

Final Determination Report	
Application for a Maritime Area Consent (MAC) under Section 75(1) of Maritime Area Planning Act 2021 (the Act)	
Application Details	
MAC Holder:	Fingal County Council
MAC Reference No:	MAC20240007
Date Application received:	27 September 2024
Application Details	Fingal Co. Council have applied for a MAC for the construction of a coastal protection scheme at Portrane (Burrow) Beach. The proposed maritime usage includes the construction, use, operation and maintenance of coastal protection groynes and beach nourishment works including all associated decommissioning, demolition, rehabilitation and any other works required on foot of any development permission relating to the infrastructure.
Recommendation	To Grant, with conditions, the MAC sought.

Document Control			
Prepared By:		MAC Manager	28/07/2025
Reviewed & Approved By:		Head of Maritime Area Consents	28/07/2025
Final Version 1:		MAC Manager	28/07/2025

I refer to the minded to documentation that issued to Fingal County Council on the 04 July 2025. On the 24 July 2025 Fingal County Council submitted supplementary material to MARA in response to the minded notice in relation to the reasons attached to conditions the draft MAC. In accordance with Section 82(7)(b)(ii) MARA must give consideration to the supplementary material before making a determination. Details of the supplementary material provided and consideration thereof is set out below.

Supplementary material:

Fingal County Council provided the following comments in their supplementary information:

1. *"In reference to the proposed Levy requirements, it is noted that Section 8.6 of the Draft "MARITIME AREA CONSENT COASTAL FLOOD PROTECTION WORKS AT*

PORTRANE (BURROW) BEACH, COUNTY FINGAL No. MAC20240007 Holder: FINGAL COUNTY COUNCIL" provides that "In exceptional circumstances, the Grantor may in its absolute discretion grant a moratorium on the payment of the Levy, subject to such conditions as may be imposed. Such moratorium may operate as a deferral or a waiver of the Levy but unless expressly stated to be a waiver, any such moratorium shall be a deferral only." Fingal County Council respectfully submits that the circumstances of the Portrane CFERM MAC application are by definition "exceptional" as they relate to natural processes of coastal erosion and flooding outside of the control of the Council as applicant and the consequent need to protect the large coastal community which is at risk from these processes. Fingal County Council is consequently seeking a full waiver in respect of the proposed levy."

MARA Response

Any matter in relation to compliance with conditions of a MAC, including any agreements with the Grantor, cannot be considered until the MAC has commenced

The Levy Framework was agreed between MARA and Minister for Public Expenditure, National Development Plan Delivery and Reform in 2023. MARA is obliged to keep the levy framework under review and amend accordingly. If the levy framework is amended or replaced, changes must be applied to existing MACs and new MACs unless the framework specifies otherwise. A review of the existing Levy Framework is currently in the early planning stage. This process will involve engagement with stakeholders whose feedback will be considered when making recommendations in relation to any changes to the framework. Fingal County Council will be consulted as part of this process and can make submissions to MARA in regard to the levy framework and levy waiver at this time.

2. *"Fingal County Council will indemnify the Grantor for all matters pertaining to the grant over which Fingal County Council has control or for which it has responsibility."*

MARA Response

Condition 15 of the draft MAC is a standard condition in Maritime Area Consents.

15. INDEMNITY

15.1 The Holder shall keep the Grantor, the State, and their officers, servants, visitors, agents and employees fully indemnified from and against all or any actions,

proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities:

(a) arising directly or indirectly from the undertaking of the Permitted Maritime Usage the subject of this Consent; and

(b) arising directly or indirectly from a failure by the Holder to comply with:

(i) any of the provisions of this Consent;

(ii) any provision of the Act relevant to this Consent; or

(iii) a provision of one or more than one condition attached, or deemed to be attached, to this Consent.

15.2 Without prejudice to the generality of the foregoing, the Holder shall make good all loss sustained by the Grantor in consequence of any breach by the Holder of any covenants or conditions herein.

15.3 The Holder warrants to the Grantor that it has made due enquires and is satisfied that there are no third party interests in the Consent Area and the Holder shall keep the Grantor, the State and their officers, servants, visitors, agents and employees fully indemnified from and against all or any actions proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities arising directly or indirectly from the undertaking by the Holder (including its employees, contractors, subcontractors, servants, visitors, consultants, representatives and/or agents) of the Permitted Maritime Usage the subject of this Consent in the Consent Area.

Fingal County Council has not provided any supplementary information to support a consideration of a change to this condition. As per Section 81(7)(b)(ii) of the Act, MARA may only consider supplementary information made in view of the reasons only. Accordingly, no further consideration can be given by MARA in regard to the above.

3. *"In consultation with Irish Public Bodies (IPB), Fingal County Council will ensure that all appropriate insurance requirements pertaining to the grant and related works are in place for the relevant period of time."*

MARA Response

Condition 16 of the draft MAC is a standard condition in Maritime Area Consents.

16. INSURANCE

16.1 Without prejudice to the Holder's liability to indemnify the Grantor which shall be unlimited (and others as specified in condition 15), the Holder shall, prior to the commencement of occupation of the Consent Area:-

(a) insure and keep insured, in an insurance office licensed to operate in the State or which has received authorisation to operate in the State in accordance with Article 14 of Directive 2009/138/EC in the joint names of the Grantor and the Holder in the full reinstatement cost thereof or in the sum not less than the estimated maximum loss amount as determined by a suitably qualified and experienced independent consultant (to be approved from time to time by the Grantor or his surveyor and including an inflationary factor) the Consent Area and all structures and chattels thereon and the fixtures and fittings therein (if any) against loss or damage by the Insured Risks, including demolition and site clearance expenses, architects' and other fees and taxes in relation to the reinstatement of the Consent Area, and where available on the market such policy to include a non-invalidation clause acceptable to the Grantor (such joint policy or policies, if required, to contain a non-vitiating clause whereby subject to the terms, conditions, limitations of the policy or policies, any non-disclosure, mistake or misrepresentation of a

material fact by the Holder gives sufficient reason for the insurer to prove the insurance policy to be void, the Grantor will not be denied the protection of the policy);

(b) effect and keep in force a public liability insurance policy of indemnity in the joint names of the Grantor and Holder in an insurance office licensed to operate in the State with a limit of €6,500,000 (six million and five hundred Euro) (or such increased amount as the Grantor may from time to time reasonably determine) in respect of any one claim or a series of claims arising out of a single occurrence (except for pollution and products liability cover which may be on an annual aggregate basis if unavailable on a single occurrence basis) for any damage, loss or injury which the Grantor or Holder may be legally liable for which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the Permitted Maritime Usage and exercise of the rights granted in this Consent;

(c) effect and keep in force an employer's liability insurance policy of indemnity in the name of the Holder in an insurance office licensed to operate in the State with a limit

of €13,000,000.00 (thirteen million Euro) for any one claim or a series of claims arising out of a single occurrence. This policy should include an indemnity to principles clause with a specific indemnity to the Grantor;

(d) in the event that the Consent Area or any part thereof, shall be damaged by any of the Insured Risks, then and as often as shall happen, apply all monies received in respect of such insurance as aforesaid as soon as practicable in or upon reinstating the Consent Area in a good and substantial manner and in the event that such monies shall be insufficient for the said purpose, to make good the deficiency;

(e) whenever required to do so by the Grantor, produce to the Grantor for inspection evidence of insurances, including certificates together with evidence of payment for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Grantor by the Holder's insurers, and to comply with all conditions pertaining to any such policy or policies;

(f) not do or omit to do anything which might cause any policy of insurance (if required) relating to the Consent Area or any other part of the maritime area affected by the Permitted Maritime Usage to become void or voidable, wholly or in

part, nor (unless the Holder has previously notified the Grantor and the Holder has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable;

(g) as soon as reasonably practicable notify the Grantor in writing of the making of any claim under any policy of insurance which is required to be held in connection with this Consent and to provide the Grantor with all information in relation to any such claim;

(h) ensure that any contractors, servants or agents of the Holder engaged in connection with activities in the Consent Area or otherwise in connection with this Consent have appropriate insurance and that evidence of such insurance policies shall be provided to the Grantor as soon as is reasonably practicable;

16.2 Where the Grantor deems that the limit of the public liability insurance policy in 16.1(b) should be increased having regard to changes in circumstances (including but not limited to inflation, increased costs and changes in the value of money) then the Grantor may notify the Holder of the required increase, and the Holder shall increase the relevant policy limit within 90 Business Days of the receipt of such notification subject to any extension as may be permitted by the Grantor following a written request by the Holder.

Fingal County Council has not provided any supplementary information to support a consideration of a change to this condition. As per Section 81(7)(b)(ii) of the Act, MARA may only consider supplementary information made in view of the reasons only. Accordingly, no further consideration can be given by MARA in regard to the above.

It is recommended to finalise the MAC with conditions attached, as per the minded to notice. Reasons for the conditions attached thereto are recommended to issue as per the minded to notice. It is recommended to issue a final determination notice in relation to the above application in accordance with section 81(3) of the Act.

A final determination notice, the final MAC and reasons for conditions attached thereto are attached for your approval.

Signed:

A solid black rectangular box redacting the signature.