levy, it is critical that the MAC application and subsequent award allows the total liable area for the Development Levy to be amended to include the final details due to be included in the Grid Connection Assessment documentation from EirGrid. However, we note this information will not be available at the point the project applies for their MAC during the proposed MAC Application window.

We also ask for clarification on the definition of the Operational Levy (2% gross revenue) – what will be considered gross revenue and how will this be calculated?

Given the financial obligations of the levies: both development and operational – it is important for projects who are awarded a MAC to have a high confidence in the site's characteristics in terms of development consent and build out. Therefore, it is essential to ensure that any subsequent projects in Phase 2, which seek to locate adjacent to, or overlapping Phase 1 projects which have been awarded a MAC, that those Phase 2 projects are required to declare their interest and notify the impacted Phase 1 project.

This is due to the potential displacement impacts on the natural and human environments which could arise from a Phase 2 project being progressed adjacent to a Phase 1 project (such as impacts on bird flight paths, navigation constraints or other co-existence considerations when progressing the design and delivery of the Phase 1 project). This could also impede an applicant's ability to mitigate those effects through impacts on the wind resources (wake effect) cable rating integrity and maintenance (through potentially overlapping cable corridors) and infrastructure spatial separation requirements.

3.3.2 – Application Fees

- Option 1 – no charge
- Option 2 – Charge a handling fee based on the calculated workload in processing and assessing MAC applications.

Q16) 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 recognise that the evaluation of a MAC application is a process which requires time and effort and as such the reasonable costs of the Department should be paid for and therefore have no objection in principle to Option 2 being selected. Given the clear expectation that 5 (and potentially 6) projects which will apply for a Phase 1 MAC, and that the application will be a pass/fail, we believe that such a charge should be proportional to the evaluation effort required. Having regard to the fee structure for the recent Scotwind leasing round (£20,000 per site application) this would be a reasonable charge given the similarities in the assessment criteria and evaluation.

3.3.3 MAC application window

Q17) 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.

As it is currently unclear when the final requirements for the MAC application and the assessment criteria will be issued and what modifications will be made to both having regard to submissions made as part of this consultation, we believe it would be more appropriate to have a 12-week (3 months) window within which to submit the MAC application.

In addition to these general uncertainties, a number of projects (including but not limited to Dublin Array) still do not have a confirmed grid connection location and as such continue to have multiple potential export cable corridor options. This introduces additional complexities for those projects in the MAC application process when compared with other Phase 1 projects. As previously noted, in order to ensure all projects have the same information and certainty on their project prior to the ORESS1 auction and prequalification, it is essential that whilst the Department can and should begin processing the MAC applications following their submission, **MAC award should occur simultaneously for all projects**. Variable application dates lead to potential delays in processing and awarding of MAC applications, as it creates uncertainty for the Department as to when applications will be submitted and therefore having the necessary resources in place and available at the time when required.

3.3.4 – Duration of a MAC

Q18) 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*

No, we do not believe that the proposed 30-year duration for a MAC is appropriate for several reasons:

- a) The asset life for offshore wind projects is now 30-35 years **and increasing**.
- b) As currently drafted, the 30-year MAC duration is intended to cover the consenting, construction and decommissioning periods. This significantly reduces the operational period of the windfarm to less than 20 years.
- c) We do not agree that international experience shows that 30 is a standard lease duration as currently proposed. Whilst there are many countries with a 30-year lease lifespan, those lease lifespans usually commence at the point of COD (i.e., post the consenting and construction phases).

We note that the most recent lease arrangements in the UK (for both AR4 and Scotwind) were for 60 years – **and that period only starts when all key consents have been met**.

3.3.5 Additional Consultation Questions

Q19) Are there any specific aspects of the assessment methodology that you consider requires further clarification?

As per our response to question 1 and in respect to Section 3.3.2 in the consultation, we are concerned at the potential for delays in confirmation of the Grid Connection Assessment and timings for the award of the MAC, if the MAC needs to include details of the export cable route, both in terms of whether alternative routes need to be included and or whether the areas associated with the grid connection corridors will be included in the final calculation of each project's assumed development levies.

