MARITIME AREA AND FORESHORE (AMENDMENT) BILL 2013

REGULATORY IMPACT ANALYSIS

Prepared by the Department of the Environment, Community and Local Government, May 2013
The Department of the Environment, Community and Local Government has prepared this Regulatory Impact Analysis (RIA) to accompany the General Scheme of the proposed Maritime Area and Foreshore (Amendment) Bill. The proposed Bill seeks to address the following key objectives:

1. The integration of the foreshore consent process with the planning system, with An Bord Pleanála as the consent authority for;
   - strategic infrastructure developments with a foreshore or maritime area element;
   - all foreshore or maritime area developments of a class which require an environmental impact statement or a natura impact statement;
   - developments that are entirely beyond the outer limit of the nearshore area\(^1\).

2. The integration of the foreshore consent process for all other projects with the wider planning system, with coastal Local Authorities as the consent authorities;

3. The separation of property regulation and development consent procedures;

4. The adoption of a plan-led approach to the foreshore and wider maritime area, through the development of integrated coastal zone management objectives within the planning hierarchy. This will guide management of the interface between terrestrial and foreshore development and provide for coherence between the on-land and offshore elements of guidelines and plans;

5. To define in law an Irish Maritime Area, which would encompass the foreshore, the exclusive economic zone (EEZ) and the continental shelf, so as to enable the State to manage and licence developments beyond the foreshore and provide a new framework within which international obligations under the EIA Directive\(^2\) and UNCLOS\(^3\) can be met.

This RIA has been prepared under the terms of the Revised RIA Guidelines *How to Conduct a Regulatory Impact Analysis* (Department of the Taoiseach, 2009).

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\(^1\) The nearshore area is a new term, introduced by this bill, to cover the area between the High and Low Water Marks.

\(^2\) Directive 2011/92/EU

\(^3\) UNCLOS: United Nations Convention on the Law of the Sea
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1. Summary of Regulatory Impact Analysis (RIA)

<table>
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<tr>
<th>Department/Office: Environment Community and Local Government</th>
<th>Title of Legislation: Maritime Area and Foreshore (Amendment) Bill</th>
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<tr>
<td>Stage: General Scheme of Bill</td>
<td>Date: 10 May 2013</td>
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Contact for enquiries: Andrew Caldicott
Telephone: 053 9117390

What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the option below and indicate whether a preferred option has been identified.

1. Do Nothing.
2. Extend the remit of Local Authorities and An Bord Pleanála to cover the granting of development consent for projects on the foreshore and in the maritime area.
3. Extend the remit of An Bord Pleanála to cover development consent for Strategic Infrastructure and, projects requiring EIA, on the foreshore and within the maritime area.

Preferred Option: 2

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>COSTS</th>
<th>BENEFITS</th>
<th>IMPACTS</th>
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<tbody>
<tr>
<td>1: Do Nothing</td>
<td>Direct and indirect costs to the Exchequer in the absence of a one-step approach to processing foreshore licences/leases, in duplication of work and loss of revenue e.g. arising from decisions to invest elsewhere</td>
<td>No need to revise legislation and procedures</td>
<td>Administrative obstacles to development, lack of coherent planning, duplication of effort in private and public sectors, possible requirement for multiple EIA, lack of certainty regarding the consent process, lack of a clear path to consent for developers.</td>
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<td>2: Extend remit of Local Authorities and An Bord Pleanála to cover the</td>
<td>Need for up-skilling/re-training of staff in the planning system in marine engineering and coastal zone</td>
<td>Savings in administrative overheads, elimination of duplication of work, unlock development potential of foreshore and the seas beyond,</td>
<td>Positive impacts are anticipated under the following headings: • National competitiveness</td>
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| 3: Extend remit of An Bord Pleanála to cover development consent for Strategic Infrastructure and, projects requiring EIA, on the foreshore, in the exclusive economic zone (EEZ) and on the continental shelf. | Piecemeal approach to reform and potential for lack of clarity on consent procedures for project proponents. Need for up-skilling/re-training of staff in the planning system in marine engineering and coastal zone management. | Savings in administrative overheads, reduction of duplication of work, - unlock development potential of foreshore and the seas beyond, with improvements especially targeted at strategic infrastructure and EIA-class development, - facilitation of forward planning for the coastal zone. | Positive impacts could arise under the following headings:  
- The environment  
- Energy market  
- Compliance Burden  
No impacts are anticipated under the following headings:  
- The socially excluded and vulnerable groups  
- The rights of citizens  
- North-South and East-West Relations |

| 4: Establishment of a new maritime consenting authority without integration with planning system | Potential for costs to arise due to the continued existence of separate consent processes for terrestrial and maritime dimensions of the same projects, not consistent with current policy on public bodies, potential for | One stop shop for all marine planning decisions, consistency across decisions, clear path to consent for developers, potential for a single agency to manage both property and regulatory aspects. | Positive impacts could arise under the following headings:  
- The environment  
- Energy market  
- National competitiveness  
No impacts are anticipated under the following headings:  
- The socially excluded and vulnerable groups  
- The rights of citizens  
- North-South and East-West Relations |
| **5: Await formulation of Marine Spatial Plan for Irish waters** | significant set up and on-going costs. | and vulnerable groups
• The rights of citizens
• North-South and East-West Relations |
| --- | --- | --- |
| **There are costs associated with the persistence of the status quo for an indeterminate period of time until a Marine Spatial Plan is finalised.** | Would allow for the fullest integration of foreshore consent within a plan led framework | **Positive impacts could arise under the following headings:**
- The environment
- Energy market
- National competitiveness but the realisation of these impacts could be significantly delayed. |
| **No impacts are anticipated under the following headings:** | | • The socially excluded and vulnerable groups
• The rights of citizens
• North-South and East-West Relations |
2 - Description of Policy Context and Objectives

2.1 Policy Context

The changes proposed to the foreshore consent system are consistent with a number of commitments in the Programme Government, including commitments to:

- provide an efficient foreshore licensing and leasing process for marine energy;
- reduce the cost of Government imposed Red Tape on business;
- streamline the planning and regulatory process for bringing ashore off-shore reserves;
- develop an integrated marine and coastal planning process;

There are also links with a number of other government publications and plans, whose realisation requires an efficient, effective and integrated consent system for marine developments. These plans include:

Harnessing Our Ocean Wealth

- Sets out a roadmap for the Government’s vision, high-level goals and integrated actions across policy, governance and business to enable our marine potential to be realised.

Offshore Renewable Energy Development Plan (draft)

- Describes the policy context for the plan-led development of offshore renewable energy resources up to 2030;

GRID 25

- EirGrid’s plan to develop and upgrade the electricity transmission network from now until 2025, including putting the infrastructure in place that enables Ireland to use its own natural resources such as wind and wave power;

Putting People First - Action Programme for Effective Local Government

- Sets out the reforms the Government has approved in all of the main areas of local government, which will involve the transfer of certain functions from central to local government, including elements of the foreshore function;

National Ports Policy

- A new National Ports Policy was published in March 2013. The core objective of this policy is to facilitate a competitive and effective market for maritime transport services. The policy identifies delays and uncertainties in relation to the foreshore consent process as the cause of problems for port developments and notes the need for an effective and efficient foreshore consent system.

2.2 Legal Context

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) divides the oceans and seas into a number of maritime zones in which states exercise different sets of rights and duties. The zone immediately adjacent to a state’s coast is the territorial sea, which extends outwards to a limit of 12 nautical miles from the baseline. In Ireland, this zone is also known as the foreshore. Within its’ territorial sea, a coastal state exercises sovereignty. The water beyond this limit, out to a maximum distance of 200 nautical miles from the coast, is the exclusive economic zone (EEZ) in which the coastal state may exercise a limited set of sovereign rights and
jurisdiction. The seabed beneath this zone is regulated by continental shelf rules. Beyond these zones are the high seas in which no state exercises sovereign rights. However, UNCLOS also provides for certain rights over the continental shelf where it extends beyond the limits of the EEZ.

The foreshore is defined in Irish legislation\(^4\) as the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek, and bay of the sea or of any such river or estuary, out to a limit of twelve nautical miles, an area of nearly 40,000 km\(^2\).

The physical environment of the foreshore and EEZ therefore ranges over estuaries, bays and the open sea. The scope of human interaction with this varied physical environment is similarly diverse. This diversity is reflected in the number and focus of legal instruments which have a bearing on use of the foreshore and EEZ. Unfortunately, the majority of legislation and regulation in Ireland for marine based activities is sectoral, with few mechanisms in place to ensure a holistic approach to the sustainable development of the marine environment. In addition to acts of the Oireachtas whose primary focus is the foreshore, these instruments include acts dealing with planning, fisheries, maritime jurisdiction, environmental protection, marine safety, energy exploration and extraction, communications and local government. These acts include the Continental Shelf Act, the Gas Acts, the Petroleum and Other Minerals Development Act, the Merchant Shipping (Salvage and Wreck) Act, the Maritime Safety Acts, and the Local Government Acts.


2.3 Administrative Context

Development on the foreshore is governed primarily by the Foreshore Acts 1933 to 2011. These Acts assign responsibility for the foreshore to the Department of Agriculture, Food and the Marine in respect of aquaculture developments or developments in Fishery Harbour Centres, and to the Department of the Environment, Community and Local Government in respect of all other developments.

The Foreshore Acts require that a lease or licence be obtained from the appropriate Minister prior to undertaking any works or placing structures or material on, or for the occupation of, or removal of material from, state-owned foreshore. The consent of the appropriate Minister is also required for development on privately owned foreshore (although by far the major portion of foreshore is State-owned). The Foreshore Acts apply to the seabed and shore below the line of high water of ordinary or medium tides (including tidal and estuarine waters) and extending outwards to the limit of the territorial seas at 12 nautical miles (22.224 kilometres). Leases and licences are granted subject to the payment of fees and/or rent, the amount of which is normally established by valuation. Valuation was historically undertaken by the Valuation Office, but is currently carried out by a commercial valuations service, appointed after a tender process.

Generally, developments on the foreshore also require planning permission under the Planning and Development Acts. This is in addition to the appropriate consent under the Foreshore Acts, if the foreshore concerned is contiguous to the functional area of a planning authority. Over 90% of currently active applications\(^5\) for a foreshore lease or licence from the Department of the

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\(^4\) Foreshore is defined in the Foreshore Act 1933, with outer limit clarified in Maritime Safety Act 2005

\(^5\) 115 active applications on hands, as at mid-May 2013
Environment, Community and Local Government (DECLG) are within close proximity to the shore (1 nautical mile or less). Of these, approximately 80% are likely to fall within the scope of the planning system. There is therefore substantial potential for dual assessment of projects under the current consenting regime.

A foreshore lease or licence can only be issued if it is in the public interest. Offshore developments do not currently require planning permission, but other consents may be required.

At present, the processing of a foreshore application includes the following:

- Assessment of the application by the Department’s internal technical advisors, and when necessary, the Marine Licence Vetting Committee (MLVC)6 which advises on scientific matters;
- Consultation with statutory and non-statutory consultees, including relevant Departments and Agencies;
- A period of public consultation;
- Valuation of the site to be occupied;
- Other public interest elements that may arise in particular cases;
- Obtaining necessary legal advice and sanction from the Department of Public Expenditure and Reform when appropriate.

The types of activities consented by DECLG include:

- Energy related projects, such as offshore oil and gas projects, wind, wave and tidal energy projects
- Developments in commercial ports
- Site investigation licences for the above
- Marinas and piers
- Land reclamation and sea defences
- Outfall pipes and storm water discharges
- Seaweed harvesting
- One day events such as tag rugby or horse racing

Cases are currently prioritised based on a scheme of prioritisation modelled on the approach taken to dealing with strategic infrastructure projects under the Strategic Infrastructure Act. The scheme of prioritisation is outlined in Appendix 1. Depending on the nature of an application, foreshore consent may be the only consent required, or may form part of a suite of required permissions.

2.4 Statement of Policy Problems

The legislative framework governing the foreshore area is now 80 years old and predates both current planning legislation and the types of development that are now taking place. Constraints in the foreshore consenting process can be summarised as follows:

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6 The MLVC is a non-statutory, multi-disciplinary committee of representatives from DECLG, the Department of Arts, Heritage & the Gaeltacht, the Department of Transport, Tourism and Sport, the Marine Institute, Inland Fisheries Ireland and the Sea Fisheries Protection Authority.
the absence of a plan-led framework – the system is currently reactive and perceived as application-led;
there is no statutory or objective timeframe within which applications must be determined;
the system is fragmented with the possibility of multiple consents (planning, foreshore and offshore) and multiple environmental assessments being required for a single large scale strategic project;
the valuation process – the foreshore is often regarded by project promoters as a resource that should be freely available, or at minimum cost, rather than being a valuable State asset.

In addition to these problems within the foreshore consent system, the lack of integration with the planning system presents a number of problems. Greater detail on these is provided under option 1 below, but a summary of these problems is as follows:

Administrative burden;
Unauthorised development;
Hindrance to proper planning.

Furthermore, the sectoral approach to legislation on marine activities has left gaps in the regulation of such activities. There is at present, for example, no consent system for dealing with the development of renewable energy projects beyond the 12 nautical mile limit of the foreshore. Recent trends in international offshore wind developments have been towards locating such developments at ever greater distance from the shore. If Ireland is to tap into the market for large scale wind energy, there is a need to proactively prepare the legal framework for similar developments in Irish waters.

2.5 Defined Objective

Harnessing Our Ocean Wealth notes that in 2007, Ireland’s ocean economy supported approximately 51,000 direct and indirect jobs. Approximately 99% of Ireland’s imports and exports are handled by shipping. In addition, the potential of Ireland’s offshore renewable energy resource is significant, with much of this potential located beyond the geographical jurisdiction of the current consenting arrangements.

The strategic developments currently taking place and the priorities in the Programme for Government highlight the need for a new planning and consent architecture for development in the maritime area, if Ireland is to leverage maximum value from this resource.

The objectives of this Bill are to support and grow economic activity on the foreshore, and beyond, in a sustainable manner by:

- providing for a single stage development consent process for both the onshore and offshore elements of a strategic project, or a project requiring EIA or AA, to be dealt with by one agency, An Bord Pleanála;
- providing for a single stage development consent process for both the onshore and offshore elements of smaller projects, to be dealt with by the local authorities;
- removing unnecessary duplication in development consent processes, including requirements for separate Environmental Impact Assessments (which are very costly for major projects);
- providing greater clarity in relation to the timeframes within which determinations on applications for Strategic Infrastructure / EIA development will be made;

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7 Harnessing Our Ocean Wealth, July 2012
• establishing a coherent development consent framework in the EEZ and on the continental shelf;
• providing for the transfer of responsibility for licensing or permitting of minor activities to coastal local authorities.

The changes to the foreshore consent system contained within the Bill are intended to:

• eliminate the obstacles to proper planning of significant, strategic developments that arise within the current foreshore consent regime;
• give local authorities greater responsibilities for managing local activities; and
• facilitate forward planning in the coastal zone and wider maritime area.

3 - Identification and Description of Options

3.1 Option 1  Do Nothing

Option 1 is to maintain the status quo. There are a number of drawbacks to this option, which are detailed in Section 4.

3.2 Option 2  Extend remit of local authorities and An Bord Pleanála to cover the granting of development consent for projects on the foreshore, in the EEZ and on the continental shelf

Option 2 aims to extend the remit of local authorities and An Bord Pleanála to include the granting of development consent for certain foreshore projects.

It envisages the introduction of a new definition of “nearshore”, to cover the area between the High Water Mark and the Low Water Mark. Coastal planning authorities will be responsible for granting development consent for projects in this area, and for projects which extend from this area into the rest of the foreshore, except for Strategic Infrastructure projects or projects which require Environmental Impact Assessment or Appropriate Assessment. Projects which are wholly located beyond the nearshore area, as well as Strategic Infrastructure projects and projects which require Environmental Impact Assessment or Appropriate Assessment, would fall to An Bord Pleanála for determination.

Amendment of the Foreshore Acts and the Planning and Development Acts to transfer responsibility for development consent to those bodies could result in significant streamlining of the processes. As there are some foreshore activities which may fall outside the scope of planning legislation, amendments would also have to be made to other bodies of legislation, such as the Local Government Acts.

3.3 Option 3  Extend remit of An Bord Pleanála to cover development consent for Strategic Infrastructure and, projects requiring EIA, on the foreshore, in the EEZ and on the continental shelf

Option 3 is similar to option 2, except that development consent in respect of non-strategic/non-EIA infrastructure would be retained within DECLG for the time being. Further details are provided in Section 4.

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8 Projects which are connected to the nearshore area only by means of cable or pipeline will not fall to local authorities for determination.
3.4 Option 4  Establishment of a new maritime consenting authority without integration into the planning system

Option 4 involves the establishment of a new organisation to manage development consent for maritime projects. It would likely be similar to the model adopted in the UK, where the Marine Management Organisation was established to deal with, *inter alia*, planning and licensing in the marine environment. Further details are provided in Section 4.

3.5 Option 5  Await formulation of Marine Spatial Plan for Irish waters

Option 5 entails maintaining the status quo while awaiting the finalisation of a Marine Spatial Plan for Irish waters. Further details are provided in Section 4.

4 – Consideration of Alternative Options

4.1 Option 1  Do Nothing

Arguments in Favour

There are no arguments in favour of maintaining the status quo.

Arguments Against

*Administrative Burden*

Within the legal framework outlined in section 2, consent for many developments on the foreshore can be spread across a number of authorities. A developer for a single project may need to obtain planning permission from a planning authority or An Bord Pleanála AND foreshore consent from DECLG. Further consents may also be required, such as a consent under the Gas Acts, or a grid connection. In many instances, the nature of the information required for each consent process is the same, and the consent authorities will individually and separately seek observations from the same consultative bodies in respect of the development.

As a consequence, there is duplication of effort:

- for the developer, who must separately submit two or more applications in respect of one development;
- for public authorities, who must separately process two or more applications in respect of the one development;
- for the consultative bodies, who must separately provide observations on two or more applications in respect of the one development; and
- for the public participating in the decision-making process, who must submit separate observations to the relevant authorities.

If projects are of a size or nature to warrant an Environmental Impact Assessment being carried out, there may be further duplication of effort. This duplication is costly for both private and public sectors in terms of the direct effort involved. For example, if one consent authority insists on a particular change to a project, a fresh application to another consent authority may be necessary. This level of bureaucracy can have additional indirect costs by slowing down development, with a potential negative impact on employment and revenue streams.
**Unauthorised Development**

The delay in processing applications caused by the administrative burden may provide an incentive for unauthorised development, as potential developers lose patience or decide the process is not worth engaging with. Unauthorised development represents lost income to the state, and carries the risks of eventual alienation of state property through adverse possession and potential non-compliance with European environmental legislation.

**Hindrance to Proper Planning**

The existence of the foreshore consent system outside the planning system presents difficulties in providing consistent regional forward planning and integrated coastal zone management. The fractured nature of the consent process makes it harder to realise certain aspects of other government plans as outlined in Section 2.2.

**Gap in Consenting Provisions**

At present there is no provision for consenting to certain types of development beyond the outer limit of the foreshore. This is particularly significant in relation to offshore wind, given the scale of the national resource, and the opportunity it provides for growth in the economy.

**Impacts**

Option 1 has no new impacts under the designated headings.

4.2 **Option 2** Extend remit of local authorities and An Bord Pleanála to cover the granting of development consent for projects on the foreshore, in the EEZ and on the continental shelf

**Arguments in Favour**

Option 2 would integrate the development consent aspect of foreshore consents with the planning system operated by local authorities and An Bord Pleanála. Strategic Infrastructure projects, projects requiring Appropriate Assessment or Environmental Impact Assessment, and projects located entirely beyond the nearshore area will be assessed by An Bord Pleanála, and smaller projects, including those adjacent to land, will be assessed by local authorities. This envisaged architecture overcomes many of the drawbacks of the current situation, and carries benefits under the following headings:

**Reduction of administrative overhead**

Minimising duplication of consent processes reduces administrative and cost overheads for both developers and regulatory authorities (these overheads are outlined under option 1, Cons).

**Integrated Planning and plan-led framework for development in the maritime area**

Option 2 also allows for fuller integration of foreshore development into the forward planning hierarchy of local and regional plans, through the inclusion of mandatory objectives for development in the nearshore area in the development plans of coastal local authorities.

**Enforcement**

Although An Bord Pleanála does not have an enforcement role, the resources of local authorities are greater and more evenly spread. This, coupled with the greater local knowledge available to
local authorities, should result in better identification of unauthorised development and more effective enforcement.

**Provision for Development Consent in the EEZ and the continental shelf**

Option 2 provides for the granting of development consent for renewable energy projects located at greater distances from the shore than is currently possible. This will provide a framework to facilitate development of Ireland’s significant offshore renewable energy resources.

**Arguments Against**

**Transitional Arrangements**

Option 2 marks a significant departure from the status quo and the transition to the new regime would need to be handled carefully.

**Availability of Expertise**

Local authorities may need to up-skill and retrain staff, to ensure that appropriate expertise to assess applications for development consent is in place. It is possible that a shared services approach could be adopted to address against this challenge.

**Non Planning Activities**

Some activities that are currently consented under the Foreshore Acts do not fall within the scope of the planning system, such as activities on the foreshore (filming, sports events) and deployment of moorings. Accordingly, there is requirement for the provision of an alternative framework for permitting these activities.

**Impacts**

Positive impacts from option 2 may be anticipated under the following designated headings:

- **National competitiveness**

  A more efficient, plan-led consent system would serve both to enhance environmental protection and facilitate development, by providing clarity as to where and how development should be considered. The removal of administrative obstacles will have a beneficial impact in the provision of infrastructure and the commencement of projects (subject to private investment) that can lead to job creation.

- **The environment**

  The provision of a plan-led system would facilitate earlier identification of potential environmental constraints on development. This should allow for the targeting of development in areas that are less likely to be environmentally sensitive.

- **Energy market**

  The integration of the consent process for offshore energy projects into a Strategic Infrastructure-type consent process, coupled with a plan-led approach, should provide greater
clarity for potential developers and investors in the development of Ireland’s offshore energy resources.

- **Compliance Burden**

Integration of the foreshore consent system into the planning process should reduce the compliance burden by reducing administrative overheads. Utilisation of local resources and should mean more efficient enforcement and compliance regimes.

**4.3 Option 3** Extend remit of An Bord Pleanála to cover development consent for Strategic Infrastructure and EIA-class developments in the maritime area

**Arguments in Favour**

Option 3 overcomes many of the drawbacks of the current situation insofar as major developments are concerned, and carries benefits under the following headings:

**Reduction of administrative and cost overheads**

The elimination of the duplication of consent processes for Strategic Infrastructure / EIA projects removes administrative and cost overheads for both developers and regulatory authorities (these overheads are described under option 1, Arguments in Favour). These costs, such as the costs of preparing Environmental Impact Statements, are necessarily greatest for the scale of developments which are the focus of option 3.

**Integrated Planning and plan-led framework for development in the maritime area**

Option 3 also allows for fuller integration of foreshore development into the forward planning hierarchy of local and regional plans.

**Provision for Development Consent in the EEZ and the continental shelf**

Option 3 provides for the granting of development consent for projects located at greater distances from the shore than is currently possible. This will provide, *inter alia*, a framework to facilitate development of Ireland’s significant offshore renewable energy resources. Smaller developments beyond 12 nautical miles are not addressed by this option. However the nature of the physical environment between 12 and 200 nautical miles would suggest that this will not pose immediate problems, as projects will need to be of some size to be capable of withstanding the environment at such a distance from shore.

**Arguments Against**

**Transitional Arrangements**

As with option 2, there will be a need to manage transition to the new regime. It is anticipated, however, that transition would be simpler and faster than for option 2, due to a number of factors including the smaller number of applications and the transfer of development consent to a single authority i.e. An Bord Pleanála.
Residual Dual Consenting

Option 3 does not address the issue of dual consenting for projects that are not Strategic Infrastructure and which fall below the EIA threshold.

Impacts
Positive impacts from option 3 may be anticipated under the following designated headings:

- **National competitiveness**

  A more efficient consent system for Strategic Infrastructure projects should make it easier to develop the foreshore and unlock the potential of Ireland’s offshore renewable energy resource. The removal of administrative obstacles in this area should have a beneficial impact in the provision of infrastructure and the commencement of projects (subject to private investment) that can lead to job creation.

- **The environment**

  The freeing up of the foreshore consent system may lead to more development in the coastal area. However, a more streamlined decision making process arising from bringing the expertise of An Bord Pleanála to bear, along with more integrated planning, should have beneficial impacts on the environment.

- **Energy market**

  The integration of the consent process for offshore energy projects into a Strategic Infrastructure-type consent process, coupled with a plan-led approach to development, should provide greater clarity for potential developers and investors in the development of Ireland’s offshore energy resources.

- **Compliance Burden**

  Integration of the foreshore consent system into the planning process in respect of Strategic Infrastructure projects and projects requiring EIA, should reduce the compliance burden by reducing administrative overheads, such as the need to engage in duplicate EIA and public consultation processes.

4.4 Option 4 Establishment of a new maritime consenting authority without integration with the planning system

Arguments in Favour

Option 4 allows for the provision of a one stop shop for marine development consents, with consistency in decision making across the whole country. This is similar to the model adopted by the UK, where the Marine Management Organisation was recently established. This approach recognises the unique nature of the marine environment and the challenges it presents to development. A single consent authority for this environment would allow for the development and application of expertise which could be beyond that which may be available to local authorities and An Bord Pleanála, thus facilitating the coherent translation of marine planning into realisable benefit for the State. An independent body might also help to provide greater transparency in decisions on marine consents.
Arguments Against

Financial Implications
Option 4 involves the establishment of a new organisation to process foreshore and maritime consent applications. This would have significant financial implications.

Integration with land based planning system
Option 4 does not fully resolve the issue of duplicate planning permission and foreshore consents being required for the same project, which is one of the main challenges giving rise to the current requirement for reform. This is of particular concern for projects that have both on-land and foreshore elements, which account for approximately 80% of foreshore consent applications currently active in the Department of the Environment, Community and Local Government.

Under this option there is also potential for disparities between marine planning priorities and land based planning priorities due to the separation of land and sea based forward planning frameworks.

Impacts
Positive impacts from option 4 may be anticipated under the following designated headings:

- National competitiveness
A more efficient foreshore consent system should make it easier to develop the foreshore. The reduction of administrative obstacles in this area should have a beneficial impact in the provision of infrastructure and the commencement of projects (subject to private investment) that can lead to job creation. However the impact may not be as great as that anticipated under options 2 and 3.

- The environment
The freeing up of the foreshore consent system may lead to more development in the coastal area. The concentration of resources in one organisation should lead to the maximising of expertise on the marine environment.

- Energy market
A single body to decide on all marine consent elements of a development should provide better decision making and greater clarity for potential investors. However, as land based elements of developments would still require planning permission from either planning authorities or An Bord Pleanála, the benefits may not be as great as those anticipated under options 2 and 3.

- Compliance Burden
The establishment of a single body for marine consents should result in a streamlined consenting process, with a reduction in the compliance burden by reducing administrative overheads. The concentration of expertise that such a body would be expected to accumulate could mean more efficient enforcement and compliance regimes.

However, as there would not be as much integration with land based planning, any benefits may not be as pronounced as those anticipated under options 2 and 3.
4.5 Option 5 Await formulation of Marine Spatial Plan for Irish waters

Arguments in Favour
Option 5 allows for the fullest integration of foreshore consent within a plan led framework. It builds on the success of the terrestrial planning model by recreating for the marine environment the same hierarchy of considered plans as a framework within which appropriate benchmarks can be established for the assessment of development consent applications.

Arguments Against

Delay in realisation of benefits
Due to the potentially long lead in time until the delivery of a complete Marine Spatial Planning framework for Ireland, the realisation of benefits will be delayed and the unnecessary costs and duplication of work inherent in the current consent regime would persist for a number of years.

Impacts
Positive impacts from option 5 may be anticipated under the following designated headings:

- National competitiveness
A more efficient consent system should make it easier to develop the foreshore. The removal of administrative obstacles in this area should have a beneficial impact in the provision of infrastructure and the commencement of projects (subject to private investment) that can lead to job creation.

- The environment
The freeing up of the foreshore consent system may lead to more development in the coastal area. However, better enforcement due to the involvement of local authorities and more integrated planning, should have beneficial impacts on the environment.

- Energy market
The integration of the consent process for offshore energy projects into a Strategic Infrastructure-type consent process, coupled with a plan-led approach to development, should provide greater clarity for potential developers and investors in the development of Ireland’s offshore energy resources.

- Compliance Burden
Integration of the foreshore consent system into the planning process should reduce the compliance burden by reducing administrative overheads. Utilisation of local resources should mean more efficient enforcement and compliance regimes. However, due to the potentially long lead in time until the delivery of a complete Marine Spatial Planning framework, the realization of these beneficial impacts will be delayed and the unnecessary costs and duplication of work inherent in the current consent regime would persist for a number of years.
5 – Consultation

5.1 Internal Consultation

Draft proposals were discussed with the Department’s Planning Division. Observations have been received and are reflected in the current drafting of the bill.

5.2 Interdepartmental/agency Consultation

Draft proposals were sent to An Bord Pleanála and to Donegal County Council (one of the larger coastal counties) – representing the County and City Managers Association. Observations have been received and are reflected in the current drafting of the bill.

5.3 Consultation with Government

Government have been briefed on the proposals and the necessary Memoranda for Government will be drafted and circulated in keeping with required procedures. In addition, DECLG put in place an Advisory Group comprising of officials from the Departments of Agriculture, Food and the Marine; Transport Tourism and Sport, Communications, Energy and Natural Resources, and Public Expenditure and Reform, along with representatives from the Marine Institute, An Bord Pleanála, and the County and City Managers’ Association.

5.4 Consultation with Stakeholders

Since assuming the foreshore function, the Department has been in formal and informal contact with a broad range of stakeholders regarding possible ways of improving the consent process, including those listed at Appendix 2. Discussions with these bodies have informed the development of the legislative proposals.

In addition, the Department wrote to a range of key stakeholders advising them of the launch of the public consultation, (described at section 5.5) and inviting comments.

Specific issues raised during stakeholder consultations include:

- the desire for guidance on what activities/developments Government is prioritising in the foreshore / marine environment, and in what areas;
- lack of statutory timeframes in relation to the decision making process for foreshore consents;
- the potential for speculative applications and ‘land banking’ under the existing system without the ability to fully develop projects;
- transparency of the valuation process;
- the need for a Marine Spatial Plan if the integration of foreshore projects into the existing Strategic Infrastructure consent process is to be most effective.

While the articulation of a Marine Spatial Plan is beyond the scope of the proposed bill, the views expressed by stakeholders have informed the drafting of the General Scheme.

5.5 Public Consultation

The Department launched a public consultation in January 2013. Submissions were received from a range of public bodies, companies, citizens, NGOs, community groups, and trade and
industry bodies. These are included (apart from the names of private individuals) in the list of stakeholders consulted at Appendix 2.

Analysis of responses is hampered by the fact that only a handful of respondents completed the statistical information section (Part 1) of the return form, and many respondents did not directly address the questions posed in Part 2. The Department received 196 responses during the consultation window. Of these, 139 were in support of the submission made by Dublin Bay Concern, and 1 was in support of the submission made by Save Our Seafront. 44 of the responses in support of the Dublin Bay Concern submission also made additional comments. These related primarily to the importance of preserving Dublin Bay from oil and/or gas exploration.

The remaining 56 submissions can be categorized as follows.

<table>
<thead>
<tr>
<th>Private Individual</th>
<th>NGO</th>
<th>Industry/Commercial Entity</th>
<th>State Sector/ Public Body</th>
<th>Local Community Group</th>
<th>Trade/Professional Body</th>
<th>Higher Education/Research</th>
<th>Other</th>
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<td>15</td>
<td>16</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

Of those who expressed views:

1. The majority agreed that there would be a benefit to the establishment in law of a maritime area.
2. Approximately half were in favour of An Bord Pleanála or local authorities, or a combination of the two, being the development consent authority for the maritime area.
3. The majority expressed the view that proprietary interest should not be granted by the same body that grants development consent.
4. The majority expressed the view that there should not be a separate public participation process for the granting of proprietary interest.

6 – Review

The significance of the changes envisaged in the draft bill, and the importance of adequate transitional measures, make it important that an effective review mechanism is in place. DECLG will work with An Bord Pleanála and local authorities in order to agree an appropriate review mechanism. Appropriate indicators and measures may include processing times or numbers of applications determined.

7 – Publication

This Regulatory Impact Analysis will be published on the Department’s website.

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9 These facts mean the analysis has required a degree of extrapolation on the part of officials, which may affect the accuracy of the statistics.

10 A number of submissions were also received after the closing date.
## Appendix 1

### Scheme for Prioritising Foreshore Applications

| Priority 1 | • Strategic Infrastructure Projects and associated works  
|            | • Time Critical Projects  
|            | • All Energy related Projects including oil, gas, wave, wind, tidal projects  
|            | • Developments in commercial ports and harbours & associated works  
|            | • Site Investigation Licences in relation to the above |
| Priority 2 | • Marina developments,  
|            | • Piers  
|            | • Reclamation, bridges etc.  
|            | • Site Investigations  
|            | • Rock armouring |
| Priority 3 | • Outfall pipes (if not part of a larger 'SI' project)  
|            | • minor works, one day events, e.g. tag rugby, race meetings  
|            | • Private boat moorings  
|            | • Extensions to existing piers/slipways/jetties  
|            | • Harvesting of seaweed etc.  
|            | • Storm water discharges |
Appendix 2

Stakeholders consulted to date

An Taisce
Aquamarine Power
Arranmore Island Development and Employment Coop
Arup
Atlantic Ocean Energy Alliance
Beaufort Research Centre (UCC)
Bere Island Conservation Group
Bord Gáis Éireann (Irish Water)
Bord Iascaigh Mhara
Centre for Planning Education and Research (UCC)
City and County Managers’ Association
Clare County Council
Coastal Concern Alliance
Coastal Marine Research Centre, UCC
Coastwatch
Commission for Energy Regulation
Commissioners for Irish Lights
Cork County Council
Cork Port
Department of Agriculture, Food and the Marine
Department of Communications, Energy & Natural Resources
Department of Public Expenditure and Reform
Department of Transport, Tourism and Sport
Donegal County Council
Doyle Kent Planning Consultants
Dublin Bay Concern
Dublin Regional Authority
Dun Laoghaire Fishermen’s Group
Dun Laoghaire Port
Dun Laoghaire-Rathdown County Council
Ecopraxis
Environmental Protection Agency
ERM
ESB Ocean Energy
Galway City Council
IDEA
Inland Fisheries Ireland
Irish Environmental Network
Irish Marine Federation
Irish Offshore Operators
Irish Planning Institute
Irish Ports Authority
Irish Wind Energy Association
Kerry County Council
Kinsale Energy
Leitrim County Council
Limerick City Council
Limerick County Council
MAREN Project
Marine Co-ordination Network
Marine Institute
Marine Renewables Industry Association
Mayo County Council
National Offshore Wind Association of Ireland
Natural Power
Ocean Energy Development Unit /Sustainable Energy Ireland
Oriel Windfarm
Providence Resources
RPS
Saorgus Energy
Save Our Seafront
SEPI
Shannon LNG
Sustainable Water Network