

Prescribed Bodies Consultation

Nature Conservation – NPWS Development Applications Unit

The survey works around the proposed Sea Stacks Offshore Wind farm, off Counties Dublin and Wicklow, have been evaluated by a Natura Impact Statement and other documents. The conclusion of the Article 6(3) supporting document is that the proposed works are unlikely to pose a significant likely risk to nature conservation interests in the vicinity. This is supported in relation to marine Annex I habitats.

The “Risk Assessment for Annex IV Species” has indicated that there would be negligible impacts on ecological receivers from the proposed survey works. It does note that following the precautionary principle that relevant sections of “Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters” as outlined in Section 7 of the assessment document would be implemented. National Parks & Wildlife Service concur with this approach and requests that this provision be added as a condition of consent.

NPWS Underwater Archaeology Unit

The Department refers to your notification in relation to the above Investigative Foreshore Licence Application (Offshore Renewable Energy) by ESB Wind Development Ltd. The application and supporting documents have been reviewed by the Underwater Archaeology Unit of the National Monuments Service of the Department of Housing, Local Government and Heritage. This Department is of the view that the submitted documents do not contain adequate information to allow for an informed opinion on whether the proposed mitigation measures offer sufficient amelioration of the potential impact(s) of the proposed geotechnical investigations on known and potential underwater and terrestrial archaeological heritage.

It is not clear to this Department that due consideration has been given to the high number of historically-documented losses of ships which are recorded as having been wrecked in the development area but have yet to be located. In this regard, the Wreck Inventory of Ireland Database includes numerous entries for the coastal waters off Dublin, many of which are specifically noted as having been lost within the application area. The wrecks that are mapped in the submitted ‘Sea Stacks Offshore Wind – Site Investigation Accompanying Report’ should be considered a minimum number and there are likely to be many additional examples within the application area. All wrecks over 100-years old are protected under the 1987 and 1994 (Amendment) Acts of the National Monuments Acts. Many of these may, in turn, require the institution of exclusion zones to facilitate their protection in the course of the proposed works. It is essential therefore that the data from the proposed geophysical surveys is assessed in advance of geotechnical investigations being undertaken by a suitably qualified and experienced underwater archaeologist and the outcome of this furnished, with recommendations for mitigation measures, as part of an Underwater Archaeological Impact Assessment (see below) to the National Monuments Service. Similarly, the proposed landfall and shoreline areas included in the application area contain extensive intertidal and terrestrial archaeological heritage that requires inclusion in an Underwater Archaeological Impact Assessment. Given the scale of archaeological interventions required for this, and all ORE

projects, this Department recommends that a Project Archaeologist is taken on to advise on archaeological matters going forward.

In light of the above it is recommended that the Foreshore Unit request the following as CONDITIONS of any grant of a foreshore licence:

- All geophysical survey activities shall be licenced by the Department of Housing, Local Government and Heritage under the National Monuments Acts 1930-2014 and all survey methodologies shall be optimized, as advised by a suitably qualified and experienced archaeologist, to enable the capturing of archaeological data. Should any dive surveys be required in connection with proposed geophysical surveys and archaeological surveys these shall also be licenced under the Acts and said licences shall be obtained by a suitably qualified archaeologist with underwater/marine experience. Any dive survey shall be accompanied by a hand-held detection survey which shall also be licenced under the National Monuments Acts 1930-2014.
- An Underwater Archaeological Impact Assessment of all proposed geotechnical works, including secondary impacts such as machinery movements, shall be prepared by a suitably qualified archaeologist with maritime and underwater experience. All geophysical survey data sets available from previous work for the proposed development area and all newly obtained geophysical survey data sets shall be utilised by the archaeologist and shall be incorporated into the assessment report. The assessment shall also include a desk study and a licenced wade/intertidal survey and licenced metal detection survey (where appropriate) of the intertidal area and a walkover of the areas within the application area. The overall results of the assessment shall be compiled into a report and forwarded to the National Monuments Service for review and comment in advance of the geotechnical works taking place. The assessment shall also include proposals for the protection of all documented potential and confirmed wrecks by the institution of a buffer/exclusion area around the sites during all works and for buffer/exclusion zones around all identified and potential areas of archaeological potential. Similarly, the report shall include proposals for mitigation of potential impacts on archaeology, such as avoidance, dive surveys, monitoring or test-excavations. No geotechnical works shall be undertaken in advance of receipt of observations on the report from the National Monuments Service.
- All areas of the seabed where SI works will take place should be subject to a high resolution geophysical survey (as advised by a suitably qualified and experienced archaeologist) in advance of works taking place with the results assessed by the archaeologist. Where archaeological assessment of geophysical data is not possible, or data is not available or of sufficient resolution/standard and an impact on the seafloor/inter tidal zone is expected, it is recommended that a dive/ intertidal survey is carried out accompanied by a metal detection survey. Both the dive survey and the metal detection survey shall be licenced under the National Monuments acts 1930-2014.
- The results of all geotechnical works, including core samples and other geotechnical samples, shall be made available for assessment to the consultant archaeologist for review. Such assessment shall seek to identify any cultural material contained within the samples and evidence for palaeo-environments. A follow up Archaeological Report detailing the results of the assessment of geotechnical samples shall be forwarded to the National Monuments Service for review and consideration and to inform any future Foreshore/Planning application for the proposed offshore windfarm.

- Geophysical surveys of protected wreck sites outside the 12 mile limit should also be licenced under the National Monuments Acts 1930-2004.

Commissioners of Irish Lights

Irish Lights notes from the application that there will be a number of Aids to Navigation (AtoN) deployed: wave buoys, Lidar buoys and the possibility of guard buoys for the acoustic monitoring equipment. Before any aid to navigation can be established, altered or disestablished consent in the form of Statutory Sanction under the Merchant Shipping Act must be obtained from the Commissioners of Irish Lights. The aid must be coloured and marked as per IALA (International Association of Marine Aids to Navigation and Lighthouse Authorities) standards. We note from document number QS-000307-01-R460-002 Site Investigation – Schedule of works that the word ‘amber’ is used. We would advise when applying for Statutory Sanction that this be replaced with ‘yellow’ as per the IALA guidelines.

The foreshore license sought is in Dublin Bay which is a high traffic density area and overlaps the Dublin Bay Traffic Separation Schemes (TSS). Irish Lights therefore advise consultation with local authorities and the Marine Survey Office (MSO).

Irish Lights note under document number QS-000307-01-R460-002 Site Investigation – Schedule of works, section ‘3.3.4 Shipping and Navigation Infrastructure’ that a number of buoys and the Kish Lighthouse are located within the foreshore License area. We understand the ESB ‘will engage and consult with the Commissioner of Irish Lights and harbourmasters as appropriate prior to undertaking survey works to coordinate survey activities adjacent to these features and associated marine traffic.’ We request that Irish Lights is kept fully informed of any activities near navigational aids.

Irish Lights note that some aspects of the geophysical / hydrographic surveying may be undertaken using unmanned surface vehicles (USVs) and / or autonomous surface vehicles (ASVs). We therefore also advise consultation with local authorities and the MSO in relation to this as the use of unmanned surface vehicles (USVs) and/or autonomous surface vehicles (ASVs) can only be performed by licensed operators and Radio Navigational Warnings (RNWs) will need to be issued.

Inland Fisheries Ireland

ESB have applied for a Foreshore Licence under Section 3 of the Foreshore Act 1933, as amended, to carry out site investigation works as part of the preliminary assessment of the suitability of Sea Stacks Offshore Wind for a fixed foundation offshore wind development. The overall area the subject of this Foreshore Licence application is 305 km².

Surveys include:

Geophysical surveys proposed include:

- Multibeam Echosounder (MBES)
- Side Scan Sonar (SSS)
- Sub-Bottom Profiling (SBP) / Ultra High Resolution Seismic (UHRS)
- Magnetometer Survey

Geotechnical surveys proposed include:

- Boreholes
- Cone Penetration Testing (CPT)
- Vibro Core (VC) / Grab Sampling
- Down the Hole testing
- Trial Pits

Oceanographic & Metocean surveys proposed include:

- Equipment Deployment & Recovery from a vessel
- Acoustic Doppler Current Profiler (ADCP) to measure ocean currents
- Wave Buoys
- Floating Lidar Buoy to measure wind speed at height

Environmental/Ecological & Archaeological Surveys proposed include:

- Benthic Sampling
- Static Acoustic monitoring
- Archaeological Surveys

Comment

IFI would point out that the mitigation measures and guidance of NPWS in regard to marine mammals are not transferrable to fish species. The fish remain invisible to any shore- or boat-based observer. Mitigation measures should aim to reduce the sound generated, in intensity and duration. The use of soft-start and ramp-up procedures for any sound-generating surveys undertaken – both on a day-to-day basis and on re-start after any stoppages within any day should be undertaken.

This measure should be a condition of the foreshore licence. The comments of IFI in this regard relate to fish species of conservation significance and of leisure angling significance all of which constitute part of IFI's brief.

It is recommended to contact the Sea Fisheries Protection Agency (SFPA) to seek advice regarding the timing of survey works to avoid clashing with spawning periods of commercial fish in the area. This will reduce any potential for noise damage to larval and juvenile life stages of fish when they are more susceptible to noise damage than adults.

There is no mention of any diadromous species within the NIS document attached just a short section in the supplementary report in relation to the Annex II species and their respective SAC areas however the River Liffey is known to have European eel, Sea Lamprey, River Lamprey, Salmon and Sea trout. These species will be passing through the area of investigation and therefore there is a risk of them being affected. The timings of the work should be cognisant of the migratory window of diadromous species.

Marine Institute

ESB Wind Development Ltd submitted a foreshore application for a series of site investigation works to be carried out in a defined area off the Dublin and Wicklow coasts and along cable route corridors towards the coastline to sections of the coast at Poolbeg and Dollymount Strand, specifically. The application is for permission to carry out ecological, geophysical and geotechnical surveys over the proposed licence application and cable route areas.

The overall aim of the site investigations is to collect the necessary data and information required to inform the engineering and detailed design of a windfarm and cable route ashore within the foreshore licence application area. It is noted the installation of a windfarm and associated infrastructure in the area in the future would be the subject of a separate Foreshore Lease / Licence application and is not the subject of this current application.

It is proposed that the site investigations will include:

- **Geophysical Survey** - involving the use of multibeam echo sounder, sidescan sonar, Sub-Bottom Profiling (SBP) / Ultra High Resolution Seismic (UHRS), magnetometer,
- **Geotechnical survey** – involving cone penetration testing (n=113) as well as vibrocore and gravity coring, boreholes and the collection of grab samples for sediment and faunal analysis. The exact location, quantity and type of geotechnical samples collected would be subject to the results of the geophysical survey. The following indicative numbers, may be collected:
 - Up to 60 vibrocore and gravity core samples
 - Up to 40 seabed cone penetration tests,
 - Up to 17 boreholes
 - Up to 10 trial pits
- **Environmental Survey** – It is anticipated that benthic grab samples (0.1m³) will be collected, in triplicate, at 78 sampling sites in the survey area. The exact location would be subject to the results of the geophysical survey. Video or still photographs will also be collected. Other ecological studies will include Bird, fisheries and marine mammal (using SAMs) surveys.
- **Metocean** - It is also intended to deploy of wind, wave and current measuring devices (LIDAR buoy, Wave Buoys and ADCPs) in the survey area

The proposed site investigation methods are relatively standard and have been used in similar investigations in Irish waters and internationally.

It is intended that the proposed survey works would be phased over a period of 3 years following award of licence and specific survey scope will range from 2 months to 3 years in duration.

There are no licenced aquaculture sites within the proposed site investigation area on the Foreshore and therefore impacts on aquaculture are not considered likely.

There is commercial fishing activity within the proposed site investigation area on the Foreshore and therefore some interaction with fishing activity may occur. Notwithstanding this, it is noted that the applicant has appointed a Fisheries Liaison Officer who will engage with the fishing interests in the area during investigations.

The NIS submitted identifies a number of risks to conservation features (e.g., marine mammals) likely to result from the proposed activity. As mitigation, a number of actions are suggested that should reduce the risk. Foremost among these is the use of marine mammal observers (MMO) during operations including a 'soft start' protocol.

The MI is satisfied that such measures will mitigate any risk to marine mammals in the immediate area during the site investigations. However, it is advised that DHLGH identify any similar geophysical/geotechnical surveys that might be carried out along the eastern seaboard and ensure that they not coincide with this survey. Furthermore, in light of the intensive nature of the methodologies proposed, it would be important that DHLGH consider the cumulative effects of

these activities in light of the location and timing of similar activities along the East Coast and consider the likely longer term effects on marine mammals and biota, if any?

Marine Survey Office

After careful consideration the Marine Survey Office has no objection to the above referenced application from a navigational safety perspective.

However the following points shall be of note;

1. The Licensee shall, through consultation and agreement with the Department of Transport, Marine Survey Office and Commissioners of Irish Lights, arrange for the publication of a Marine Notice through the Maritime Safety Policy Division. The frequency and promulgation of Navtex and radio broadcast warnings shall be agreed in advance with the Irish Coast Guard for the duration of the license period.
2. The marking and lighting of moored instruments shall be carried out in consultation with the Marine Survey Office and Commissioners of Irish Lights. Lighting and marking shall be compliant with International Association of Aids to Navigation (IALA) requirements. Information regarding the position of any markings which create a hazard to navigation shall be promulgated to the mariner via publication of a marine notice and all available means appropriate.
3. The Licensee shall ensure all appropriate measures are taken for the duration of any on-site activity to ensure the safety of navigation is maintained. Any hazard to safe navigation shall be easily identifiable to all mariners operating within or in the vicinity of the license area.

Marine Advisor – Engineering

Re: Foreshore Licence application for Offshore Renewable Energy Site Investigation off the South Dublin and North Wicklow Coast. FS007134

Applicant: ESB Wind Development Limited (a wholly owned subsidiary of ESB).

Project Overview

This application for a foreshore licence is made by ESB Wind Development Limited, a wholly owned subsidiary of ESB. ESB plans to develop offshore windfarms around the coast of Ireland in support of national and European targets for renewable electricity generation and de-carbonisation of our society.

ESB has identified a location for a potential fixed foundation offshore wind farm at a site known as 'Sea Stacks Offshore Wind' located to the east of South Dublin and North Wicklow, at a distance of approximately 12 km from shore. This Foreshore licence application relates to proposed Site Investigation (SI) works only. These works are temporary and short term in nature. The ultimate project, the wind farm itself, will be the subject of a full consent application in due course and is outside the scope of this application. This initial stage in the overall development process is focussed on the undertaking of SI works only in order to inform ongoing feasibility assessments for the development.

Brief description of Site Investigation works

The objectives of the works proposed under this Foreshore Licence application are as follows:

- . To gather further information on seabed and sub-seabed information.
- . To gather sufficient geotechnical data to allow the characterisation of the sub-seabed strata.
- . To collect accurate wind and metocean (wave, current, tide and water levels) information.
- . To provide the project team with baseline information on the environmental conditions at the site, including marine ecology, bird, mammals and benthos.
- . To provide the applicants project team with information on the archaeological conditions at the site.

In order to meet the above objectives various SI works and monitoring device deployments are required, for which ESB require a Foreshore Licence. In summary these include the following;

Geophysical surveys proposed include:

- . Multibeam Echosounder (MBES)
- . Side Scan Sonar (SSS)
- . Sub-Bottom Profiling (SBP) / Ultra High Resolution Seismic (UHRs)
- . Magnetometer Survey

Geotechnical surveys proposed include:

- . Boreholes
- . Cone Penetration Testing (CPT)
- . Vibro Core (VC) / Grab Sampling
- . Down the Hole testing
- . Trial Pits

Oceanographic & Metocean surveys proposed include:

- . Equipment Deployment & Recovery from a vessel
- . Acoustic Doppler Current Profiler (ADCP) to measure ocean currents
- . Wave Buoys
- . Floating Lidar Buoy to measure wind speed at height

Environmental/Ecological & Archaeological Surveys proposed include:

- . Benthic Sampling
- . Static Acoustic monitoring
- . Archaeological Surveys

Further information on techniques and equipment of the SI are included in the Schedule of Works

(Document No.: QS-000307-01-R460-00 dated Nov 2021) which accompanies the application. The duration is anticipated to be in the order of three years from the granting of a Foreshore Licence. No interaction with other foreshore users is anticipated. ESB Engineering & Major Projects on behalf of the applicant are responsible for designing the works in accordance with the relevant standards and codes.

This application constitutes a Foreshore Licence application for the undertaking of SI activities only.

These activities are required in order to inform the overall project feasibility, conditions at site and along the cable route, the various assessments required to progress the project and the development of the project. This application does not comprise the ultimate consent application for the overall wind farm development which will be the subject of a future application to the appropriate authorities.

Coastal Processes

The proposed site investigation works will have no impact on the existing coastal processes.

Estate Management

All foreshore is presumed state owned unless proven otherwise. In this case there are no known established claims of private ownership of the foreshore at this location. Subject to no claims of private ownership arising out of the application and public consultation process, the foreshore the subject of this application is state owned. Section 3 of the Foreshore Act applies for the proposed site investigation. The licence area for the proposed works is shown outlined on the following map submitted by the applicant:

. Map No: QS-000307-01-D460-002-001-001 Rev 01 Date 11/11/2021 and entitled 'Foreshore Licence Map'

The proposed area of foreshore associated with the works is 30461.9Ha. The site investigation will have no permanent impact on other legitimate users or existing access arrangements. The applicant shall use that part of the foreshore, the subject matter of the application for the purposes as outlined in the application and for no other purposes whatsoever. Where relevant the foreshore and adjacent seashore area shall be restored to its natural state on completion of the works to the satisfaction of the Department of Housing, Local Government and Heritage.

Public Interest

Section 2 and 3 of the 1933 Foreshore Act, as amended, states that a lease or licence of state foreshore may be granted "If, in the opinion of the Minister, it is in the public interest". As foreshore is a finite and valuable national resource and public amenity, it is important that each plan and project is fully assessed to ensure, that if consented to, it is a sustainable and proper use of that finite and valuable resource. Having considered and assessed the relevant issues associated with the proposed site investigation, while taking note that the state owned foreshore is finite resource which must be utilised sustainably, I am satisfied that the proposed works are in the Public Interest.

National Marine Planning Framework (NMPF)

The NMPF is a national plan for Ireland's marine area including the Foreshore. It sets out, over a 20-year horizon, how we want to use, protect and enjoy our marine area. The NMPF sits at the top of the hierarchy of plans and sectoral policies for the marine area and provides a coherent framework in which those sectoral policies and objectives can be realised. All decisions on individual

applications determined under the Foreshore Act, must secure and be consistent with the objectives of the plan, similar to the way that terrestrial plans form part of the decision-making tool-kit in the on-land planning process. NMPF objectives are supported by specific policies that articulate factors that can form part of objective consideration.

Having reviewed and assessed the information on file for this application to conduct an ORE Site Investigation against the objectives of the NMPF, I am satisfied the proposed works do not act significantly against any objective within the NMPF. Furthermore, the project is aligned and secures key sectoral/activity objectives including Energy – Offshore Renewable (Policy 2). Accordingly, I am satisfied that the ORE Site Investigation is aligned with and secures the objectives set out in the NMPF.

Conclusion/Recommendation

I have no objection to the granting of a Foreshore Licence subject to the following conditions:

1. The Licensee shall use that part of the foreshore, the subject matter of this lease for the purposes as outlined in the application and for no other purposes whatsoever.
2. The works shall be located as outlined on Map No: QS-000307-01-D460-002-001-001 Rev 01 Date 11/11/2021 and entitled 'Foreshore Licence Map'
3. The Licensee shall notify the Department of Housing, Local Government and Heritage at least 14 days in advance of the commencement of any works on the foreshore.
4. During the course of the works the Licensee shall ensure that existing public access arrangements are maintained, where possible, and all necessary precautions are put in place to protect the public in accordance with relevant Health and Safety Legislation.
5. On completion of the works, the surrounding foreshore shall be returned to its natural state to the satisfaction of the Department of Housing, Local Government and Heritage.
6. The Licensee shall submit, to the Department, the 'as deployed' location for all monitoring devices.
7. At the end of each phase and/or calendar year, the Licensee shall inform the Department of the work completed to date and the works planned for the coming year.
8. The Licensee shall ensure that contractors, and their subcontractors, are made aware of all conditions and project specific requirements and they are required to have briefings on these to ensure all parties are fully aware of these requirements

Department of Agriculture, Food and the Marine

This Department has received a response from the SFPA, who have no objections to this application.

Please now consider this email as the final response from the Dept of Agriculture Food and the Marine.

Our Ref: FW.4.54 ESB Wind Development Ltd – Site Investigation licence at “ Sea Stacks Off Wind” situated off Dublin & Wicklow coasts

I refer to your request for comments from this Department regarding this site investigation licence for ESB Wind Development Ltd.

Please see attached email expressing BIM's concerns and note the following from Marine Engineering Division (MED).

- MED noted that there are increasing numbers of proposals for the Irish Sea and that as with those applications, appropriate monitoring and measures and best practice must be followed during the to ensure that the proposed survey works do not cause any direct or cumulative negative impacts on FHC access and navigation, environmental sites, aquaculture and fishery harbour operations. Appropriate liaison and planning must be undertaken to ensure that there is not conflict between the proposal as outlined and existing foreshore permissions and applications

BIM

It is BIM's view that it is likely this this application (FW. 4.54) would have an impact on fisheries in the proposed location of the site investigations.

As noted in the accompanying report to the application, there is a valuable whelk fishery, mainly in the area from the Kish/Bray bank down to the Codling Bank which is targeted by both Co. Wicklow based boats as well as from Co. Dublin. In addition, several vessels from Dun Laoghaire target crab and lobster in the proposed site investigation area, particularly around the Muglins east of Dalkey Island.

Looking at the survey techniques to be employed fishers will in particular be concerned about Sub-Bottom Profiling (SBP) / Ultra High Resolution Seismic (UHRS), which they consider to have a negative impact in driving shellfish from the area and reducing substantially their catch rates. Also mentioned are various geophysical survey techniques including bore holes etc. that can have a similar impact.

In summary the concerns of fishers comprise;

- Disruption to their fishing during the surveys
- Displacement of fishing effort in areas not being fished on top of other fishers during the surveys
- Impact on catch rates and future incomes due to the surveys techniques mentioned above, that can be not just short term
- Fear of the eventual outcome if the project goes ahead due to the impacts of the construction period and potential long-term exclusions from fishing areas during the operation of the windfarm.

The accompanying report notes that the applicant has engaged a dedicated FLO for this project and it is vitally important that fishers need to be communicated with fully and that ever effort should be made to minimise the impacts. BIM also believe that the investigation works should address the concerns of fishers to study before, during and after the surveys take place for an agreed period the impact on catch rates of the commercial fisheries.

Marine Advisor - Environment

These are my Prescribed Bodies Consultation for the licence application for site investigation works off the coasts of counties Dublin and Wicklow.

The site investigation areas occurs within a number of European Sites namely, South Dublin Bay SAC [IE000210], North Dublin Bay SAC [IE000206], Rockabill to Dalkey SAC [IE003000], South Dublin Bay & River Tolka Estuary SPA [IE004024] and North Bull Island SPA [IE004006]. It also lies in close proximity to the Codling Fault Zone SAC [IE003015]. It should also be noted that Dublin Bay is also a UNESCO Biosphere Reserve.

The Special Protection Areas within Dublin Bay support nationally and internationally important populations of a number of species with the Special Areas of Conservation supporting a variety of habitats to support these. Rockabill to Dalkey Island SAC is designated for the Annex II species Harbour Porpoise and the Annex I habitat Reefs, one of the few examples of this habitat on the east coast of Ireland. It should be noted that the site investigation area lies in close proximity to the Codling Fault Zone SAC [IE003015] which is the only site designated for the Annex I habitat Submarine structures made by leaking gases. This is a habitat which is extremely vulnerable to bottom contact gear.

Assessment Process

The Minister for Housing, Local Government and Heritage, is responsible for carrying out environmental screening and any environmental assessments determined as being required following screening, in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**) and Directive 2009/147/EC (**Birds Directive**), in respect of applications under the The Foreshore Act 1933, as amended.

Habitats Directive

The Appropriate Assessment process (AA) is an assessment of the potential for adverse or negative effects of a plan or project, in combination with other plans or projects, on the conservation objectives of a European Site (Natura 2000 site). The focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives.

Article 6(3) and 6(4) of the **Habitats Directive** place strict legal obligations on Member States to regulate the conditions under which development that has the potential to impact on European Sites can be proceed. It requires that an Appropriate Assessment be carried out of plans or projects, not directly connected with or necessary to the management of a site as a European Site, but which are likely to have a significant effect thereon, either individually or in combination with other plans or projects. An AA Screening assessment is carried out to determine whether a plan or project is likely to have a significant effect on a European Site.

☐ Article 6.3 states that: *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*

☐ Article 6.4 states: *“if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member*

State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”

In giving effect to the above as a matter of Irish law, the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows:-

Regulation 42(1) of the Birds and Natural Habitats Regulations states that: “A screening for *Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site*”.

Regulation 42(2) provides that: “A public authority shall carry out screening for *Appropriate Assessment under paragraph (1) before consenting for a plan or project is given, or a decision to undertake or adopt a plan or project is taken*”.

The Birds and Natural Habitats Regulations further provide as follows at Regulation 42 (6) and 42 (7):-

6. The public authority shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

7. The public authority shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

Furthermore, under section 42A (13) of S.I. No. 293 of 2021 an Appropriate Assessment, including the specified public consultation, must be carried out before the public authority makes a decision to undertake or adopt the proposed plan or project.

Risk Assessment for Annex IV Species

Article 12 of the Habitats Directive (92/43/EEC) affords strict protection to species listed in Annex IV of the Directive wherever they occur. Outside of designated Natura 2000 sites, the waters around Ireland’s coast are a suitable habitat for a number of Annex IV species. Where necessary a Risk Assessment for adverse effects of the proposed works on these species must be undertaken and a report produced.

The purpose of the Risk Assessment is to examine the possibility that the proposed project either individually or in combination with other plans and projects, may result in the deliberate disturbance

or destruction of any of the species listed in Annex IV which may be present in the works area. The Risk Assessment should take into account the status (e.g. as indicated in the latest Article 17 reporting for Ireland, NPWS 2019) and sensitivities of relevant Annex IV species to potential impacts associated with the proposed project.

The Risk Assessment for Annex IV Species should be precise, with definite findings, mitigation and conclusions removing all reasonable scientific doubt as to the effects of the proposed project on any Annex IV species. This assessment is separate to that undertaken under Article 6.3.

Independent Environmental Consultants (IEC)

Owing to the scale and complexity of the environmental assessment required, and taking account of the available resources within the Department, I recommend that Foreshore Section of DHLGH engage a suitable qualified IEC. The IEC must conduct an independent assessment of the information provided by the Applicant, having regard to the Habitats Directive, the Birds Directive, the Birds and Natural Habitats Regulations, the EIA Directive, Non-statutory Environmental Reports and relevant jurisprudence of the EU and Irish courts.

The IEC shall ensure that the Minister has all the environmental assessments required to allow them to make decisions on applications under The Foreshore Act 1933, as amended in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**), Directive 2009/147/EC (**Birds Directive**) and Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**).

Conclusion/Recommendation

In principle I have no objections to this application.

On completion of the Second Consultation and the work of the IEC, I will furnish my final report with determinations, which may include any case specific conditions will follow having regard to the information obtained during public partici