



**A New Planning and Consent Architecture  
for  
Development in the Marine Area**

**Submission  
by**

**Coastal Concern Alliance**

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## CCA Introduction

Coastal Concern Alliance (CCA) is an independent, voluntary body established in 2006 to campaign for reform of the outdated Foreshore Act 1933, and the introduction of coastal and marine spatial planning to balance competing interests in our seas. We have no industry or political affiliations.

We welcome the opportunity to comment on “*A New Planning and Consent Architecture for Development in the Marine Area*”.

CCA is deeply concerned at the manner in which coastal zone policy has evolved in Ireland during the Celtic Tiger era, shaped largely by industry interests rather than an overall vision for our seas and coastal areas. Large scale offshore wind farm development has been permitted in Ireland’s East coast near-shore zone under outdated and undemocratic legislation (The Foreshore Act 1933) in a manner which does not comply with EU Environmental Directives; no coastal or marine spatial planning has been introduced to balance competing interests and large areas of ecologically rich habitat have not been surveyed and designated for protection as is required by the EU Habitats and Birds Directives.

As in many other areas of Irish governance, we are now at a turning point in our efforts to protect the public interest in management of a key national resource - the marine and coastal environment. The current administration must not choose to accept and build on the inadequate regulation and speculation of the past. Instead it must openly acknowledge past mistakes and work to ensure that the future of our coastal area is based on open and democratic discussion of what is best for Ireland, its people and its environment into the future.

New foreshore legislation must enshrine the best principles of Integrated Coastal Zone Management and Marine Spatial Planning and balance conservation and development objectives

## 1. Introduction

### 1.2. Programme for Government Commitments

CCA suggest that, in order to encompass both economic growth and protection of the marine environment, *the new bill should be entitled “Foreshore and Marine Area Management Bill”*.

We would also draw attention to other commitments in the *Programme for Government* - specifically a commitment to introduce a National Landscape Strategy (NLS), a key requirement under the European Landscape Convention (ELC), signed and ratified by Ireland in 2002. ***In the public interest this NLS (including seascapes as per the ELC) must be completed before consideration is given to advancing large scale offshore wind farm development*** with potential for significant adverse visual impact on valued seascapes, designated coastal landscapes and “views and prospects” listed for protection in democratically agreed County Development Plans.

### 1.3. Harnessing Our Ocean Wealth

In our submission (March 2012) on *Our Ocean Wealth*, CCA took serious issue with the apparent acceptance of the *DRAFT Offshore Renewable Energy Development Plan (OREDPA)* as the basis for future development in this area. The Draft OREDPA, produced by the outgoing administration in November 2010, is largely an exercise in retrospective planning. It endorses the large- scale offshore wind projects permitted and advanced with no national plan and no Strategic Environmental Assessment under the undemocratic Foreshore Act 1933, in an era of speculation and inadequate regulation (2002 – 2008). The landscape and other environmental impacts of the massive offshore wind development envisaged, largely on protected shallow sandbanks, 10/12km off the East coast, have not been properly assessed. The accompanying environmental report acknowledges significant baseline data and information gaps in critical areas. It is clear that the precautionary principle must apply. ***The draft OREDPA is out of tune with current national needs and carries significant risk to Ireland’s natural heritage. It must not be adopted by the current government.***

### 1.4 Implementation of the Marine Strategy Framework Directive

Objectives of this Directive are to:

- Achieve good environmental status by 2021
- Maintain biodiversity and provide diverse and dynamic seas that are clean
- Establish protected areas
- Phase out pollution, including noise pollution

It includes a requirement to include in the analysis of marine waters an economic and social analysis of use and the cost of degradation.

Our updated marine planning legislation must support the objectives of this Directive, with a view to achieving good environmental status by 2021.

***CCA welcomes consideration being given to the implementation of the Marine Strategy Framework Directive.***

***CCA suggests that in tandem with the development of a Marine Atlas covering the areas listed in the Consultation Paper, an Atlas of Coastal Landscapes should also be created.***

## 2. Current Foreshore Regime

CCA note the inclusion in the Consultation Paper of numerous references to the requirement under the Foreshore Act 1933 that decisions be made “*in the public interest*”.

The key fact about the current foreshore regime, is that it has facilitated speculation and failed to protect the public interest. This fact continues to be ignored in official consultations on foreshore reform. The developer-led projects with hundreds of huge wind turbines permitted and progressed under the Foreshore Act 1933 without proper assessment on the sole authority of the Minister for the Marine, will shape the future of Ireland’s East coast. The serious implications for Ireland’s landscape and wildlife have not been democratically examined. Unless these legacy issues are urgently addressed, reform will have come too late to protect our coastal heritage.

Minister for Energy Pat Rabbitte has noted (18/1/2012) that Ireland will meet its domestic renewable energy targets from wind farms on land without resorting to offshore wind which is more than twice as expensive.

***CCA urges an immediate review of the unnecessary offshore wind developments advanced under the current outdated foreshore regime. In terms of size, scale and proximity to sensitive coasts these developments are out of line with good international practice.***

### 2.3. Processing of Foreshore Applications

The Marine Licence Vetting Committee is a multi-disciplinary committee of scientific, technical and engineering experts, primarily staff from the Marine Institute. It does not include planning or landscape expertise which CCA deem to be an essential component of a consent body.

## 3. A Proposed Marine Area

CCA understands the legal status given to the different parts of the offshore marine environment and can appreciate why consideration is given to their amalgamation as one Marine Area. However, it is obvious that the constraints on development and the aspects requiring environmental protection vary significantly across such a wide area, largely depending on the proximity to shore.

***CCA does not agree that there would be benefit to the establishment in law of a new Marine Area, if the purpose of establishing such an area was to manage development and conservation within that area under one common legislative framework.***

## 4. A New Planning and Consent Architecture

### 4.1 Overview

***CCA welcomes the proposal to integrate the foreshore consent process within the existing consent system under the Planning and Development Acts 2000-2012. It seems rational to differentiate between applications for consent in relation to minor uses of the foreshore (e.g. tag rugby on the beach) and applications which relate to major developments (e.g. offshore energy installations).***

#### 4.1.1. A New Strategic Consent System

Ireland is required to comply with EU Directives, 85/337/EEC as amended by 97/11/EC and 2003/35/EC (Consolidated EIA Directive). Article 10a of the consolidated EIA Directive states:

*“Member States shall ensure that in accordance with the relevant national legal system, members of the public concerned: having a sufficient interest, or alternatively, maintaining the impairment of a right, where administrative procedural law of a member state requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of the Directive .” .....*

*“Any such procedure shall be fair, equitable, timely and not prohibitively expensive”.*

Under the Planning and Development (Strategic Infrastructure) Act 2006 (SI Act), a member of the public concerned can access a review procedure only by way of a judicial review before the High Court. Judicial review under Irish law is primarily, although not exclusively, concerned with the decision making process, i.e. the procedural legality of the decision. Therefore it does not provide an appropriate appeals procedure to comply with Directive 2003/35/EC.

In addition, it would be prohibitively expensive for a member of the public concerned to go to the High Court for Judicial Review. Therefore it does not comply with the requirement to be “fair, equitable, timely and not prohibitively expensive”.

***CCA believes that the proposal to give An Bord Pleanála full development consent jurisdiction over all strategic infrastructure projects on, or partially on, the foreshore does not meet with the requirements of the consolidated EIA Directive***

CCA are concerned that developments listed in the Seventh Schedule of the SI Act may include those which are not proven to be strategic for Ireland. This includes for example, offshore energy installations developed to export energy, where the energy generated is not necessary to meet national requirements and where the cost to Ireland, in terms of negative impacts on the environment, landscape, etc. has not been comprehensively assessed.

***CCA are opposed to the integration of the foreshore consent process for projects deemed to be strategic infrastructure, under the Planning and Development (Strategic Infrastructure) Act 2006.***

The Consultation Paper proposes that “Existing arrangements for the processing of foreshore applications that are not deemed to be strategic infrastructure would continue to apply”. This statement requires clarification.

- Is it proposed to continue to process applications under the Foreshore Act 1933?
- Is it considered democratic that consent for development is granted by the relevant Minister?
- Is it intended that the current system which affords no right of appeal against the decision of the Minister would continue?

***CCA are opposed to the continued processing of application for consent under the outdated and undemocratic Foreshore Act 1933.***

(c) An outline is given in the Consultation Paper of how environmental assessment and public consultation would sit within the proposed consent system.

Directive 2011/92/EU, (Environmental Impact Assessment (EIA) Directive) Annex IV (a) refers to the information to be provided in relation to proposed developments which require an environmental impact assessment. It states “A description of the project, including in particular: a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases.

Frequently in the past foreshore lease applications and environmental impact assessments have not related to “*the whole project*”.

***CCA welcomes the fact that the requirement to submit information in relation to the whole project is emphasized.***

#### **4.1.2 A new consent system for Mid-Level Projects**

***CCA would not be supportive of transfer of a broader development consent role to An Bord Pleanála, for the reasons already outlined above relating to compliance with the consolidated EIA Directive with regard to public right of appeal.***

#### **4.1.3 A new Consent System for non-EIA Foreshore Developments adjoining Land**

CCA welcome, we believe for the first time in a government publication, acknowledgement that under Section 225 of the Planning and Development Acts, certain developments on the foreshore require planning permission.

Developments within 12 km of the shore will have their greatest impact on local populations in coastal counties. In the interest of democracy and in the context of the government’s action plan for local government, Putting People First, serious consideration should be given to the devolution of the foreshore consent process for projects proposed in the near shore zone to Local Authorities.

Devolving responsibility for the initial stage of the process to the Local Authority would have a number of benefits.

- It would circumvent the difficulties inherent in achieving a legitimate appeals procedure if developments were governed by the Strategic Infrastructure Act
- An Bord Pleanála would fulfill this appeal function, as it currently does for land-based planning applications
- Local Authorities could conduct comprehensive public consultation in the area most likely to be affected by development
- Local Authorities are aware of their democratically agreed development plan objectives and would ensure compliance with these.

***CCA are supportive of devolving the development consent process for projects in the foreshore zone to Local Authorities as a stand-alone change.***

***In addition to sharing local authority expertise, consideration could be given to a broad based consultative process which would facilitate input from other national statutory bodies, e.g EPA, NRA, Irish Environmental Network, Birdwatch Ireland etc. so that decisions are made based on a wide range of expertise.***

## 4.2 Forward Planning

*CCA is supportive of the proposal to set mandatory objectives for managing all aspects of the coastal zone, including both terrestrial and marine elements within the development plan process.*

*We have repeatedly called for the implementation of a system of Integrated Coastal Zone Management and welcome moves in this direction.*

*We suggest that the definition of ICZM be revised to include “... the fragility of coastal ecosystems and the sensitivity of landscapes...”.*

### Conclusion

Since 2006, CCA has been campaigning for the reform of the outdated and undemocratic Foreshore Act 1933 and the introduction of a modern system of marine planning.

We wholeheartedly welcome the steps being taken towards the introduction of new legislation.

In conclusion we would stress that a key first step in a new planning and consent architecture must be the introduction of a democratically agreed Marine Spatial Plan to give context to all planning decisions relating to the marine.

Ends