

Sustainable Energy Authority of Ireland  
3 Park Place  
Hatch Street  
Dublin 2

16<sup>th</sup> July 2020

Marine Planning Policy and Development  
Department of Housing, Planning and Local Government  
Newtown Road  
Wexford

Dear Sir/Madam,

I am writing in response to the single submission to Site investigation licence application FS007062 (SEAI SAIPAM Site Investigation for Floating Offshore Wind testing at AMETS Site Mayo) as part of the public consultation process.

It appears from the submission that the application for a Site Investigation foreshore licence is opposed on two grounds: (i) on the basis that the application is not compliant with the High Court judgment in *Ted Kelly v An Bord Pleanála* [2014] IEHC 400 and (ii) in light of the alarming and unprecedented rate of decline in biodiversity identified in the Status of EU Protected Habitats and Species in Ireland Report 2019 and the Report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).

It is unclear from the submission in what respect it is alleged that the application is not compliant with the High Court judgment in *Ted Kelly*. The contention would appear to be that, due to the serious decline in biodiversity both globally and in Ireland, it must follow that there is a *possibility of significant effects* on a European site such as to trigger the obligation for an appropriate assessment in accordance with Article 6(3) of the Habitats Directive.

The submission purports to quote paragraph 26 of the *Ted Kelly* judgment, however the extract in the submission is incomplete. Paragraph 26 of the judgment quotes from the Advocate General's opinion in Case C-258/11 *Sweetman*, paras 47-49. The submission omits paragraphs 48 – 49, thereby placing paragraph 47 out of context. For the sake of clarity, paragraphs 47 – 49 are quoted in full as follows:

47. It follows that the *possibility* of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to *establish* such an effect; it is, as Ireland observes, merely necessary to determine that there *may be* such an effect.

48. The requirement that the effect in question be 'significant' exists in order to lay down a *de minimis* threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having *any* effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.

49. The threshold at the first stage of Article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken on the implications of the plan or project for the conservation objectives of the site [. . . ]”

The finding of the High Court in the *Ted Kelly* case, and in subsequent High Court judgments in *Eoin Kelly v An Bord Pleanála and Others*, *Sweetman v An Bord Pleanála and IGP Solar*, *Elaine Kelly Dunne v Offaly County Council*, and *Uí Mhuirín v Minister for Housing Planning and Local Government and Others* is that the obligation under Article 6(3) of the Habitats Directive is to exclude at the screening stage, any *likely significant* effects on the European site concerned, and to do so without reliance on any measures intended to avoid or reduce such likely significant effects. Therefore, whilst the trigger for carrying out a stage 2 appropriate assessment is very light, there is a *de minimis* threshold which corresponds to the concept of ‘significant’ or ‘appreciable’ effect on the European site.

The Appropriate Assessment (AA) Screening document submitted as part of Applications Documents (available here <https://www.housing.gov.ie/planning/foreshore/applications/seai-saipam-site-investigation-floating-offshore-wind-testing-amets>), provides the Minister for Housing, Planning and Local Government with the necessary scientific evidence on which to reach a determination that there are no likely significant effects on the conservation objectives of any European site due to the localised nature and short duration of the site investigation activities, the size of the test areas and their location in open offshore waters.

See Chapter 12 ‘Finding of No Significant Impacts’ conclusion “**There will be no impact on any Natura 2000 site**” and ‘Screening Statement’ conclusion that “**the proposed project will have no impact** on the features of interests or conservation objectives of any Natura 2000 site/s, Annex I habitats or Annex II species and **that further Appropriate Assessment is not required**”.

I hope you find this response in order.

Yours faithfully

[REDACTED]  
[REDACTED] – Offshore Renewables  
Sustainable Energy Authority of Ireland

+353 (0) [REDACTED]  
[REDACTED]@seai.ie  
[www.seai.ie](http://www.seai.ie)