



Mr Kevin McGettigan
Executive Officer
An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

13 October 2026

Re: Case Number ABP-318802-24

Dear Mr McGettigan,

In response to your letter of 30 September 2026, we are happy to provide you with the requested further information in relation to the proposed development.

The requested information relates to:

1. the implications for the proposed development of updated high water mark (HWM) data from Táilte Éireann in the period since submission of the application, including in 2026.
2. technical queries on the modelling used for the Updated Coastal Recession Assessment - 2026
3. clarification on the level of consideration given to coastal fumigation and complex local meteorological condition in the dispersion modelling study.

1 Implications of updated HWM for the proposed development

1. Following receipt and consideration of your response to item 7(b) of the Commission's previous further information request, the Commission hereby advises you of updated high water mark dataset publications by Táilte Eireann in the period since submission of the application, including in 2026. You are requested to submit additional information (including drawings) that demonstrate the current delineated high water mark and its relationship to both the application site (red line) boundary and the high water mark identified on the application documentation. The submission should address the implications of any change in the high water mark for land ownership, development boundaries, and the applicable statutory consenting regime including clarification of any requirement for consent, licence, or other authorisation under the Maritime Area Planning Act 2021.

MARA announced on 16 April 2026 that Táilte Eireann's Ungeneralised 2026 HWM dataset ("2026 HWM") has been released. MARA's announcement state that *'With immediate effect, this dataset is to be used for all Maritime Area Consent and Maritime Usage Licence applications submitted to MAR[A]'*¹.

This response now addresses the implications of the 2026 HWM for the proposed development.

- (i) *additional information (including drawings) that demonstrate the current delineated high water mark and its relationship to both the application site (red line) boundary and the high water mark identified on the application documentation*

See enclosed drawing number IE_Cork_Planning_1434-104_14 which shows both the 2026 HWM

¹ Update available at <https://www.maritimeregulator.ie/important-mapping-update/>



(marked with a purple line) and the high-water mark identified on the application documentation (“**2015 HWM**”) (marked with a blue line).

The 2015 HWM was the red line boundary on the coastal side of the application site.

Where there is a difference between the 2015 HWM and the 2026 HWM, the parcel of land the status of which has changed (i.e., to being above or below the HWM) is shaded in green and labelled ‘A’ in the enclosed drawing IE_Cork_Planning_1434-104_14.

(ii) *the implications of any change in the high water mark for (I) land ownership, (II) development boundaries, and (III) the applicable statutory consenting regime including clarification of any requirement for consent, licence, or other authorisation under the Maritime Area Planning Act 2021.*

(I) *the implications of any change in the high water mark for land ownership*

The land parcel marked in green is below the 2026 HWM and accordingly now forms part of the foreshore².

There is a legal presumption that the State owns all of Ireland’s foreshore unless it can be shown that it has been the subject of a grant of title or has been adversely possessed over a period of time. Thus, unless ownership is otherwise established, the foreshore is state land and is vested in the Minister for Finance. In this regard, see:

- (1) Article 11 Constitution of the Irish Free State (Saorstát Éireann) Act 1922;
- (2) Article 10.2 Bunreacht na hÉireann;
- (3) Section 1C Foreshore Act 1933 (as amended);
- (4) Section 2 of the State Property Act 1954;
- (5) Section 5(1) of State Property Act 1954; and
- (6) Written answer delivered by the Minister of State at the Department of the Environment, Community and Local Government to question 394 on 15 April 2014.

The text of these provisions is at Appendix 1.

Indaver is not aware of any non-State person or entity that could have established title to the land parcel marked in green since it formed part of Folio number: CK113809F, which Indaver has owned since November 2000.

(II) *the implications of any change in the high water mark for development boundaries*

As is clear from the information provided below under the heading ‘Implications for the Placement of Sacrificial Material’, no works whatsoever are proposed within the land parcel marked in green. The proposed development, if permission is granted, can be carried out without any amendments or alternations to the plans and particulars of the application documentation submitted to the Commission.

Accordingly, Indaver submits that the redline boundary for the application should be amended as per drawing IE_Cork_Planning_1434-104_14 enclosed.

² See section 1 of the Foreshore Act 1933 (as amended), which states: “the word “foreshore” means 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”



There is precedent for the redline boundary of a proposed development being amended in response to a request for information from the Commission per the High Court's judgment in *O'Griana & Ors v An Bord Pleanála & Ors*, [2017] IEHC 7.

In that case, the applicant for permission, Framore Limited, amended the redline boundary in response to a request issued by An Bord Pleanála under section 132 of the Planning and Development Act 2000 (as amended). The amendment to the redline boundary (and relocation of a turbine and consequent minor alteration to the internal access track and underground cable) was advertised in newspaper notices. The Applicants sought to challenge the permission, including because the amendments proposed by Framore constituted a material change to the proposed development. That argument was rejected by the High Court, including because the applicants had made submissions in response to the advertisement of the changes and those submissions were referenced by the inspector before permission was granted.

The change to the redline boundary proposed now by Indaver is clearly a non-material change of the type which can be permitted by the Commission in light of the judgment referenced above. Indaver confirms that it has no objection to advertising this change.

In addition and / or in the alternative, Indaver confirms that it would have no objection to the inclusion of a condition prohibiting the carrying out of any works whatsoever within the land parcel marked in green.

(III) *the implications of any change in the high water mark for the applicable statutory consenting regime including clarification of any requirement for consent, licence, or other authorisation under the Maritime Area Planning Act 2021*

As set out above, no works whatsoever are proposed within the land parcel marked green, so there is no “maritime usage” (within the meaning of that term as defined in the Maritime Area Planning Act 2021 (as amended)³) (the “MAP Act”). Accordingly, Indaver was correct to state in its response to RFI dated 31 August 2026 that:

“... Indaver is not required to obtain a consent, licence, or other authorisation under the Maritime Area Planning Act 2021 as amended, and the proposed development is outside of the remit of the Maritime Area Regulatory Authority (MARA).”

Without prejudice to that position, Indaver is in any event not required to obtain a MAC from MARA prior to making its application for planning permission and is permitted to apply within the two year period following a grant of permission. This is because section 75(4)(b) of the MAP Act provides that:

“Subject to paragraph (c), subsection (1) shall not apply where –

³ ““maritime usage”, in relation to the maritime area, 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,

and references in this Act to “proposed maritime usage” shall be construed accordingly;”



(i) a prospective applicant for the development permission referred to in that subsection [ie where a MAC is ordinarily required prior to seeking development permission] has, on or before 1 October 2022, entered into consultations with the Board (P) under section 37B of the Act of 2000, and

(ii) an application for such permission is made, on or before 1 October 2024, pursuant to Part III of the Act of 2000.”

Paragraph (c) provides that: *“Where a person is for the time being not required to be the holder of a MAC by virtue of the operation of paragraph (b), the person shall make the MAC application concerned before the 2nd anniversary of the date of the grant of the permission concerned pursuant to Part III of the Act of 2000.”*

Indaver meets the conditions set out in section 75(4)(b)(i) and (ii) because:

- Pre-application consultations took place in respect of Indaver’s application on 12 November 2012, 12 June 2013, 03 March 2015, 16 July 2015, 11 September 2015 and 23 November 2015; and
- Indaver’s application for the proposed development was made on 13 January 2016, and was remitted by the High Court to the Commission on 8 January 2024.

Notwithstanding the above-mentioned provisions, Indaver reiterates that it does not require a MAC in respect of the proposed development as there is no *“maritime usage”* proposed because no part of the proposed development lies within the *“maritime area”*.

Implications for the placement of sacrificial material

The concept for the placement of the beach nourishment remains as illustrated in Appendix H of the Coastal Erosion Study - 2026. The actual geometry and volume of beach nourishment will be adapted to suit the geometry of the cliff, the beach profile and the delineated HWM as they are found to occur at the time when the material is placed on the beach, in line with the adaptive coastal management strategy set out in Chapter 13 and accompanying Appendices of the 2025 EIS, and will be fully implemented on lands above the HWM - including the updated 2026 HWM.

2 Technical detail of modelling used for the updated coastal recession assessment

2. Following receipt and consideration of the document ‘Updated Coastal Recession Assessment – 2026’ contained at Appendix I of Attachment 7.2 of your further information submission, you are requested to clarify the following:

- (i) The version of the SCAPE model used as part of the assessment.*
- (ii) The wave and water level conditions used during the calibration period from 2008 to 2025 (Section 3.2.4 refers).*
- (iii) Calibrated ‘R’ values, where ‘R’ relates to material strength and some hydrodynamic constants (Section 3.2.4 refers).*

SCAPE Version v1.23 was used for the modelling.

The water levels and wave conditions data used for the calibration period are as follows:



WL (m OD Malin)	Tp (s)	Hs (m)	Dir (degN)
1.62	3.9	1.0	91
-2.18	0	0	108
1.62	4.1	1.0	99
-2.18	0	0	108
1.62	3.7	0.2	102
-2.18	0	0	108
2.73	4.2	1.3	107
-2.18	0	0	108
1.62	4.1	0.8	103
-2.18	0	0	108
1.62	7.2	0.2	106
-2.18	0	0	108

The R values by profile are as follows:

Profile	R ($m^{9/4}s^{2/3}$)
B	8×10^7
C	2×10^7
D	2×10^7
E	3×10^7
F	1×10^7
G	9×10^6

3 Consideration of coastal fumigation and complex local meteorological conditions in the dispersion modelling study

Please refer to Attachment 2 to this letter, which is a technical note addressing the issues raised on this topic.

We are providing two hard copies and one electronic copy of this information.

Yours sincerely

Conor Jones | Regional Engineering Manager

Attachment 1: Amended Planning Boundary: Drawing Number 1434-104_14 Oct 2026

Attachment 2: Technical Note on Coastal Fumigation and Complex Local Meteorological Conditions (AWN Consulting, 2026)



Appendix 1

Provision	Text
Article 11 Constitution of the Irish Free State (Saorstát Éireann) Act 1922	All the lands and waters, mines and minerals, within the territory of the Irish Free State (Saorstát Éireann) hitherto vested in the State, or any department thereof, or held for the public use or benefit, and also all the natural resources of the same territory (including the air and all forms of potential energy), and also all royalties and franchises within that territory shall, from and after the date of the coming into operation of this Constitution, belong to the Irish Free State (Saorstát Éireann), subject to any trusts, grants, leases or concessions then existing in respect thereof, or any valid private interest therein, and shall be controlled and administered by the Oireachtas, in accordance with such regulations and provisions as shall be from time to time approved by legislation, but the same shall not, nor shall any part thereof, be alienated, but may in the public interest be from time to time granted by way of lease or licence to be worked or enjoyed under the authority and subject to the control of the Oireachtas: Provided that no such lease or licence may be made for a term exceeding ninety-nine years, beginning from the date thereof, and no such lease or licence may be renewable by the terms thereof.
Article 10.2 Bunreacht na hÉireann	All land and all mines, minerals and waters which belonged to Saorstát Éireann immediately before the coming into operation of this Constitution belong to the State to the same extent as they then belonged to Saorstát Éireann.
Section 1C Foreshore Act 1933 (as amended)	References in the Foreshore Acts 1933 to 2009 to foreshore belonging to the State shall be construed as references to foreshore which for the time being belongs to the State, including foreshore so belonging whether by virtue of Article 10.2 of the Constitution or otherwise.
Section 2 of the State Property Act 1954 (as amended)	“land” includes— ... (b) foreshore, within the meaning of the Foreshore Act, 1933 (No. 12 of 1933) ... the operative date” means the date of the passing of this Act [9 December 1954] “State land” means land which belongs to the State, the Nation, the People or a State authority or a gift of which, made to the State, the Nation or the People or in terms indicating that it is for the benefit of the State, the Nation or the People, was, before the operative date, accepted by the Government or a State authority, and includes any former crown rent, but does not include—...
Section 5(1) of the State Property Act 1954 (as amended)	On the operative date [9 December 1954, per section 2] all land, which immediately before the operative date is State land and is not then vested in a State authority, shall, by virtue of this subsection, stand vested in the [Minister for Finance].
Written answer delivered by the Minister of State at the Department of the Environment, Community and Local Government to question 394 on 15 April 2014	The Foreshore Act 1933 defines foreshore 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 and the outer limit of the foreshore is to be determined in accordance with section 1A of the Foreshore Act. The State Property Act 1954 vests ownership of the foreshore in the minister for Public Expenditure and Reform on behalf of the State. There is



	a legal presumption that the State owns all of Ireland's foreshore unless it can be shown that it has been the subject of a grant of title or has been adversely possessed over a period of time. The burden of proof of ownership rests on the claimant. If the area referred to as "beach" is foreshore as defined in the Foreshore Act, it is presumed to be in State ownership unless it can be proved otherwise. Accessible at https://www.oireachtas.ie/en/debates/question/2014-04-15/394/#pq-answers-394
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