Comment on proposal by Department of Housing, Local Government and Heritage (DHLGH) to modify the *Marine Planning and Development Management* (MPDM) Bill through an amalgamation of the Planning Interest and the Maritime Area Consent elements of the General Scheme for the Bill.

October 13th, 2020

The MRIA Council held an online meeting with DHLGH about the MPDM and, also, the National Marine Planning Framework recently. The Department stated that a Memorandum would go to Government shortly about the MPDM and that it would deal particularly with two items.

First, it will seek to ensure that the provisions of the Bill are in accordance with the Aarhus Convention to which both Ireland and the EU are a contracting party. More information may be found at www.gov.ie/en/publication/b3b1a-aarhus-convention/ . The Convention establishes a number of rights of the public with regard to the environment including access to environmental information; public participation in decision-making; and access to justice.

Second, it is now proposed to amalgamate the Planning Interest (PI) and the Maritime Area Consent (MAC) which were set out in the General Scheme of the Bill (published in mid-2019) and introduce them as one, modified step at an early stage in the process. MRIA's views on this proposal are set out at 3. below.

On 9 October, 2020 a communication was received from DHLGH stating that a new process of prioritisation is to be applied to foreshore site-investigation applications under the Foreshore Act for offshore renewable energy site investigation cases from October 12th 2020. In MRIA's view the proposed prioritisation, would effectively confine all developments to the East coast, would be at odds with the objectives of the MDPM Bill and would prevent achievement of 2030 targets and proper exploitation of the offshore wind resource for the economic benefit of the country and to enable us to reach 'net zero' by 2050. This clearly needs further discussion.

1. Position in the General Scheme

The General Scheme made provision for developers to seek a *Planning Interest* (a term which the Department recognised as possibly misleading and planned to change) in a particular site for a project. A Planning Interest would confer no property rights on a grantee and would be time limited. It was planned as the instrument to enable Government to take a view at an early stage of the financial and technical capacity of potential offshore developers.

The *Maritime Area Consent,* by contrast, was the intended final step after an applicant had received a Planning Interest, a Development Consent from An Bord Pleanala, etc. It amounted to what was traditionally known as a 'lease' and arose at the very end of the planned process.

2. New proposal

The new proposal, as informally discussed with the Department at the Council meeting on 2 October, is to:

- 'amalgamate' the Planning Interest with the Maritime Area Consent
- Introduce the amalgamated step in the overall consenting process at an early stage
- combine the original Planning Interest's requirement that an applicant should demonstrate the technical and financial capacity to undertake the project with some form of option for a specific site which could be exercised by the grantee once all of the other consenting steps - An Bord Pleanala, grid etc - were concluded.

3. MRIA Views

The MRIA welcomes the proposed new arrangement in broad principle and it appears to bring the planned Irish practice broadly in line with the proven Crown Estate model.

However, a number of observations and possible concerns must be expressed:

1. The General Scheme is over a year old and was necessarily a 'work in progress' with acknowledged gaps. The Association awaits publication of the Bill per se with interest and looks forward to the public consultation on it.

2. The original purpose of the 'Planning Interest/Maritime Area Consent' arrangement was inter alia to separate the planning aspect (including the Planning Interest) from the estate management aspect (Maritime Area Consent). It is rather unclear, at this stage, as to which body (Department of Housing, Local Government and Heritage? Department of Communications, Climate Action and Environment?) will hold ultimate authority and responsibility. If the Planning Interest and the MAC are to be combined, the process for acquiring it needs to be streamlined to ensure a swift and robust process.

3. The General Scheme provided for the Minister (but see comment immediately above) to auction the Planning Interest among applicants for a specific site. How is it intended to deal with this issue under the new arrangement? Industry feedback and consultation should be sought on this matter. There are many examples of both good and bad practice globally on this area which should be considered.

4. The current Foreshore Licensing approach to enabling site investigation is challenging both for the approval body (Housing, Local Government and Heritage) and for applicants. The recent memo in relation to a new prioritisation system has resulted in widespread discord from the industry. The consensus opinion is that

limited resources within a Government Department should not be a reason to create a system which may unfairly disadvantages certain developments and risks the achievement of the Climate Action targets. The proposed prioritisation system should be urgently re-considered by the Department

5. There is a need for a straightforward, proportionate and time limited permitting system to enable site investigations. Provision should be made also to deal with the possibility of multiple developers seeking to investigate the same site.

   The General Scheme (Head 40) allows for the provision of a Maritime Area Consent to undertake marine environmental surveys under a rather complex arrangement. A review of this proposal should be undertaken in regard to three aspects: so far as possible, the proposed approach should be simplified and proportionate; the adjudication process should be spelt out; and there should be a statutory determination period.

6. Elements of the original proposal for a Maritime Area Consent arrangement should remain for final resolution at the end of the new process. In particular, it would be onerous and expensive for developers to have to secure bonding (which, of course, should be in place immediately prior to actual development commencing) and to set out *detailed* decommissioning and restoration plans at the first stage of the consenting process when only an *option* is being sought.

7. The basis on which applicants for Maritime Area Consents are judged to be 'fit corporate persons' should be detailed and be specifically proved in the planned short public consultation on the MPDM Bill as a whole.

8. Consultation with industry would be desirable in regard to the manner in which options fees are to be determined. Consideration should be given to a capped level as this would bring certainty to the investment appraisal process and keep costs down.

9. It is presumed that options will be time limited. How will the duration of an option be determined? On what basis will an option expire: after a fixed term? failure to gain grid access? etc. It is imperative that this time period is sufficient to enable developers to secure planning consent, complete front-end engineering and design work, secure a route to market and execute a grid connection to get to a financial investment decision.

   While it is difficult to place an exact timeframe on this complex process, we estimate that it will take up to 10 years for the completion of all of these activities. The process used by the Crown Estate in the UK may be useful to consider in this context. The Agreement for Lease is dependent on key agreed milestones being reached. This provides the developer with the opportunity to develop the site but prevents

'hoarding' of seabed rights. For example, under the Crown Estate's Round 4 for offshore wind, developers are given 10 years to establish their project but must make a planning application by the halfway point (5 years).

10. Given the typical nature and size of offshore renewable energy 'farms', there should be a specific provision in the Maritime Area Consent element of the MPDM to allow developers to complete their projects in pre-determined phases.

11. The Government has set ambitious targets for the development of offshore renewable energy. The MPDM is one (important) part of the framework of legislation and policy being put in place to enable and underpin this effort. All of this commendable effort will come to nought unless adequate public service people resources - policy formulation/application assessment/scientific advice/etc - are put in place and put in place urgently. The current issue over the capacity of the Department of Housing, Local Government and Heritage to deal with Foreshore License applications bodes poorly for the future.