



11 April 2023

Foreshore Unit  
Department of Housing, Local Government and Heritage  
Newtown Road,  
Co. Wexford

**Re: Fuinneamh Sceirde Teoranta: Foreshore Licence Application Numbers FS007161 and FS007543**

Dear Sirs

We refer to the above foreshore licence applications.

The Minister invited the public to make submissions and observations on the foreshore licence applications, under Section 19 of the Foreshore Act, 1933 (as amended) and Article 42 of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended).

As a result of that public consultation process, the Minister received 63 submissions and observations (31 for FS007161 and 32 for FS007543) from a number of local fishermen, local residents, Cumann Iascairi Oileáin Árann, Wild Ireland Defence CLG, the Irish Whale and Dolphin Group, the Galway and Aran Fisherman's Co-operative Ltd, Aran Islands Seafoods, University of Galway / Mace Head, Galway Bay Inshore Fishermen's Association, Breizon Ltd and the Iascairi Sceirde fishing group. The Minister also received 11 responses (for each application) from prescribed bodies (Department of the Housing, Local Government and Heritage, Marine Institute, Irish Lights, Inland Fisheries Ireland, Sea Fisheries Protection Authority, Underwater Archaeology Unit, National Parks and Wildlife Service, Marine Survey Office, Department of Agriculture, Food and the Marine, Department of Agriculture, Food and the Marine National Seafood Centre Clonakilty). No objection was raised to the foreshore licence by any of these prescribed bodies.

We now **enclose** a table, which sets out the Applicant's responses to each of the issues raised in the submissions. However, in summary, these submissions (and the Applicant's responses) can, in our view, be broadly grouped into three categories:

**1. Submissions raised by local fisherman**

The Applicant has addressed these submissions on an issue by issue basis within the spreadsheet.

In summary, the largest proportion of public consultation comments come from, and are in relation to, impacts on the fishing industry and the fish/shellfish species that are the focus of the fishing industry. The Applicant can demonstrate through its supporting reports that there

will be no likely significant effect on fish and shellfish species (or any adverse impact on any European Sites for which fish or shellfish species are qualifying interests) or on commercial fishing. These conclusions were reached on the basis of the relatively small footprint, the temporary nature of the site investigation activities and the lack of sensitivity to underwater noise from key species such as lobster and crab.

The Applicant will consult with local fishermen to develop and implement, where possible, a survey programme which minimises the risk of any potential losses through effective planning and coordination of the survey activities.

## **2. Submissions relating to the potential significant effects of the offshore wind farm project**

A large proportion of the public consultation comments made reference to potential impacts that relate to the construction and operation of a wind farm. Many comments were made in relation to impacts from cable installation, electromagnetic frequencies from cables and visual disturbance from turbines. The Applicant has addressed these submissions on an issue by issue basis within the spreadsheet.

In summary, the foreshore licences which have been applied for are for site investigations. They do not form part of the project. Rather, they will inform the environmental assessment reports for the project. The offshore wind farm project will be the subject of an application for planning permission, which will be accompanied by an Environmental Impact Assessment Report, Appropriate Assessment Screening Report and / or Natura Impact Statement. The matters raised in these submissions are therefore beyond the scope of, and not relevant to, the applications for foreshore licences. In having regard to these submissions, we would request that the Minister dismiss them on this basis.

## **3. Submissions raising legal issues**

We have addressed also these submissions on an issue by issue basis within the spreadsheet. In summary, the issues raised are as follows:

### *Public consultation for Appropriate Assessment Screening*

Allegations were made that the Appropriate Assessment Screening process ought to have been subject to public consultation. We note that public consultation is being carried out by the Minister in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) before he makes his stage 2 Appropriate Assessment determination.

### *Failure to comply with relevant legislation*

Generic and unspecified allegations were made that the Application had not complied with national and European legislation and in particular, the Habitats and Birds Directives, the Environmental Impact Assessment Directive, Strategic Environmental Assessment Directive and Maritime Spatial Planning Directive, the Foreshore Acts and the Planning and Development Acts and Regulations. While it is not possible to substantively engage with this type of allegation, we note the following:

The foreshore licence applications were prepared in compliance with the Foreshore Acts, Habitats and Birds Directives and Environmental Impact Assessment Directive.

An Appropriate Assessment Screening Report was prepared, and it concluded that “*the potential for likely significant effect cannot be excluded*” in respect of certain, named SACs, which would then “*be taken forward to a Stage 2 Appropriate Assessment*”.

A Natura Impact Statement was therefore also prepared, which concluded, “*in view of best scientific knowledge...the Sceirde Rocks Offshore Wind Farm site investigation activities will have no adverse effect (alone or in-combination with another plan or project) on the integrity of any European Site, having regard to their conservation objectives.*”

The surveys are an activity, not a project of a class that requires Environmental Impact Assessment. A full Environmental Impact Assessment Report will be submitted for the windfarm project in due course. The surveys do not form part of an EIA project, rather they are surveys to inform the preparation of the Environmental Impact Assessment Report for the windfarm project. This is a fundamental misunderstanding of the Environmental Impact Assessment Directive and caselaw. For completeness, an Environmental Impact Assessment Screening Report was prepared and it was concluded that Environmental Impact Assessment could be screened out on the basis that the site investigations:

- Do not fall under the descriptions of activities included within Annex I or Annex II of the Directive; and
- Are of such a nature, scale and location that there are no foreseeable significant effects on the environment arising from the proposed activities.

The Strategic Environmental Assessment Directive is not engaged as this is an activity, not a plan or programme. The Maritime Spatial Planning Directive is similarly not engaged here as it is relevant only to the proposed offshore windfarm and not the site investigations the subject of the within application for foreshore licences for site investigations. The Planning and Development Acts 2000 - 2022 and Planning and Development Regulations 2001 - 2022 are not applicable to any application for a Foreshore Licence for site investigations made under the Foreshore Acts. No onshore works are involved.

#### European and Irish case law

A number of decisions of the Court of Justice of the European Union, as well as a decision of the Irish High Court, were listed, with no context or detail given as to the basis upon which the submission sought to rely on those cases, or setting out why the submission considered them to be of relevance. The Applicant has endeavoured to respond to each of those cases, and would submit that many of them engage with issues which are not relevant to the subject matter of the foreshore licence application – i.e. an application for site investigations, not a windfarm project.

The key decision referenced is that of *Kelly (Ted) v An Bord Pleanála*, which confirms that the Minister must take the following steps in carrying out his Appropriate Assessment:

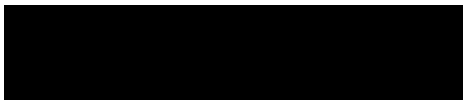
- (i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.
- (ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.
- (iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects.

For simplicity and the assistance of the Minister in undertaking his Appropriate Assessment, we also **enclose** refreshed Natura Impact Statements (one NIS for FS007161 and one NIS for FS007543). This has been refreshed to reflect the decision of the Minister to bring forward to Stage 2 Appropriate Assessment additional sites and species which were not considered to have a likely significant effect by the Applicant in its Appropriate Assessment Screening Report, sites which were outside the Zone of Influence identified by the Applicant in its Appropriate Assessment Screening Report in respect of the harbour porpoise only, and a small number of additional projects identified by the Minister for the purposes of the in combination assessment. We have provided this so that the Minister may have regard to it (and not the prior Natura Impact Statement submitted). This is an elaboration on the information provided in the original Natura Impact Statement and Appropriate Assessment Screening Report, not new and significant information.

Following an examination, analysis and evaluation of these sites and species, using the same best scientific evidence relied upon in our Appropriate Assessment Screening Report and Natura Impact Statement, our overall conclusion that there will be no adverse impact on the integrity of a European Site remains unchanged.

We look forward to receiving the decision of the Department on our applications.

Yours faithfully



Development Manager

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