



An  
Bord  
Pleanála

## Inspector's Report ABP-321898-25

<b>Question</b>	Whether the installation of the Beaufort sub-sea fibre optic cable system from the terminus of works under the granted Foreshore Licence (i.e. beyond 12nm of the coast) and within the Irish EEZ is or is not development or is or is not exempted development
<b>Location</b>	Within the Irish Exclusive Economic Marine Zone and beyond the 12 nautical mile (nM) limit off the south coast, south of Carnsore point, Wexford.
<b>Referral</b>	Direct referral to An Bord Pleanála under Section 314 of the Planning and Development Act, 2000 (as amended)
<b>Referred by</b>	Tom Philips & Associates for MDM Engineering on behalf of Amazon MCS Ireland Ltd.
<b>Owner/ Occupier</b>	Works are along the seabed in the EEZ
<b>Date of Site Inspection</b>	None Undertaken
<b>Inspector</b>	Jimmy Green

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## 1.0 Site Location and Description

- 1.1. The current referral has been made on behalf of Amazon MCS Ireland Limited and relates to part of a proposed sub-sea fibre-optic cable extending from the 12 nautical mile (nM) limit to the boundary of the Irish Exclusive Economic Zone (EEZ). The development description provided within the referrers documentation states the following:

"The proposed development is a subsea cable length that will provide connection between the 12 nautical mile (nM) limit and the Exclusive Economic Zone (EEZ). The cable is approximately 38.5km in length and traverses an area from Ireland's 12nM limit to the extent of the EEZ in the Celtic Sea"

- 1.2. The subsea cable is a 33mm diameter fibre optic cable, which will be simultaneously laid and buried beneath the seabed using a jetting trencher<sup>1</sup>, which will be powered and controlled by umbilical from the cable installation vessel. No details of the proposed/anticipated burial depths have been provided within the referral documentation.
- 1.3. The extent of the subject works ultimately forms part of an overall sub-sea fibre optic cable that will run from Kilmore Quay on the south east coast of Wexford in a westerly direction, before turning south and south east (to avoid the Saltee Islands SAC [Site Code 000707]), towards the boundary of the EEZ.
- 1.4. Although information is not provided within the referrers documentation as to the overall purpose of the subject cable on review of the granted foreshore licence documentation covering the extent of the works within the 12nM limit [FS007361 refers – discussed further below in Section 4], the overall subsea cable is being provided to replace an out-of-service cable and upgrade connectivity between Ireland and the UK.

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<sup>1</sup> A system which simultaneously lays and buries the cable by forming a narrow trench by fluidising the seabed and then inserting the cable. These systems can be either self-propelled (Remotely Operated Vehicles) or sled mounted and towed behind an installation vessel.

## 2.0 The Question

- 2.1. The question articulated by the referrer within their documentation (Section 1.6 of the planning cover letter dated 29<sup>th</sup> January refers) is set out below:

*“Does the ‘proposed development’ specified above<sup>2</sup> constitute exempted development in reference to works beyond the 12nM and within the EEZ, where works in this area would be subject to a licence under Part 5 of the MAP Act, as they represent a usage that requires such a licence?”*

- 2.2. The extent of the works subject to the referral is specifically targeted to focus on the works between the 12nM limit up to the boundary of the EEZ. This specific query arises from the fact that a consent has already issued from the relevant authority in relation to the subsea cable works within the 12nM limit (i.e. from the Wexford coastline to the 12nM boundary), under the foreshore licencing procedures that were in place prior to the expansion of the jurisdiction of planning functions into the marine area brought about by the Maritime Area Planning Act, 2021 (“the MAP Act”). As set out below I do have some issue in relation to the nature and wording of the question being asked, however, given the relatively recent alteration in the legislative provisions for subsea works beyond the 12nM limit, the focus of the question on the specific spatial extent of the referred works is pertinent in my opinion.
- 2.3. While the substantive question being raised is of merit, I consider the applicants wording as phrased above, contains some presumptive language (particularly in relation to the status of the subject works under the licencing regime of the MAP Act) and lacks clarity in relation to the nature of the works, and functions of the Board in relation to the exempted development declaration process. Accordingly, I consider it more appropriate for the Board to consider the following question:

*Whether the proposed development of a sub-sea fibre optic cable system (approximately 38.5km long) from the terminus of works under the granted foreshore licence (F007361) at the 12 nautical mile (nM) limit through, and to the limit of the Exclusive Economic Zone (EEZ) is or is not development and or is or is not exempted development?*

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<sup>2</sup> Described in their letter as ‘The installation of the Beaufort sub-sea fibre optic cable system from the terminus of works under the granted foreshore licence 007361 at the 12 nautical mile limit to the extent of the Exclusive Economic Zone’.

- 2.3.1. The amended wording is necessary as it allows the Board to consider all relevant issues, provides greater clarity and specificity of the description and allows the Board to determine the relevant development and exempted development provisions while also considering the specific context of the subject works.

### 3.0 Coastal Planning Authority

- 3.1. There has been no previous declaration made in relation to the proposed development as the referral has been made directly to An Bord Pleanála under the provisions of section 314 of the Planning and Development Act, 2000 (as amended) which is discussed further in section 6.1.5 of this report below.
- 3.2. Although the works subject to this specific query lie outside the 12nM limit, as the closest coastal planning authority Wexford County Council were asked for any comments they may have in relation to the proposed development. A letter issued to the Coastal Planning Authority from the Board on the 20<sup>th</sup> of February 2025 seeking any submissions or observations in relation to the referral to be made by the 19<sup>th</sup> of March 2025. At time of reporting no comments had been received from the Coastal Planning Authority.

### 4.0 Planning History

- 4.1. There is no relevant planning history in relation to the subject works, however, Foreshore Licence FS007361 is a relevant consideration, the details of which are summarised below:
- **FS007361:** Foreshore licence granted by the Minister for Housing, Local Government and Heritage, on the 19<sup>th</sup> December 2023 to Amazon MCS Ireland Ltd. to lay, construct, install, operate repair, maintain, and decommission a subsea fibre optic cable system on the licenced area for the permitted use and as specified in the plans submitted. The foreshore licence application was accompanied by inter-alia, an Appropriate Assessment Screening and Natura Impact Statement, an Ecological Impact Assessment, a Non-Statutory Environmental Report, as well as a Marine Archaeological Assessment and Policy Support Statement. While the foreshore licence granted relates solely to that part of the cable route from landfall to the 12nM

boundary, the report of the Marine Licence Vetting Committee<sup>3</sup> (MLVC) informing the decision on this foreshore licence includes the following statements –

- 'Having considered the project as proposed it is concluded that it does not fall within the classes defined under Annex I or Annex II of the EIA Directive and therefore an Environmental Impact Assessment Report (EIAR) is not required'
- 'Having considered the application by, Amazon MCS Ireland Ltd. the IEC's<sup>4</sup> Appropriate Assessment and the Department's Marine Advisor (Environment) Environmental Report, it is concluded that from an appropriate assessment point of view the proposed development is environmentally acceptable'.
- 'The Department's Marine Advisor (Environmental) has reviewed the IEC's Risk Assessment for Annex IV species Report for Foreshore Application FS007361 and agrees with the IEC's conclusion that the proposed project will comply with the strict protection afforded to Annex IV species by Article 12 of the Habitats Directive'.
- 'In the interests of clarity the environmental considerations that have informed this assessment has taken account of environmental implications for the whole project as it is within the EEZ waters. As part of the process a range of detailed considerations have been given to the compliance of this proposed project with the various environmental directives. It is concluded that the proposed development will not have an adverse effect individually or in combination with other plans or projects, on the integrity of any designated European sites.'

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<sup>3</sup> The Marine Licence Vetting Committee (MLVC) is a committee convened as required for the purposes of undertaking a technical, including environmental, assessment of any application under the Foreshore Act 1933, at the request of the Foreshore Section of the Department of Housing, Local Government and Heritage.

<sup>4</sup> Independent Environmental Consultant engaged by the Department.

- 'The proposed development overlaps with Licence FS004585 which is for the now out of service ESAT-1 cable which is to be decommissioned and for the most part removed under this application. The duct on the beach is to be retained and reused for this application'.

In recommending that a foreshore licence be granted for the works based on the totality of the documentation submitted, subject to conditions, the MLVC stated:

- 'The proposed development seeks to improve telecommunications infrastructure by linking into a wider network. This particular development connects Ireland into an improved telecommunications network. The appropriate expansion of telecommunications infrastructure is considered to be prudent and needed both from a resilience and necessary support for economic development point of view. It is considered that the proposal is appropriate.'

- 4.2. Under MAC240030, Amazon MCS Ireland Ltd. has applied to the Maritime Area Regulatory Authority (MARA) for a Marine Area Consent (MAC) in relation to the "installation of the Beaufort telecommunications fibre optic cable connecting Kilmore Quay, Wexford to Pembrokeshire, Wales". The Board should note that this project description has been sourced from the MARA website, and as the MAC is currently under the consideration of MARA there is no further information available, apart from the location of the activity which is described as being Kilmore Quay, Wexford, and a map which appears to delineate the extent of the works subject to the current referral (i.e. the provision of the Beaufort cable from the end of the existing foreshore licence to the boundary of the EEZ).
- 4.3. MARA have also granted a licence (Ref. No. LIC230017) to Microsoft Ireland Operation Ltd. to carry out marine environmental surveys for the purposes of site investigation. This licence appears to partially overlap with the referrer's foreshore licence discussed at 4.1 above within and at the 12nM limit, but takes a different route to the east of the subject works within the EEZ. This licence was issued in July 2024 and has a 2 year term.

## **5.0 Policy Context**

### **5.1. National Marine Planning Framework**

- 5.1.1. The works subject to the current referral lie entirely within the marine area, and as such the provisions of the National Marine Planning Framework (NMPF) are relevant. Section 22 of the NMPF refers to telecommunications and includes an objective to facilitate international high-speed connectivity between Ireland and other countries. Telecommunications Policy 1 of the NMPF includes the statement that 'Proposals that guarantee existing and future international telecommunications connectivity which is critically important to support the future needs of society, Government, the provision of Public Services and enterprise in Ireland, should be supported.'

### **5.2. South Coast Designated Maritime Area Plan for Offshore Renewable Energy**

The mapping provided by the referrer does not include any detail in relation to the proposed route in the context of the maritime areas designated for the provision of offshore renewable energy (ORE) in the South Coast Designated Maritime Area Plan for Offshore Renewable Energy (South Coast D-Map). The route is proximate to and may overlap with Maritime Area D from the South Coast D-Map which covers an area of approximately 300km<sup>2</sup> and lies approximately 26km off the Wexford coastline. Notwithstanding this, however, policy TEL 1 of the South Coast D-Map supports the principle of co-existence of ORE development with digital telecommunications infrastructure, and states that "No exclusions shall be placed on the deployment, operation or maintenance of subsea telecommunications cables within or around ORE developments or the associated cabling, unless required for safety, environmental reasons or other exceptional circumstances.' Furthermore the South Coast D-Map notes the critical importance of national and international telecommunications connectivity and acknowledges that the maritime areas designated are of sufficient size to facilitate project flexibility to design and plan for cable routes and any associated crossing points.



### 5.3. Designations

The area subject to the current referral (i.e. within the EEZ but outside the 12nM limit) is not subject to any Natura 2000 designations. The Seas off Wexford Coast Special Protection Area (SPA) lies approximately 1km to the north of the northernmost part of the subject works (at the 12nM limit) while the route of the already consented foreshore licence cabling runs through this SPA as well as the Ballyteige Burrow SAC, and skirts around (the northern and western boundaries) of the Saltee Islands SAC. The Hook Head SAC lies approximately 5km to the west of the previously consented foreshore cable route. The Board should note that the Seas off the Wexford Coast SPA was designated as an SPA in January 2024.

## 6.0 Statutory Provisions

### 6.1. Planning and Development Act, 2000 (as amended)

6.1.1. The following provisions and definitions from the Planning and Development Act, 2000 (as amended) ("The Planning Act") are relevant.

- **Works** "includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure..." [Section 2(1) of the Planning Act refers].
- **Maritime Area:** has the meaning assigned to it by the Maritime Area Planning Act 2021.[Section 2(1) of the Planning Act refers]. This is further discussed in Section 6.3 below.
- **'Outer Maritime Area** means that part of the maritime area that is not within the nearshore area of any coastal planning authority' [Section 2(1) of the Planning Act refers].
- **'Maritime Site** means a part of the maritime area, and includes (a) the waters of that part of the maritime area, (b) the seabed in that part of the maritime area, and (c) all substrata beneath the seabed in that part of the maritime area.' [Section 2(1) of the Planning Act refers].
- "In this Act, except where the context otherwise requires, **'Development'** means – (a) the carrying out of any works in, on, over or under land, or the

making of any material change in the use of any land or structure situated on land, or (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Planning Act 2021)” [Section 3(1) of the Planning Act refers].

- Part XXI of the Planning Act refers to Maritime Development and Section 278 states that, except where the context otherwise requires:
  - **‘Development** means – (a) the carrying out of any works in the maritime area, or (b) the making of any material change in the use of the sea, seabed or any structure, in the maritime area, and includes the reclamation of any land in the nearshore area.
- **Land** includes any structure and any land covered with water (whether inland or coastal). [Section 2(1) of the Planning Act refers].
- **Statutory undertaker** means a person, for the time being, authorized by or under any enactment or instrument under an enactment to –
  - (a) Construct or operate a railway, canal, inland navigation, dock, harbour, or airport,
  - (b) Provide, or carry out works for the provision of, gas, electricity, or telecommunications services, or
  - (c) Provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking; [Section 2(1) of the Planning Act refers].

6.1.2. Chapter III, Part XXI of the Planning Act refers to ‘Other Development in the Maritime Area’, and refers to development situated, inter-alia ‘wholly in the outer marine area’ (Section 285(1)(a)(i) refers) as well as development specified in the Eighth Schedule situated wholly or partly in the nearshore area<sup>5</sup> and/or partly on land, all of which require an application for permission to be lodged directly with An Bord Pleanála. Section 285(2) clarifies that the provisions of this chapter do not apply to:

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<sup>5</sup> Developments in the nearshore would normally require application to the relevant coastal authority under chapter II of Part XXI, however, schedule eight type development must be lodged directly with the Board even if they are located in the nearshore.

- Development that has been previously approved under Part III (sections 225 or 226 which were repealed by the Maritime Planning Act),
- Certain developments approved in accordance with sections 10 (e.g. building, pier, wall or other structure) or 13 (material deposition) of the Foreshore Act 1933 ('the Foreshore Act'), or any development subject to a lease made, or licence granted, under the Foreshore Act, on or after the 17<sup>th</sup> October 2017 and for which permission under Part III was not required whether the development has been commenced, completed, or not commenced<sup>6</sup> (see footnote 4).

6.1.3. The eighth schedule includes developments such as:

- Development referred to in the Seventh Schedule, (which includes various items of energy, transport, environmental, and health infrastructure),
- Development consisting of the construction of an electrical power line that has a voltage of not less than 220 kilovolts and a length of not less than 15 kilometres.
- Development consisting of the laying of a telecommunications cable or pipeline of not less than 15 kilometres in length.
- An installation for the production of energy by harnessing the power of the wind that has (a) more than 5 turbines or (b) a total output of more than 5 megawatts.

6.1.4. Section 286 of the Planning Act specifies that 'permission shall be required for development (other than exempted development) to which this Chapter applies, and accordingly a person shall not carry out any such development except under and in accordance with a permission granted under section 293<sup>7</sup>. Section 286(2) confirms that an application for permission to carry out development to which this chapter applies shall be made to the Board under Section 291.

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<sup>6</sup> This provision will cease to apply to development which has not been completed on or before the 5<sup>th</sup> anniversary of the date of commencement of section 249 of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023, (i.e. 31<sup>st</sup> December 2028)

<sup>7</sup> Section 293 refers to a decision by An Bord Pleanála in relation to an application for permission under Section 291 of the Planning Act.

6.1.5. Section 314 of the Planning Act states the following in relation to exempted development:

“For the purpose of determining the question as to whether or not any development situated wholly or partly in the outer maritime area is exempted development, section 5 shall apply as if -

(a) references to a planning authority, the planning authority, the relevant planning authority or the authority were references to the Board, and

(b) subsections (3) and (4) were deleted.”

6.1.6. Section 4 of the Planning Act sets out a range of exempted developments including those in the maritime area. The relevant exempted development provisions in relation to the subject works (i.e. relating to works in the maritime area by an entity other than a coastal planning authority) are set out in Section 4(1A) of the Planning Act as it refers to developments wholly in the maritime area, it states the following categories of exempted development:

“4(1A) Subject to subsection (1B), the following classes of development shall also be exempted development for the purposes of this Act if carried out wholly in the maritime area:

(a) development for the purposes of any survey for archaeological purposes;

(b) development for the purposes, or consisting, of—

(i) the exploration for petroleum, within the meaning of Part II of the Petroleum and Other Minerals Development Act 1960, in accordance with a licence under section 8, 9 or 19 of that Act or a lease under section 13 of that Act,

(ii) the working, within such meaning, of such petroleum, in accordance with such lease or licence, or

(iii) the restoration of the area in which such exploration or working has taken place;

- (c) development consisting, or for the purposes, of the construction or operation, in accordance with a consent under subsection (1) of section 40 of the Gas Act 1976, of an upstream pipeline,
- (d) development for the purposes, or consisting, of dumping within the meaning of the Dumping at Sea Act 1996;
- (e) development authorised under section 638 of the Merchant Shipping Act 1894 or section 3 of the Merchant Shipping (Commissioners of Irish Lights) Act 1997 by the Commissioners of Irish Lights for the purposes, or consisting, of the placement of aids to navigation;
- (f) activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act 2021;
- (g) development consisting of the use of any land or maritime site for the purposes of -
  - (i) the harvesting of shellfish, or
  - (ii) activities relating to fishing or aquaculture.

(1B) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an environmental impact assessment of the development is required.

(1C) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required.”

6.1.7. In relation to item 1A(f) above, activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act, 2021 are discussed further in section 6.3.3 – 6.3.7 of this report below.

6.1.8. Section 4(3) of the Planning Act notes that any reference to exempted development shall be construed as reference to development which is specified in subsection (1) or (1A) [of Section 4] or to development referred to in regulations made under subsection 2.

6.1.9. Section 4(4) of the Planning Act notes that notwithstanding paragraphs (a), (i), (ia), and (l) of subsection (1) and any regulations under subsection (2) development shall not be exempted development if an Environmental Impact Assessment (EIA) or an appropriate assessment (AA) of the development is required. Subsection 4(4A) states that:

“Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.”

6.1.10. Section 5 of the Planning Act relates to declarations and referrals on development and exempted development, and as augmented by section 314 as set out above notes that for development wholly within the maritime area, direct referral to the Board is necessary in order to determine a question as to what constitutes exempted development. Section 5 also allows the Board to request further information from the referrer [Section 5(2)(b)] if required.

## **6.2. Planning and Development Regulations, 2001**

6.2.1. The Planning and Development Regulations, 2001 (as amended) contain a further range of classifications of exempted development under Article 6, Schedule 2 (subject to restrictions applied by Article 9), Articles 7 and 8, as well as changes of use in Article 10. Article 9 restrictions which would preclude a development being considered exempted include inter alia, contravention of a condition attached to a planning permission, any development for which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and such assessment is required, creation of an adverse impact on an NHA, as well as obstruction of any public right of way.

6.2.2. Schedule 2 of the Planning and Development Regulations contain a number of classes of development which could be exempted development subject to certain

specified conditions and limitations (as well as the restrictions applicable under Article 9). In this regard, the Board will note the provisions of

- Class 31, Part 1, Schedule 2, “The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of – (a) underground telecommunications structures or other underground telecommunications works (including the laying of mains and cables and the installation underground of any apparatus or equipment)...”.
- Class 53, Part 1, Schedule 2, “The carrying out of development below the high water mark pursuant to and in accordance with a licence under the fisheries (Amendment) Act, 1997 (No. 23 of 1997)(including a licence deemed to be granted under that Act or the Fisheries and Foreshore (Amendment) Act, 1998 (No. 54 of 1998).

6.2.3. The above are only referenced as a matter of completeness and for the avoidance of doubt that the provisions of the Regulations have been considered. Having reviewed these I am satisfied that there are none applicable to the subject development, furthermore I note that the referrer has not indicated or argued that any of the exemptions from the Planning Regulations, 2001 (as amended) are applicable in relation to the subject referral.

### 6.3. **Maritime Area Planning Act 2021.**

6.3.1. The following provisions and definitions from the Maritime Area Planning Act 2021 (as amended) (“the MAP Act”) are relevant.

- **Nearshore** is defined in Part 5 of the Maritime Act, it essentially entails the area from the coastline (high water mark) out to sea for 3 nautical miles.<sup>8</sup>
- **Maritime area** is described in section 3 as that area of the State extending from the high water of ordinary or medium tides of the sea to the outer limit of the continental shelf, and includes - (a) the sea and tidal area of internal waters of the state, (b) the territorial seas of the state, (c) the exclusive economic zone, and (d) the continental shelf.

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<sup>8</sup> This distance may vary in the event of there being an alternative distance prescribed.

- **Maritime usage** in relation to the maritime area, [Section 2(1) of the Maritime Act refers] means any activity, operation works or development undertaken in that area for any purpose (including conservation), and includes –
  - (a) The construction or use, or both, of any infrastructure in that area associated with, or otherwise supporting, the activity, operation, works or development, and
  - (b) The maintenance of such infrastructure.
- **Sea** includes –
  - (a) An area which is submerged at high water or ordinary or medium tides,
  - (b) An estuary or arm of the sea, and
  - (c) The tidal waters of a channel, creek, bay, river, canal, waterway, or other watercourse [Section 2 of the Maritime Act refers].

6.3.2. The Planning Act references and adopts the above definitions of nearshore, maritime area, and coastal planning authority from the Maritime Act.

6.3.3. As set out previously above, one of the exempted development provisions from the Planning Act refers to “activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act 2021”<sup>9</sup>. Part 5 of the Maritime Act refers to licences authorising certain maritime usages in the Maritime Area, these licences are considered and decided upon by the Marine Area Regulatory Authority (MARA). Whether the referred development is a licensable activity is therefore a crucial consideration in relation to this matter.

6.3.4. Part 5, of the MAP Act relates to licences authorising certain maritime uses in the Maritime Area. Section 111 states that a licence shall not be granted for a schedule 7 usage if an EIA is required, Section 112 confirms that MARA is the competent authority in relation to the appropriate assessment of licensable maritime usages while Section 113(1) confirms that a person shall not undertake a Schedule 7 usage (other than an exempted usage – i.e. specified by regulation under section 114 –

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<sup>9</sup> Section 4(1A)(f) of the Planning and Development Act, 2000 (as amended) refers.



discussed further below) in any part of the maritime area unless they are the holder of a licence for such usage.

6.3.5. Schedule 7 lists a range of maritime uses which may be undertaken in the maritime area pursuant to a licence, the list can be summarised as follows:

- 1) Dredging from one part of the seabed to another other than dredging for a new harbour, berth, or to deepen existing facilities, or any dredging that is ancillary to development authorised under the Planning Act.
- 2) Marine environmental surveys for scientific discovery or research,
- 3) Marine environmental surveys for site investigation in support of a planning application under Part XXI of the Planning Act.
- 4) The provision of navigational aids or markers not undertaken or authorised by the Commissioners of Irish Lights.
- 5) The installation of non-permanent platforms, pontoons or slipways.
- 6) The deposit of any substance or object either in the sea or on or under the seabed from (among other things) a vehicle, vessel, aircraft or marine structure, .
- 7) The use of (among other things) a vehicle, vessel, aircraft to remove any substance or object from the seabed.
- 8) The use of explosives not related to a development authorised under the Planning Act nor requiring authorisation under any other enactment.
- 9) The maintenance of any cable, pipeline, oil gas, or carbon storage facility structure that does not require authorisation under any other enactment.
- 10)The harvesting, disturbance or removal of seaweed.
- 11)The deposit, construction, or removal of any mooring not requiring authorisation under any other enactment.
- 12)The removal or disturbance of beach material area other than in the course of ordinary or reasonable recreational enjoyment of the maritime area.
- 13)The laying or installation of telecommunications cables or ducting by or between coastal States where such cables or ducting pass through the

exclusive economic zone (as construed in accordance with the Act of 2021) or the continental shelf but do not land in the State.

14) A maritime usage specified in regulations.

- 6.3.6. Section 114 of the Maritime Act allows for the provision of regulations to specify any class of schedule 7 usage to be exempted from the need to acquire a licence, however, no such usage can be exempted if an appropriate assessment or environmental impact assessment is required.
- 6.3.7. Section 115 of the Maritime Act allows a person to seek a formal declaration in writing from MARA as to whether or not a maritime usage is a Schedule 7 usage and whether a licence is required for the usage.

## **7.0 The Referral**

### **7.1. Referrer's Case**

- 7.1.1. TPA on behalf of the referrer states their opinion that the subject works are development but constitute exempted development because of the following:
- Consent is already in place for the provision of a cable and all associated works from land to 12 nautical miles through the granted foreshore licence [FS007361] which also indicated that a cable would be laid from 12nM to the EEZ and beyond as part of the project. The subject works relate to the laying of a subsea telecommunications cable from a location at a point 12nm from the Irish coastline to the edge of the EEZ.
  - Section 4(1A)(f) of the Planning Act states that 'subject to subsection (1B), the following classes of development shall also be exempted development for the purposes of this Act if carried out wholly in the maritime area ...  
(f) activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act 2021.
  - Section 4(1C) of the Planning Act notes that certain developments listed under section 4(1A) [namely (a), (d), (e) and (g)] shall not be exempted development if an Appropriate Assessment of the works are needed. Item (f) is not listed in this subsection and accordingly activities which are subject of

or require, a licence under Part 5 of the MAP Act can still be considered as exempted development.

- Usages that require a licence under Part 5 of the Maritime Area Planning Act 2021 include the following:

“The laying or installation of telecommunications cables or ducting by or between coastal states where such cables or ducting pass through the exclusive economic zone (as construed in accordance with the Act of 2021) or the continental shelf but do not land in the State”.

- 7.1.2. The referrer is of the opinion that the subject works satisfy all the above relevant criteria and that therefore the works constitute development but is exempted development as the cable subject to the referral does not land in the state (i.e. runs from the edge of the EEZ to the 12nM limit). The referrer makes clear that it acknowledges that notwithstanding their stated position above that the works will still have to engage with MARA and obtain a licence prior to carrying out the works.

## **7.2. Planning Authority**

- 7.2.1. As stated previously above, this referral was lodged directly with the Board in accordance with Section 314 of the Planning Act and accordingly there has been no prior consideration of this referral at local authority level. The Board wrote to Wexford County Council to request any submissions or observations by Wednesday the 19<sup>th</sup> of March, 2025. At time of reporting no comments had been received.

## **7.3. Maritime Area Regulatory Authority.**

- 7.3.1. The subject works are located entirely within the EEZ, and are therefore within the outer Maritime area. MARA has been established to, in effect, act as custodian and regulator of Ireland's maritime area. The referrer is not the owner of the site of the subject works which runs along the seafloor, furthermore the referrer has stated that the subject works are reliant on their Schedule 7 maritime usage status to qualify as exempted development. Accordingly, in this regard An Bord Pleanála wrote to MARA under the provisions of section 131 of the Planning Act inviting any submission or observations they may have on the subject referral and asking two questions in particular. The questions asked of MARA were as follows:

- (1) Whether an application for a declaration under Section 115 of the MAP Act has been made to (/or decided by) MARA, on whether the subject works constitute a Schedule 7 usage and would require a licence, and/or whether such licence has been sought for the subject works?
- (2) Should there have been no such application for a licence or declaration as described at (1) above, you are requested to provide consideration on the basis of the information available (attached), as to whether the subject works would constitute an activity that could be subject to a licence under Part 5 of the Maritime Area Planning Act 2021. In this regard, you are requested to consider the referrer's stated opinion in their documentation that the subject works are a class 13 use under Schedule 7 of the Maritime Area Planning Act 2021.

7.3.2. MARA has responded in detail to the Boards request in correspondence dated 13<sup>th</sup> March 2025 (attached to the file), as summarised below:

- MARA notes that there is an existing licence granted under FS007361 on the 19<sup>th</sup> of December 2023 to Amazon MCS Ireland Ltd. for the telecoms cable from Kilmore as far as the 12NM limit, and that this authorises the main lay, construction works, maintenance and decommissioning of the Beaufort sub-sea fibre optic cable system from landfall to the 12NM limit.
- The referrer 'Amazon MCS Ireland Ltd.' currently has a live Maritime Area Consent (MAC) application ref MAC 240030 (which at time of writing remains under the consideration of MARA<sup>10</sup>) for the 'installation of the Beaufort telecommunications fibre optic cable connection Kilmore Quay to Pembrokeshire, Wales'. The Board should note that, notwithstanding the description provided by MARA in their correspondence in relation to the description of the MAC, the 'Applicant Map' available for MAC240030 on the MARA website seems to define the extent of the current referral works (i.e. from the 12nM mark out through the EEZ)<sup>11</sup>.

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<sup>10</sup> No information was provided in terms of the timeframe of decision or when the MAC application was lodged.

<sup>11</sup> In this regard the Board should note that this statement is made on the basis of visual comparison between the referral map and that from the MARA website (as the MARA website map is not to scale), and the stated site areas are the same (38.5ha) on both maps.

- MARA states as follows in their correspondence, “As provided under the Maritime Area Planning Act 2021, Schedule 7(13) MARA can licence, ‘The laying or installation of telecommunications cables or ducting by or between coastal States where such cables or ducting pass through the exclusive economic zone (as constructed in accordance with the Act of 2021) or the continental shelf but do not land in the State”. [Underlined emphasis provided by MARA].
- In relation to the first specific query from the Board MARA have confirmed that there has been no application for a declaration under section 115 of the MAP Act. They have, however, stated the following:

*“..a communication was issued to the applicant in May 2024 on this matter confirming MARA considered that a Maritime Usage Licence (MUL) was not the appropriate consent for that part of the cable which will be located within the Exclusive Economic Zone (EEZ). Instead a Maritime Area Consent (MAC) would be required for the portion of the cable that will be located within the EEZ as, notwithstanding the fact that a foreshore licence has been obtained, the cable constituted a cable that will land in the state.”*

- In relation to the second specific query from the Board MARA state the following:

*“...MARA considers on the basis of the information supplied that the proposed cable does not constitute an activity that could be licenced under Part 5 of the MAP Act, as the cable constitutes a cable that lands in the State and therefore does not come within the scope of paragraph 13 of Schedule 7 to the MAP Act. The Amazon letter suggests that the portion of the Cable not covered by the Foreshore License lies wholly within the EEZ and does not land in the State and that is what is sought to be licensed. However, the portion of any cable within the EEZ does not land in the State and it is contra legem to regard a cable as not landing in the state simply because its landing in the State is authorised by a Foreshore License and comes within a separate consenting regime.”*

## **8.0 Assessment**

### **8.1. Maritime Status of the Works**

- 8.1.1. I acknowledge that the subject referral relates to works which are proposed wholly in the outer maritime area and that accordingly the provisions of Section 314 of the Planning Act are relevant. Therefore, it is appropriate that the referrer has raised the question of the exempted status or otherwise of the subject works directly with An Bord Pleanála.

### **8.2. Is or is not development**

- 8.2.1. This referral relates to the provision of a subsea telecommunications cable from a point at the 12nM limit (to the south of the Wexford coastline), in a south easterly direction for a distance of approximately 38.5km, through and to the boundary of the EEZ.
- 8.2.2. Given the relevant legislative definitions set out in Section 6 of my report above, I am satisfied that the subject referral constitutes development. I note in particular in this regard, that the laying of a subsea cable represents “works” which are defined in section 2(1) of the Planning Act as including any act or operation of construction, or excavation, and that Section 271 of the Planning Act states that the carrying out of works in the maritime area<sup>12</sup> constitutes development.

### **8.3. Is or is not exempted development**

- 8.3.1. Having established that the subject works constitute development, the remaining matter to consider is the exempted status. The applicant has set out their position clearly as summarised in Section 7.1 above that in their opinion the works are exempted as they are a licensable activity by MARA under Part 5 of the Maritime Act.
- 8.3.2. I have reviewed the statutory provisions of the Planning Act and its associated regulations (set out in sections 6.1 and 6.2 above) as well as those of the Maritime

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<sup>12</sup> Defined generally as that area of the state extending from the high water of ordinary or medium tides of the sea to the outer limit of the continental shelf and includes the exclusive economic zone (EEZ) – Section 3 of the Maritime Act refers.

Act (set out in section 6.3 above), and I am satisfied that the relevant exempted development provisions which need to be considered in relation to the subject development are those set out in Section 4(1A) of the Planning Act which refers to exempted developments located wholly in the maritime area. Section 4(1A) sets out a range of classes of exempted development within the maritime area and is quoted in its entirety in section 6.1.9 above. The only class of development set out under Section 4(1A) of the Planning Act that could be argued as being applicable for the current referral (and is argued as such by the referrer) is item (f), as set out below:

‘(f) activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act 2021;’

Accordingly, if the works can be considered a MARA licensable activity they may have a pathway towards being exempted development (subject to consideration of whether an EIA is necessary or not).

- 8.3.3. Activities that are the subject of, or require, a licence under Part 5 of the Maritime Act have been summarised in section 6.3.5 above. The only activity listed which relates to the provision of a telecommunications cable is set out below:

‘13 The laying or installation of telecommunications cables or ducting by or between coastal States where such cables or ducting pass through the exclusive economic zone (as construed in accordance with the Act of 2021) or the continental shelf but do not land in the State.’ (Schedule 7, Maritime Planning Act refers)

- 8.3.4. The referrer in their documentation argues that the above provision is applicable and relevant in relation to the proposed development because the referral relates specifically to works solely within the EEZ, and that they do not therefore make landfall in the state. On consideration of this matter and the wording of item 13 above, I do not agree with the referrers position. The subject referral relates to a portion of a cable which clearly lands in county Wexford within the State and connects the State to the UK. Any interpretation of the wording of an item 13 usage points to it referring to portions of subsea cables that pass through Irish waters between other coastal states but do not make landfall in the Irish State, this cannot be said of the subject sub-sea cable.

- 8.3.5. I acknowledge that the referral relates to a portion of a cable that lies within the EEZ as that portion of the overall cable within the 12nM limit has achieved consent under the previous foreshore regime. The portion of the cable whose exempted status is currently being questioned to the Board clearly forms part of this overall cable route that makes landfall in the State, and is not a separate standalone cable. I note that the previous foreshore licencing regime restricted the extent of any such licences to the 12nM limit, and that the referrers had no means or mechanism to achieve a consent beyond that limit at that time. However, the fact remains that the cable does make landfall in the state albeit that portion of the cable within the 12nM limit has been consented under the issued foreshore licence.
- 8.3.6. MARA's response to the Boards invitation to comment (as set out in section 7.3 of this report above) confirms my stated opinion above. MARA do not consider that subject works constitute an activity that could be licenced under Part 5 of the MAP Act as the cable constitutes a cable that lands in the state and therefore does not come within the scope of paragraph 13 of Schedule 7 of the MAP Act.
- 8.3.7. On the basis of the above I conclude that as the subject works are not a licensable activity under the provisions of Schedule 7(13) of the Maritime Area Planning Act 2021 (as amended), and as no other relevant exemptions are applicable under the provisions of the Planning and Development Act, 2000 (as amended) that the works cannot be considered exempted development under the current statutory provisions.

#### **8.4. Restrictions on exempted development**

- 8.4.1. Although the non-exempted status of the subject works have been clarified above, in the interests of completeness, and to fully inform the Boards consideration I here consider the further relevant restrictions on exempted development status. Having regard to the nature of the proposed development the relevant restriction to consider relates solely to whether the works would be subject to EIA. Section 4(4) of the Planning Act notes that subject to certain exceptions (not relevant in the current case) that development shall not be exempted development if an EIA is required, while section 4(1B) notes that specifically in relation to certain developments carried out wholly in the maritime area that if EIA is required they cannot be considered



exempted development. Section 111 of the MAP Act confirms that a licence cannot be issued for a Schedule 7 maritime usage if an EIA is required.

- 8.4.2. The Board should note that no information or discussion has been presented on this matter by the referrer, however, I note the Departments consideration of this issue when issuing the foreshore licence FS007361 whereby they conclude that the proposed cable does not fall within the classes of development under Annex I or II of the EIA Directive and therefore EIA is not required. While the foreshore licence related solely to works within the 12nM limit, the Board should note that the Department clarified within their assessment that their consideration has taken account of environmental implications for the while projects as it is within the EEZ. In this regard I concur with the Departments conclusion that EIA is not required in relation to the current case as it is not a class which requires EIA.
- 8.4.3. In relation to Appropriate Assessment (AA) Section 112 of the MAP Act, notes that MARA is the competent authority in relation to maritime usage licensable activities. Accordingly, a licence can therefore be issued by MARA for any such licensable activity which requires AA. Section 4(1C) of the Planning Act refers in this regard, and the Board should note that while this section specifically precludes certain developments carried out wholly in the maritime area from being exempted should Appropriate Assessment be required, activities that are subject of, or require a licence under Part 5 of the MAP Act are not included in this restriction. I also note that the Department completed an appropriate assessment of the works when issuing the foreshore licence for the works within the 12nM limit.
- 8.4.4. The Board should note that neither the EIA nor AA considerations alter my conclusion that the subject works are not exempted development, this discussion is merely presented for completeness.

## 9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the proposed development of a sub-sea fibre optic cable system (approximately 38.5km long) from the

terminus of works under the granted foreshore licence (F007361) at the 12 nautical mile (nM) limit through, and to the limit of the Exclusive Economic Zone (EEZ) is or is not development or is or is not exempted development:

**AND WHEREAS** Amazon MCS Ireland Limited requested a declaration on this question from An Bord Pleanála on the 29<sup>th</sup> day of January, 2025:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended
- (c) Sections 4(1A),(1B) and (1C) of the Planning and Development Act, 2000, as amended,
- (d) Sections 278, 285, 286, and 314, Part XXI, Maritime Development, of the Planning and Development Act, as amended,
- (e) Section 2 of the Maritime Area Planning Act, 2021 (as amended)
- (f) Section 3 of the Maritime Area Planning Act, 2021 (as amended)
- (g) Part 5 of the Maritime Area Planning Act, 2021 (as amended)
- (h) Schedule 7 of the Maritime Area Planning Act. 2021 (as amended)
- (i) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (j) the report and recommendation of the Planning Inspector.

**AND WHEREAS** An Bord Pleanála has concluded that the proposed development of a sub-sea fibre optic cable system (approximately 38.5km long) from the terminus of works under the granted foreshore licence

(F007361) at the 12 nautical mile (nM) limit through, and to the limit of the Exclusive Economic Zone (EEZ) is development and is not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 314 of the Planning and Development Act, 2000 (as amended), hereby decides that the proposed development of a sub-sea fibre optic cable system (approximately 38.5km long) from the terminus of works under the granted foreshore licence (F007361) at the 12 nautical mile (nM) limit through, and to the limit of the Exclusive Economic Zone (EEZ) is development and is not exempted development

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Jimmy Green  
Planning Inspector

3<sup>rd</sup> April 2024