

## Honor Caird Marren

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**From:** Sean O'Callaghan <socallaghan@antaisce.org>  
**Sent:** Friday 7 November 2025 17:22  
**To:** Marine  
**Cc:** Bord  
**Subject:** Ref: 323575  
**Attachments:** 20251107-ACP-323575.pdf

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A Chara,

Please find enclosed An Taisce's submission on the above proposal.

Is mise le meas,

Seán O'Callaghan  
Planning and Environmental Policy Officer  
*An Taisce – The National Trust for Ireland*  
Email: [socallaghan@antaisce.org](mailto:socallaghan@antaisce.org)  
[www.antaisce.org](http://www.antaisce.org)



An Taisce

*The National Trust for Ireland*

5 Foster Place

Dublin 2, Ireland

D02 V0P9

**20251107-ACP-323575**

An Coimisiún Pleanála,  
64 Marlborough Street,  
Rotunda,  
Dublin 1,  
D01 V902.

Sent by email to: [marine@pleanala.ie](mailto:marine@pleanala.ie) cc: [bord@pleanala.ie](mailto:bord@pleanala.ie)

7<sup>th</sup> November 2025

**Ref: 323575**

**App: Port of Waterford**

**For: Proposed extension of port facilities to support Offshore Renewable Energy ('ORE') development and ancillary works**

**Site: Port of Waterford, Belview, Co. Kilkenny**

A Chara,

We thank you for referring the above application to An Taisce for comment.

## **1. Habitats Directive**

The proposed works will take place within the Lower River Suir SAC (site code: 002137) which the NPWS Site Synopsis notes as containing "*excellent examples of a number of Annex I habitats, including the priority habitats alluvial forest and Yew woodland. The site also supports populations of several important animals species, some listed on Annex II of the Habitats Directive or listed in the Irish Red Data Book. The presence of two legally protected plants (Flora (Protection) Order, 2022) and the ornithological importance of the site adds further to the ecological interest and importance.*"<sup>1</sup> Hence, proposed construction and operational phase activity requires close consideration in light of the ecological significance of the site.

It is noted that the application proposes to reclaim 1.3ha of the estuary resulting in a loss of SAC habitat. It is also proposed to create a 1.8ha Biodiversity Enhancement Area to offset the loss of SAC habitat. Retention of key habitat and biodiversity features should be prioritised within the proposal, with offsetting being the final option in the mitigation hierarchy if considered unavoidable. An evidence base for alternative design consideration which avoids the most sensitive biodiversity locations should be transparent within the application particulars. Replacement planting in the

<sup>1</sup> <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002137.pdf>

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**Directors:** Terri Morrissey (Chair), Neil Whoriskey (Vice Chair), John Conroy (Treasurer), Laura Segura Gutierrez (Secretary),

Finbarr Murray, Helen Shaw, Tony Holohan

terrestrial space within a 'Biodiversity Enhancement Area', as currently proposed, would not necessarily offset lost habitat and species such as sub-tidal macro-invertebrates, European eel, seagrass etc.

It is submitted that An Coimisiún should evaluate whether the scale of the potential impact to the SAC to the extent that offsetting is proposed requires consideration under Article 6(4) of the Habitats Directive.

### 1.1 Habitats Directive Legal Requirements

It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In Case C-258/11, *Sweetman & Others v An Bord Pleanála & Others*, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together "*as a coherent whole in the light of the conservation objectives pursued by the directive*" and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the "*lasting preservation of the constitutive characteristics*" of the site for which it was designated, with reference to the site's conservation objectives. Significantly it was determined that:

*"authorisation for a plan or project ....may therefore be given only on condition that the competent authorities ....are certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where **no reasonable scientific doubt remains** as to the absence of such effects"*[emphasis added].

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

*"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it **cannot have lacunae and must contain complete, precise and definitive findings** and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C 404/09 *Commission v Spain*, paragraph 100 and the case-law cited)..."* [emphasis added].

In *Kelly v An Bord Pleanála & Others*, [2013 No 802 J.R.] with reference to *Commission v Spain C-404/09*, the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rationale and reasoning which was used to arrive at the determination.

The *Kelly* Judgement has provided a very helpful clarification of the requirements of an Appropriate Assessment, and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

*"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.*

*(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.*

*(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."*

## **2. Birds Directive**

The proposed development is located approximately 12.1 kilometres to the northeast of the Tramore Back Strand SPA (site code: 004027), a site designated due to being of special conservation significance for Light-bellied Brent Goose, Golden Plover, Grey Plover, Lapwing, Dunlin, Black-tailed Godwit, Bar-tailed Godwit and Curlew, as well as wetlands and waterbirds. Consequently, the site is of high ornithological importance, particularly for wintering waterfowl and the notable presence of three Annex I species, the Little Egret, Golden Plover and Bar-tailed Godwit. For these reasons, Tramore Back Strand is also designated as a Ramsar Convention site. The potential for Qualifying Interest bird species from this SPA to utilise the area within the zone of influence of the proposed works for different activities requires close consideration by An Coimisiún, in accordance with Article 4(4) of the Birds Directive, whose transposing requirement in Irish legislation is also reproduced below.

The proposal is also located approximately 15.7 kilometres away from the proposed Seas off Wexford SPA (site code: 004237) which is of special conservation interest for Common Scoter, Red-throated Diver, Fulmar, Manx Shearwater, Gannet, Shag, Cormorant, Kittiwake, Black-headed Gull, Mediterranean Gull, Lesser Black-backed Gull, Herring Gull, Little Tern, Roseate Tern, Common Tern, Arctic Tern, Sandwich Tern, Puffin, Razorbill and Guillemot. Hence, the site is of high ornithological significance, whose QI species who be likely to engage in activity within or in the vicinity of the proposed works.

We recommend that An Coimisiún take account of any potential impacts arising from proposed dredging and construction activity associated with development of the berths, and how this may impact bird roosting, nesting or foraging activity. For example, a reduction of fish and invertebrate prey habitat as a result of these activities may have an adverse impact upon Qualifying Interest bird species. This is also applicable outside of the strictly delineated functional area of any SPA, as required under s.27(4) of the European Communities (Birds and Natural Habitats) Regulations 2011:

*"(4) Public authorities, in the exercise of their functions, insofar as the requirements of the Birds Directive and the Habitats Directive are relevant to those functions, shall—*

- (a) take the appropriate steps to avoid, in candidate special protection areas, pollution and deterioration of habitats and any disturbances affecting the birds insofar as these would be significant in relation to the objectives of Article 4 of the Birds Directive,*
- (b) outside those areas, strive to avoid pollution or deterioration of habitats, and*
- (c) take appropriate enforcement action."*

### 3. Water Framework Directive

The Lower Suir Estuary in the area of the subject proposal has been classed by the EPA as moderate status per Water Framework Directive (WFD) criteria. It has also been deemed to be at risk of not meeting the WFD requirement to achieve and maintain at least good status by 2027. The objectives of the WFD are to protect all high status waters, prevent further deterioration of all waters and to restore degraded surface and ground waters to good status by 2027. Specifically, where there is bad or moderate water quality there is the legal imperative to bring that water body up to good status by 2027.

Therefore, the proposal should be assessed against **Article 4** of the WFD to determine whether the project may cause a deterioration of the status of a surface or ground water body or if it may jeopardise the attainment of good surface or ground water status or of good ecological potential and good surface or ground water chemical status.

### 4. Proposed Natural Heritage Area

The proposal is located approximately 1.3 kilometres to the southwest of the Barrow River Estuary pNHA (site code: 000698), 5.1 kilometres from the Waterford Harbour pNHA (site code: 000787), 4.8 kilometres from the Ballyhack pNHA (site code: 000695), 3.8 kilometres from the King's Channel pNHA (site code: 001702), 8.1 kilometres from the Belle Lake pNHA (site code: 000659). Each of these may contain ornithological receptors whose activity may overlap with the proposal's zone of influence. While pNHAs lack full statutory protection, they are recognised for their ecological significance, which includes resident species whose integrity should not incur significant impact from the proposal's construction and operational phase activity.

### 5. Dredging Activity

It should be ensured that the potential presence of subtidal fauna should be surveyed and assessed accordingly, for example macro-invertebrates. Proposed dredging activity may have an adverse effect upon these species due to habitat removal, turbidity and sedimentation effects. In fact, EIAR Chapter 6: Biodiversity (p. 56), highlights that *"Benthic habitats that make up the estuary habitat may also be subjected to potential smothering during the capital dredging and construction works...7000m<sup>3</sup> of material will be dredged from the site...the 'muddy estuarine community complex' sensitivity to extraction (dredging) is described as 'Medium'."*

As a result, mitigation measures should seek to minimise disturbance to these important species as much as possible, given their likely significance as a food source for Qualifying Interest bird species, as well as the other marine ecosystem services they provide such as nutrient and water cycling, hydrological flux and climate regulation, habitat modification and important trophic level interactions with other organisms.

We also note EIAR Chapter 6: Biodiversity (p. 40) which states that, *"The European eel is particularly abundant in Waterford Estuary and is also particularly sensitive to many environmental stimuli and would be expected to swim rapidly away from an approaching dredging operation."* This requires clarification as the species is classified as critically endangered and is contained on the IUCN Red List



of Threatened Species.<sup>2</sup> The European Eel is also protected under the European Eel Regulation (EC/1100/2007), which necessitates that the proposal be assessed in light of this important requirement.

## 6. Seagrass Impact

We submit that the absence of seagrass habitat requires confirmation before proceeding with dredging activity at this location, due to the highly important carbon sequestering and habitat provisioning role of this species. Particular attention should be given to sedimentation and turbidity effects due to the species being highly sensitive to these.<sup>3</sup> We recommend that An Coimisiún use the most up-to-date data and mapping of seagrass habitat locations around the Irish coast to inform the development consent process for project proposals of this nature., including citizen science data collected by Coastwatch.<sup>4</sup>

## 7. Biosecurity

Development in the marine space contains risk of invasive species introduction via ship ballast water. Therefore, we submit that rigorous biosecurity measures are required to reduce the risk of unintended invasive species introduction and to adhere to the EU Invasive Species Regulation [1143/2014], European Union (Invasive Alien Species) Regulations 2024 and to secure Outcome 2H of the National Biodiversity Action Plan 2023-2030, "*Invasive alien species (IAS) are controlled and managed on an all-island basis to reduce the harmful impact they have on biodiversity and measures are undertaken to tackle the introduction and spread of new IAS to the environment.*"

## 8. Ecological Surveys

Firstly, we recommend that the applicant's Marine Mammal Observer (MMO) survey methodology corresponds with the best practice guidelines and material provided by the NPWS.<sup>5</sup>

It is noted with regard to otter surveying that "*in advance of the works commencing, a pre-commencement otter survey will take place along the accessible areas of the shoreline to ensure no otter holts are located within 150 m of the site.*" (EIAR: Chapter 6, p. 73). We submit that it would be preferable if robust, seasonal otter surveys were conducted prior to development consent determination given its legal protection as an Annex IV species under the Habitats Directive, its status as a QI of the Lower River Suir SAC (site code: 002137) and within the national Wildlife Acts 1976-2000. The applicant acknowledges a risk of short-term disturbances and that an Article 16 derogation licence from the NPWS is likely to be required in advance of the works. The planning authority should note CJEU judgement C-463/20 *Namur-Est Environnement ASBL v Région Wallonne*<sup>6</sup> which found that public participation via consultation is required with regard to a derogation licence before the completion of the development consent decision process.

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<sup>2</sup> <https://www.fisheriesireland.ie/research/eel-monitoring-programme-emp>

<sup>3</sup> Erftemeijer & Robin Lewis III. 2006. Environmental impacts of dredging on seagrasses: A review. Marine Pollution Bulletin. <https://www.sciencedirect.com/science/article/abs/pii/S0025326X06003778>

<sup>4</sup> [https://www.coastwatch.org/files/ugd/4c8400\\_34800b39756042ea8576036ff0571f6e.pdf](https://www.coastwatch.org/files/ugd/4c8400_34800b39756042ea8576036ff0571f6e.pdf)

<sup>5</sup> <https://www.npws.ie/marine/best-practice-guidelines>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62020CJ0463>

*"the adoption of a preliminary decision authorising a developer to derogate from the applicable species protection measures in order to carry out a project...need not necessarily be preceded by public participation, **provided that such participation is effectively ensured before the adoption of the decision to be taken by the competent authority** for the possible development consent for the project."* [An Taisce emphasis]

Consequently, this suggests that a derogation licence and associated public consultation is required as part of this proposal which satisfies the requirements of Article 16 of the Habitats Directive which specifies the following criteria:

- a. *the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;*
- b. *the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;*
- c. *the circumstances of when and where such derogations are granted;*
- d. *the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;*
- e. *the supervisory measures used and the results obtained.*

## **9. Marine Mammal Impacts**

We would highlight the following from EIAR Chapter 6: Biodiversity (p. 67):

*"Although it was considered that marine mammals within the vicinity of the Site are subject to ongoing port-related activities and are considered to be habituated to anthropogenic noises, the Demolition and Construction Phase has the potential to result in noise / vibration effects on species within the wider area. Potential noise sources will include the demolition works required onsite, the piling works required for the construction of the Proposed Development, the infilling works required for the reclamation works and the construction of the wharf extension and buildings."*

The underwater noise from construction works is therefore likely to produce acoustic impacts to marine mammals which should be closely considered by An Coimisiún. We would highlight that cetaceans are listed in Annex IV of the Habitats Directive, meaning they are strictly protected as specified in Article 12, including their key habitats (i.e. breeding sites and resting places) and whether inside designated areas or in the wider environment. As specified within s.27(5) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011) ("the 2011 Regulations"):

*"(5) Without prejudice to paragraphs (2), (3) and (4), every public authority in the exercise of any of its functions or responsibilities, shall—*

- a. *comply with the requirements of the Habitats Directive, the Birds Directive and these Regulations insofar as they may arise for consideration in the exercise of those functions,*

- b. *take the appropriate steps to avoid damage to European Sites through activities that may cause deterioration of natural habitats or to the conservation status of the species for which the sites have been designated, including such activities that take place outside the boundaries of the sites,*
- c. *take the appropriate steps to avoid disturbance of the species for which European Sites have been established, in so far as such disturbance could be significant in relation to the objectives of the Birds Directive or the Habitats Directive,*
- d. *outside special protection areas, strive to avoid pollution or deterioration of habitats within the meaning of the second sentence of Article 4(4) of the Birds Directive, and"*

Impacts to marine mammals as a result of underwater noise are classed as Permanent Threshold Shift (PTS) and Temporary Threshold Shift (TTS), both of which impact hearing. PTS causes permanent deafness in the animal which, given marine mammals' reliance on their hearing, will in all likelihood prove fatal. TTS is a temporary loss or decrease in hearing and is often non-lethal but does disable the animal for a time. TTS has been shown to cause neural network degeneration that may result in future hearing loss. However, we would highlight that hearing loss, even when temporary, can have very significant impacts on species with high foraging rates, such as the harbour porpoise. These animals need to feed almost continuously to survive, thus temporary hearing loss or impairment can have severe impacts and can be fatal if the animal cannot feed.<sup>78</sup> Therefore, TTS does in fact pose a very significant potential risk to marine mammals. This is recognised in German legislation which considers TTS to be an injury once the threshold for TTS has been exceeded.<sup>9</sup> It should be ensured that levels of noise exceeding the safe threshold for TTS are not occurring as part of the proposal's construction works due to adverse effect upon marine mammals.

We would highlight that TTS is also still considered to be an injury under the 2014 Irish Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (from the then Department of Arts, Heritage and the Gaeltacht).<sup>10</sup> Dolphins, whales and porpoises are listed under Annex IV of the Habitats Directive, and as such they are strictly protected wherever they occur, including their breeding and resting places. As such, we submit that TTS impacts require consideration and mitigation under the requirements of the Habitats Directive. An important finding from Houser (2021) shows that *"TTS is a graded phenomenon that is fully recoverable at low levels but can lead to tissue damage as it becomes more extreme... if a legal definition of injury includes the destruction of tissue, then synaptopathy qualifies as injury and must be considered in the framework of potential acoustic impacts to marine mammals."*<sup>11</sup> We recommend that the Board takes this interpretation of TTS as an injury into account when assessing the applicant's mitigation approach.

We would highlight that a study from Southall *et al* (2019)<sup>12</sup> contains TTS onset thresholds for impulsive sounds from pile driving, which is considered by scholars to be *"in good agreement with*

<sup>7</sup> Wisniewska *et. al.* (2016) Ultra-High Foraging Rates of Harbour Porpoises Make Them Vulnerable to Anthropogenic Disturbance, *Current Biology*, 26, 1441-1446.

<sup>8</sup> Forney *et. al.* (2017) Nowhere to go: impact assessments for marine mammal populations with high site fidelity. *Endangered Species Research*, 32: 391-413.

<sup>9</sup> Houser. S.D. (2021) When is Temporary Threshold Shift Injurious to Marine Mammals. *Journal of Marine Science and Engineering*. <https://www.mdpi.com/2077-1312/9/7/757>

<sup>10</sup> [https://www.npws.ie/sites/default/files/general/Underwater%20sound%20guidance\\_Jan%202014.pdf](https://www.npws.ie/sites/default/files/general/Underwater%20sound%20guidance_Jan%202014.pdf)

<sup>11</sup> Houser. S.D. (2021) When is Temporary Threshold Shift Injurious to Marine Mammals. *Journal of Marine Science and Engineering*. <https://www.mdpi.com/2077-1312/9/7/757>

<sup>12</sup> Southall *et al.* (2019). Marine Mammal Noise Exposure Criteria: Updated Scientific Recommendations for Residual Hearing Effects. *Aquatic Mammals*. 45(2), 125-232. [https://sea-inc.net/wp-content/uploads/2019/10/Southall-et-al\\_2019\\_MM-Noise-criteria-update-with-errata\\_Aq-Mammals.pdf](https://sea-inc.net/wp-content/uploads/2019/10/Southall-et-al_2019_MM-Noise-criteria-update-with-errata_Aq-Mammals.pdf)



*direct experimental results for pile driving playback and airgun sounds as fatiguing stimuli, which lends substantial support for the use of the suggested thresholds in regulation of the impact from pile driving and seismic surveys.”<sup>14</sup>* Therefore, impact assessment and mitigation approaches should make a meaningful attempt to utilise these TTS onset thresholds.

We recommend that in assessing the subject application’s noise mitigation measures, An Coimisiún consult international best practice guidance on noise mitigation. The prevention of noise-related impacts and injuries is most effective when combining a noise abatement approach with measures such as the use of an Acoustic Deterrent Device (ADD), soft-starts to piling, the use of a Marine Mammal Observer (MMO), Passive Acoustic Monitoring (PAM), air bubble curtains etc.

## **10. Provision of Freight Train Infrastructure + Traffic Impact**

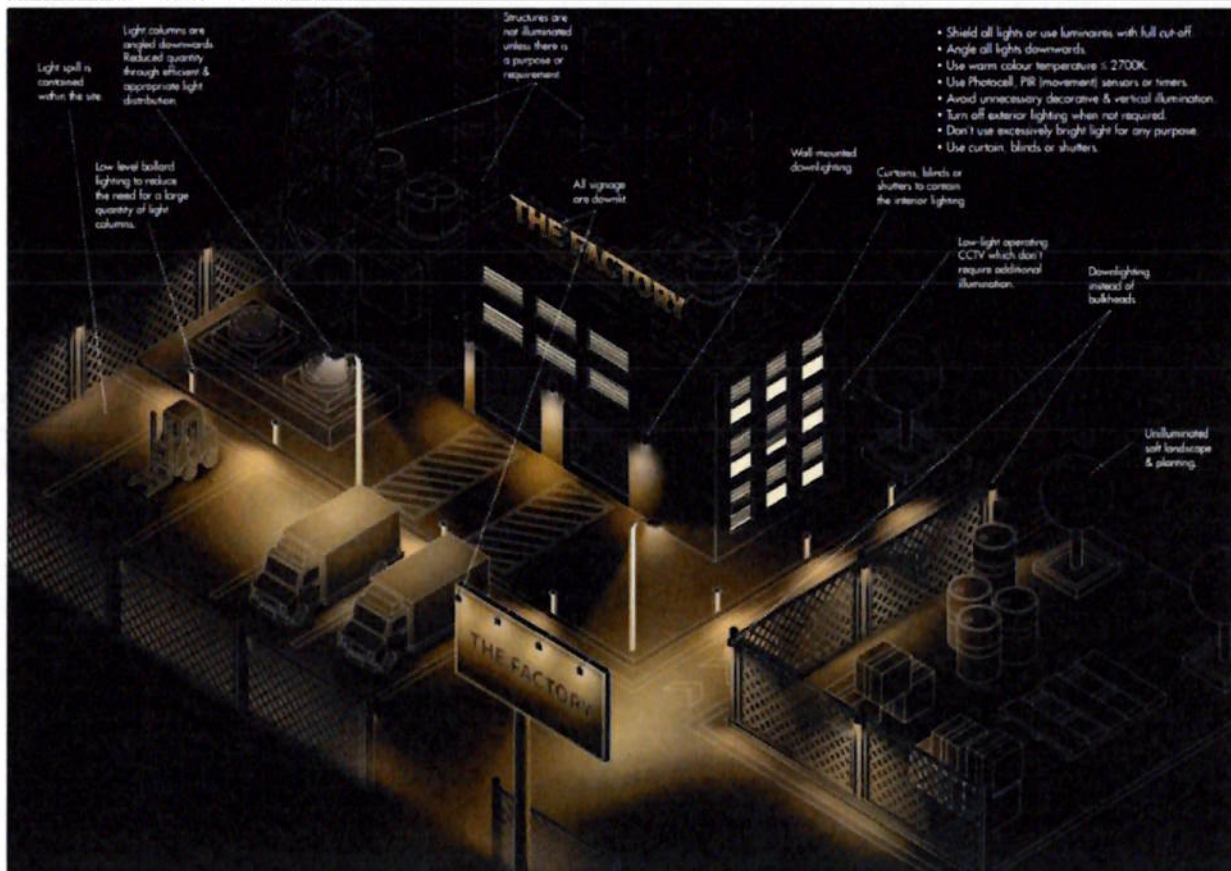
It is likely that the proposed development will lead to an increase in Heavy Goods Vehicle (HGV) movements to and from the port. This would entail that a Traffic Impact Assessment with an integrated Road Safety Audit is needed to outline mitigation measures to ensure the absence of detrimental effects upon sensitive residential receptors, surrounding roads and pedestrians. We recommend that the Board ensures that an up-to-date traffic assessment has been conducted which takes account of the increased activity associated with the facilitation of more vessels and their cargo, as well as wind turbine materials and structures. Furthermore, the benefit of embedding construction of a freight train railway track as part of the proposal’s design requires serious consideration as a positive measure which would reduce traffic impact and associated HGV emissions.

## **11. Artificial Lighting**

We would emphasise the need for detailed environmentally-friendly lighting specifications to maximise the benefit for insect life, nocturnal animals, the dark sky cultural resource and human health. Close consideration should be given to the important thresholds within each of the following six important qualities of light which are most beneficial for minimising light pollution: colour temperature (less than 2,700 Kelvins), light distribution (luminaire’s beam less than 80 degrees), illuminance (less than 5 lux for pedestrian and decorative surfaces), luminance (100 cd/m<sup>2</sup> or less), colour rendering index (CRI) (exterior lighting should not exceed CRI Ra90), energy efficiency (40 lumens per watt or greater). A dimming regime in the evening time should also be considered. We recommend that the Board cross-references lighting information provided by the applicant with guidance provided by Dark Sky Ireland.<sup>13</sup>

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<sup>13</sup> <https://www.darksky.ie/wp-content/uploads/2024/05/DSI-Environmentally-Friendly-Lighting-Guide-4.pdf>



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## 12. Cumulative Impact Assessment

A robust cumulative impact assessment will be necessary due to the downstream nature of the proposal, and the potential for facilities such as wastewater treatment plants and associated discharge points to be in the vicinity. This has implications for potential contamination of the seabed material to be dredged, especially when considered in combination with potential agricultural runoff upstream in the wider catchment area and the nutrient enrichment this may entail.

## 13. Onus on the Competent Authority

An Taisce respectfully submits that the onus of responsibility for assessing the proposal and the accompanying assessments, identifying any deficiencies in the planned approach and in the assessments, and determining if there is adequate information provided to enable the making of a determination with regard to the subject application ultimately lies with An Coimisiún Pleanála as the competent authority. Given the complexity and highly technical nature of the subject proposal, it is submitted that An Coimisiún will need ensure it has access to, either in-house or externally, the full complement of highly specialised experts needed to address all aspects of the proposal. We also consider that it would not be reasonable in such a complex, highly specialised and technically challenging case to expect any prescribed body or members of the public operating under the

constraints of relatively short public consultation timeframes to be able to comprehensively identify issues, deficiencies, etc. with the application and the associated assessments.

We would highlight the following Articles of the 2014 EIA Directive regarding the above comments. Article 1(2)(g) defines environmental impact assessment:

*(g) "environmental impact assessment" means a process consisting of:*

- (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);*
- (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;*
- (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;***
- (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and***
- (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.;* [emphasis added]

Article 5(3)(b) states: "*In order to ensure the completeness and quality of the environmental impact assessment report:... (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report*".

Please acknowledge this submission and advise us of any decision made.

Is mise le meas,

Seán O'Callaghan  
*Planning and Environmental Policy Officer*  
*An Taisce – The National Trust for Ireland*