

## Making Irish Offshore Renewables Happen

### Key Points on the Maritime Area Planning Bill and National Marine Planning Framework

On 30 June 2021, the Irish government published a pre-initiation draft of the **Maritime Area Planning** (“MAP”) Bill 2021 (the “**Bill**”) and also launched the **National Marine Planning Framework** (the “**NMPF**”).

We have set out below a summary of the key elements of the Bill and the NMPF. If you would like to discuss any matter in further detail please feel free to reach out to **Garret Farrelly** or your usual contact on the Matheson Energy & Infrastructure team.

When enacted, the Bill (previously named the Marine Planning and Development Management (MPDM) Bill) will provide the legal basis for a new marine planning system and its governance. It is seen as a key enabler of Ireland’s decarbonisation goals as it will facilitate and streamline the development of offshore wind projects.

Based on our initial review, the key features of the Bill which may be of interest to stakeholders in the nascent Irish offshore renewable energy sector are as follows:



#### Maritime Area Consent (“MAC”)

- As expected, the Bill introduces a new MAC permitting regime to replace the current system of foreshore consents and it extends the planning permission system to the entire ‘maritime area’. A project must obtain a MAC prior to seeking planning (development) permission and the use of the MAC will be conditional upon the granting of such planning permission.



#### Maritime Area Regulatory Authority (the “MARA”)

- Originally MARA was to be established as an enforcement agency, but the Bill provides that it will also be responsible for assessing and granting all MACs as well as licensing a number of activities in the Maritime Area. MARA’s functions will include:
  - considering MAC applications, granting MACs and revoking or suspending MACs;
  - considering licence applications, granting licences and revoking or suspending licences;
  - ensuring robust compliance and enforcement measures (in line with the wide-ranging enforcement provisions contained in the Bill);
  - undertaking all administrative responsibility for foreshore authorisations; and
  - declaring persons who are not an individual to be fit and proper for the purposes of receiving (and holding) a MAC.



#### Obtaining a MAC

- Assessment criteria:** In assessing a MAC application, MARA will consider factors including:
  - the nature, scope and duration of the usage;
  - whether the usage is in the public interest; and
  - alignment with the NMPF.
- Time limit:** The Bill requires MARA to determine a MAC application within 90 days of receipt and the Bill imposes prescriptive requirements around the application process (including giving reasons for any refusal, the imposition of conditions or any partial grant).
- Conditions:** Schedule 6 of the Bill lays out certain conditions which will attach to every MAC, as well as a list of conditions which MARA may impose at its discretion. All MACs will be conditional upon the holder remaining a ‘fit and proper person’ (a standard which includes an absence of previous convictions, insolvencies, financial standing, technical qualifications, previous performance, etc). Key ‘optional’ conditions include:
  - a requirement that the holder of the MAC provide an indemnity in favour of the Irish Government;
  - a requirement to give notice to the MARA of any material change in circumstances; and
  - a requirement that development permission for the usage be applied for within a specified period (particularly relevant for offshore renewable energy projects).
- Material amendments:** In order to make material amendments to any MAC, holders must follow the same initial MAC application process “*with all necessary modifications*” (the Bill does not specify what such modifications may be). However, a different ‘fast track’ regime applies for ‘non-material amendments’ and the Minister for Housing, Local Government and Heritage (the “**Minister**”) may designate certain types of amendments as ‘non-material’ for this purpose (given the speed of technological advancement in offshore renewable generation technology to date, this materiality distinction is a key consideration).
- Judicial review:** In relation to MACs and MAC applications, the Bill provides that the MARA will apply to the High Court on points of law and that questions around the validity of decisions made by the MARA are to be addressed by way of judicial review. Encouragingly, the Bill provides that the holder of a MAC which is subject to pending judicial review proceedings may proceed to apply for (and obtain) development (planning) permission. The Bill also provides that parties to judicial review proceedings are to bear their own costs, but costs might be awarded against a party if the claim is considered to be frivolous or vexatious, or due to the conduct of the party during the proceedings or in circumstances where the party is in contempt of court.



#### Other Key Points for Offshore Renewables

- ‘Special MAC cases’:** The Bill sets out a range of Special MAC cases which primarily relate to maritime usage linked to wind, solar, wave, tidal or biomass energy production. Under these provisions, which appear to be designed to accommodate the ‘Relevant Projects’ previously offered ‘fast track’ treatment, the Minister for the Environment, Climate and Communications (the “**MECC**”) may invite MAC applications in cases where applications, foreshore authorisations, or grid connection agreements or grid offers have previously been made for the proposed usage. For such applicants, the MECC itself will assess and grant the MAC rather than MARA (but will broadly follow the same process as MARA).
- Automatic MAC termination:** The Bill provides for certain events which will be deemed to trigger an automatic termination of a MAC or a licence, including insolvency and analogous circumstances. A key point raised by industry stakeholders is the potential for automatic termination in the event of a failure to obtain planning permission. The Bill does not appear to fully address industry concerns that an applicant should be permitted to lodge a fresh application: a MAC will automatically terminate in circumstances where the holder has been refused planning permission “*in circumstances where no further step can be taken by the holder, or a court, in respect of that application.*” This wording does not appear to accommodate fresh planning applications.
- Long term planning:** The Bill provides for a new regime of Maritime Spatial Plans, prepared and published by the Minister, and Designated Maritime Area Plans, prepared by public bodies so appointed by the Minister.
- Rehabilitation and emergency works:** The Bill imposes obligations upon MAC holders regarding the rehabilitation of maritime areas adversely affected by the MAC usage which may include alterations to infrastructure. Each MAC applicant must provide a detailed schedule setting out how it shall comply with rehabilitation obligations for the areas affected by the MAC usage. MARA can require a MAC holder to make a material change application if it considers that its rehabilitation schedule is no longer appropriate.
- Transition from previous foreshore regime:** The Bill lays out transitional provisions for existing foreshore authorisations (ie, granted under the historic foreshore regime). If the holder of any such ‘legacy’ authorisation wishes to amend it or continue the relevant usage following its expiry, the holder can make an application to MARA (under the MAC process with some modifications) to surrender the authorisation for a MAC. The Bill also provides for a transitional regime for pre-existing licences and for the regularisation of unauthorised maritime usages.
- No SEA / AA for regulations:** The Bill states that for the avoidance of doubt, the Minister is not required to carry out strategic environmental assessments or appropriate assessments (or screening for each of same) for the purpose of making any regulations with respect to MACs.
- Licences for certain activities:** The Bill contains a regime for the granting or refusal of certain types of licences and the imposition of conditions on same for activities including:
  - Dredging;
  - Marine environmental surveys for the purposes of scientific discovery or research; and
  - The installation or placement of navigational markers or aids to navigation.

We note for completeness that decisions to grant such licences may be judicially reviewed.

- Changes to Planning Acts:** Part 8 and certain corresponding Schedules of the Bill contain extensive proposed amendments to the Planning and Development Act 2000 (as amended), including with respect to the remit of coastal planning authorities, judicial review of MACs, consultation with and application to An Bord Pleanála, environmental assessments, alterations (‘material’ or otherwise) to planning permission and numerous other changes which we are currently scrutinising in detail.
- NMPF:** The NMPF is a long term plan for the management of Ireland’s marine area and is to be used as a key consideration for decision makers on all marine authorisations. Consistency with the objectives of the NMPF is one of the cornerstones of the Bill. The NMPF contains a number of overarching marine planning principles as well as a breakdown of the key considerations and policies in the environmental, economic and social sectors.
- Timing:** The Bill is currently a ‘pre-initiation’ draft so it has not yet been introduced into the Oireachtas. The Summer Legislative Programme for 2021 stated the Bill was priority legislation for publication this summer and the Irish Government has indicated that the Bill is to be introduced into the Oireachtas in this term, which suggests that it should move through Government in the short term.

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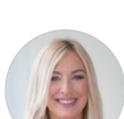
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