

Dáire Littleton Caden

From: Maura Talbot <maura.talbot@mwp.ie>
Sent: Déardaoin 12 Márta 2026 15:44
To: Daniel O'Connor; Appeals2; LAPS
Cc: Caitriona Fox; OMurchu, Noel; Alice Whittaker
Subject: Re: ABP Case Ref 323895
Attachments: 260312 Applicant Response to WID Submission on Section 37L Application(10655260.2).pdf

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Dear An Coimisiún Pleanála with attention for Daniel O'Connor

We hereby submit the attached submission on behalf of the Applicant (DAFM) in response to the third-party observer submission lodged by Wild Ireland Defence CLG (Observer) in relation to Planning Application Case Ref. ACP-323895-25, *Application for development pursuant to Section 37L of the Planning and Development Act 2000 (as amended) for a Deep Water Quay development previously permitted by Galway County Council (Planning Ref: 17/967) (Section 37L Submission)*. *We received notice from yourselves (ACP) on the 20th February 2026 inviting us to respond to this submission.*

*We will also print and post this response document to your offices today.
We trust this is all in order. Please let us know if there is anything else you require.*

*Regards
Maura*

Maura Talbot

BA Hon MA (Geog.) CEnv

Principal Environmental Consultant

e maura.talbot@mwp.ie m +353 87 382 0612
t +353 (0)21 453 6267 w www.mwp.ie

MWP, Park House, Bessboro Road,
Blackrock, Cork, T12 X251, Ireland

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**RESPONSE TO SUBMISSION BY WILD
IRELAND DEFENCE (Case Ref ACP-
323895-25)**

Ros an Mhíl Harbour Section 37L Application

Department of Agriculture, Food and the Marine (DAFM)

March 2026

Contents

1.	Introduction	1
1.1	Overview of the Wild Ireland Defence (WID) submission	1
1.2	Relevant Legal Context for the Substitute Consent and Section 37L Applications	2
1.2.1	Foundation for Substitute Consent and Section 37L in EU Law	2
1.2.2	Legal status of expired permission under Section 40 of the 2000 Act.....	4
1.2.3	Legal basis for Parallel Substitute Consent and Section 37L Applications	5
1.3	Suggestions of Conflicts and Deficiencies in the r/EIAR and r/NIS.....	6
1.3.1	Unlawful baseline	6
1.3.2	Inconsistencies in AA Screening between 2017 and 2024	6
1.3.3	Data Gaps and Inconsistencies in the Substitute Consent Application.....	7
1.3.4	Gaps in Data and Qualitative Assessment (section 5.4 of the Section 37L Submission)	7
1.3.5	Contamination of Marine Samples and Damage to Marine Ecosystems (section 5.5 of the Section 37L Submission)	7
1.4	Cumulative Assessment of Relevant Plans, Projects and Programmes –	7
1.4.1	Discharge issues	8
1.4.2	Use of unauthorised material.....	8
1.5	Water Framework Directive Assessment	8
1.5.1	Cumulative Assessment with other Discharges.....	9
1.5.2	Derogation Needed.....	9
1.6	Other Consents	9
1.7	Actual Use for Ros an Mhíl Deep Water Quay	9

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MWP, Engineering and Environmental Consultants

Address: Reen Point, Blennerville, Tralee, Co. Kerry, V92 X2TK, Ireland

www.mwp.ie



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1. Introduction

This submission is provided on behalf of the Applicant (DAFM) in response to the third-party observer submission lodged by Wild Ireland Defence CLG (Observer) in relation to Planning Application Case Ref. ACP-323895-25, *Application for development pursuant to Section 37L of the Planning and Development Act 2000 (as amended) for a Deep Water Quay development previously permitted by Galway County Council (Planning Ref: 17/967)* (Section 37L Submission). The Observer's submission appends a document titled "*An Coimisiún Pleanála Substitute Consent 332827 Ros a' Mhíl Fisheries Harbour Centre Observer Submission*" dated 5 January 2026 (Substitute Consent Comments).

The Applicant has carefully considered the issues outlined in the Observer's Section 37L Submission, including the appended Substitute Consent Comments, and welcomes the opportunity to respond.

The purpose of this response is to address the matters raised in the Section 37L Submission, outlining the relevant facts, planning context, and supporting information demonstrating that the proposed development remains consistent with applicable planning policies, standards, and guidelines.

It is respectfully submitted that, when the proposal is considered in its full context and in light of the clarifications provided below, the concerns raised by the Observer's submission do not warrant refusal or alteration of the development. The response, which has been prepared with legal support from Philip Lee LLP, therefore seeks to assist the decision-maker in reaching a balanced and informed determination.

1.1 Overview of the Wild Ireland Defence (WID) submission

The WID submission on the Section 37L Application raises concerns regarding the scope of the environmental assessments and questions the validity of the application made under Section 37L of the Planning and Development Act 2000 (as amended) for proposed future works to complete a partially constructed deep water quay and associated facilities at Ros an Mhíl Fishery Harbour Centre in Co. Galway. (Case Ref ACP-323895-25). The appended comments on the Substitute Consent Application raise further concerns regarding the scope of the environmental assessments and validity of the application made for substitute consent under Section 177E of the 2000 Act for works that were carried out between 11th July 2023 and 20th May 2024 in respect of the deep water quay at Ros an Mhíl Fishery Harbour Centre in Co. Galway. (Case Ref ACP-323827-25)¹.

The Section 37L Submission specifically requests that ACP shall consider the appended Substitute Consent Comments and the issues that are raised therein. There is a close legal and factual relationship between the Section 37L Application and the Substitute Consent Application. When determining each Application, ACP is obliged by the relevant statutory provisions to have regard to the proper planning and sustainable development of the area, and to ensure that the requirements of EU environmental law are satisfied. This includes ensuring that the necessary environmental assessments are carried out for the whole project, being the deep water quay

¹ The Applicant assumes that the document containing the Substitute Consent Comments (dated on its face, 5 January 2026) was not submitted to ACP on a stand-alone basis within the timeframe prescribed by Regulation 231(1) of the Planning and Development Regulations 2001, as amended (PDR), taking account of section 251 of the 2000 Act. The Applicant has not been specifically requested to reply to the Substitute Consent Comments and, according to Reg 231(3) PDR "*Where a submission or observation, under this article, is received by the Board after the period of 8 weeks beginning on the date of receipt of the application, the Board shall return to the person or body concerned the submission or observation received, and notify the person or body that the submission or observation cannot be considered by the Board.*"

and associated facilities development at Ros an Mhíl Fishery Harbour Centre as described in the Substitute Consent and Section 37L Applications. Both Applications are necessarily made to ACP under separate and distinct statutory provisions and procedures, nonetheless the environmental assessments to be undertaken must ensure that the whole project, including existing and future aspects, is subject to the requisite environmental assessments².

In determining the Applications, ACP is entitled to have regard to any factors which it knows to exist as are relevant to the proposed development and the proper planning and sustainable development of the area³. ACP has a broad discretion to have regard to relevant matters, save where expressly precluded⁴. In determining the Substitute Consent Application, ACP may be taken to be aware of the Section 37L Submission including the appended Substitute Consent Comments⁵.

Taking these factors into account, the Applicant proposes to respond to the substantive planning and legal issues raised in the Observer's Section 37L Submission and the appended Substitute Consent Comments, noting that the response addresses issues relevant to both Applications.

1.2 Relevant Legal Context for the Substitute Consent and Section 37L Applications

1.2.1 Foundation for Substitute Consent and Section 37L in EU Law

Both the EIA Directive (Directive 2011/92/EU as revised by Directive 2014/52/EU) and the Habitats Directive (Directive 92/43/EEC) require that, prior to the granting of consent for a project, the requisite environmental assessments provided for under those enactments are undertaken. The Court of Justice of the EU (CJEU) has held that, in respect of the obligation to carry out an EIA at least, such assessment should take place at the earliest stage in the decision-making process (see for example, Case C-201/02 *Wells*).

In Case C-201/02 *Wells*, the CJEU held that the competent authority is required, within its sphere of competence, to “nullify the unlawful consequences of a breach of community law”. In the context of a failure to carry out an EIA prior to project consent, this obligation materialises as a requirement to “make good any harm caused by the failure to carry out an environmental impact assessment”.

² See, by analogy, *Coyne v An Bord Pleanála* [2023] IEHC 412, in relation to a project that was necessarily progressed via applications made under section 34 and section 182A of the 2000 Act.

³ *Frank Harrington Ltd -v- An Bord Pleanála* [2010] IEHC 428 “7.7 It seems clear that An Bord Pleanála can and indeed should take into account all relevant factors known to exist within the context of the application made, including the planning history of the site. It is not possible to accept that the planning status of the quarry was not a relevant factor to take into account.”; Confirmed in *Hoey v An Bord Pleanála* [2018] IEHC 701

⁴ In *Reilly v An Coimisiún Pleanála* [2025] IEHC 659 the Court found that consideration by decision-taker involves essentially three elements, which are probably best categorised as follows:

(i) matters that must be considered either autonomously – normally finite and well identified – or only if they are raised, such as submissions;

(ii) matters that must not be considered; and

(iii) an infinite range of other matters which a decision-taker may consider if she wants to but does not have to.

⁵ See, by analogy, *Dublin Cycling Campaign Clg v An Bord Pleanála* [202] IEHC 587, ACP was taken to be aware of the applications made to it for the Ringsend WWTP and the Greater Dublin Drainage Scheme.

In Case C-215/06 *Commission v Ireland (Derrybrien No.1)* the CJEU reiterated the need for EIA prior to the project consent, and at the earliest possible stage in the consent process. Following Case C-201/02 *Wells*, the CJEU confirmed that EU Law “cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law” provided that such procedures do not allow a project to “circumvent the Community rules or to dispense with applying them”. The CJEU found that regularisation of a prior failure to ensure EIA must remain the exception.

In Joined Cases C-196/16 and 197/16 *Corridonia*, the CJEU confirmed that “EU law does not preclude national rules which, in certain cases, permit the regularisation of operations or measures which are unlawful in light of EU law” provided that this does not offer an opportunity to circumvent EU law or dispense with the application of EU law, and that the subsequent EIA takes account the environmental impact from the project completion as well as future operations. The CJEU noted:

“It is, however, appropriate to mention to the referring court that the facts that the undertakings concerned took the necessary steps to arrange for, if need be, an assessment of the environmental impact of their projects to be carried out, that the refusal of the competent authorities to accede to those requests was based on national rules, the incompatibility of which with EU law was only subsequently established by a ruling of the *Corte costituzionale* (Constitutional Court), and that the activities of the plants concerned were suspended appear rather to indicate that the regularisations carried out were not permitted under national law in conditions similar to those in the case leading to the judgment of 3 July 2008, *Commission v Ireland* (C-215/06, EU:C:2008:380, paragraph 61), and did not attempt to circumvent rules of EU law.” (Followed in Case C-117/17 *Comune di Castelbellino*)”.

In Case C-411/117 *Inter-Environnement Wallonie and Bond Beter Leefmilieu*, the CJEU confirmed that member states must nullify the consequences of a previous failure to carry out both EIA and Appropriate Assessment, and that the EU does not preclude regularisation via an *ex post* assessment while a project is already under way or following completion, provided national rules do not allow for circumvention of EU and the assessment covers past impacts as well as likely future effects. The CJEU went on to find that, by analogy, the same approach applies to Appropriate Assessment (AA) under Article 6(3) of the Habitats Directive.

In Case C-278/21 *AquaPri*, confirming the CJEU’s prior decisions cited above and Case C-261/18 *Commission v Ireland (Derrybrien No.2)*, the CJEU confirmed the power of a competent authority to revoke or suspend a prior consent to enable a new environmental assessment to be undertaken in accordance with the objectives of EU law, taking into account any legitimate expectations that may arise from the prior grant of consent.

CJEU caselaw establishes that retrospective regularisation must not facilitate the circumvention of the objectives of the EIA and Habitats Directives and that EU law does not preclude regularisation provided it is limited to exceptional circumstances and the requisite assessments undertaken for the purposes of regularisation look both backwards and forwards.

The Substitute Consent and Section 37L Application procedures under the 2000 Act, as described in Part 4 and 5 of the Planning Statement submitted with the Substitute Consent Application and Part 3.1 of the Section 37L Application, exist within this narrow EU law framework. Substitute Consent is not a routine pathway for regularisation because it is limited to exceptional circumstances. There are no in-built incentives for non-compliance with the prior environmental assessment obligation. The assessments for the Substitute Consent and Section 37L processes are required to be complete, looking backwards as well as forwards.

The Applicant has set out in Part 5.2 of the Substitute Consent Application the exceptional circumstances which led to the necessity to make that Application. While the Observer’s comments on the Substitute Consent

Application call into question whether exceptional circumstances apply, it is ACP who must decide the matter based on the materials before it and in the exercise of ACP's planning judgment.

Furthermore, ACP can be satisfied that the grant of Substitute Consent and Section 37L Permission in this case would not facilitate the circumvention of the objectives of the EIA and Habitats Directives and is in accordance with law.

Unlike much of the CJEU caselaw cited above, the Ros an Mhíl Deepwater Quay project was the subject of a prior *prospective* EIA and AA screening, undertaken by Galway Co Council prior to the grant of Planning Ref 17/967. EU law does not preclude a project being subject to a subsequent environmental assessment provided that the entire project is subject to an assessment (see for example, Case C-50/09 *Commission v Ireland*⁶). This point was further established by the Irish High Court in *Coyne*⁷ in which the Court confirmed that where there is a requirement within the statutory framework for concurrent applications for different aspects of the same project under distinct legal procedures, a distinct EIA can be undertaken for each aspect of the project, provided that no element of the project evades EIA and that the cumulative effect of each aspect with the other is considered fully in each EIA, to ensure that the obligation to perform EIA of the 'whole project' has been met. Therefore, while the remedial EIAR and NIS submitted with the Substitute Consent Application and the prospective EIAR and NIS submitted with the Section 37L Application fully and comprehensively assess, backwards and forwards, the environmental effects of the whole project, these assessments build upon the prospective AA screening and EIA that were undertaken previously by Galway Co Council prior to the grant of Planning Ref 17/967.

The Observer's comments on the Substitute Consent application inaccurately suggest that the rEIAR and rNIS submitted with the Substitute Consent Application are confined to an assessment of the development works undertaken between 11th July 2023 and 20th May 2024. This is not correct. The rEIAR and rNIS correctly assesses the effects of all works undertaken since the commencement of the development under Planning Ref 17/967 until the cessation of works on 20th May 2024. The prospective EIAR and NIS submitted with the Section 37L Application properly assesses the proposed development of future works as described in the Section 37L Application. Together, these assessments comprehensively assess, backwards and forwards, the significant environmental effects of the whole project, consistent with EU and Irish law.

1.2.2 Legal status of expired permission under Section 40 of the 2000 Act

The Observer's submission on the Section 37L Application and their comments on the Substitute Consent Application appended thereto suggest that the Planning Ref 17/967 permission was entirely nullified on the date of expiration of the duration of the permission. This is not correct. Section 40(1) of the 2000 Act and the established case law confirms that the "*expiry of a planning permission does not render unauthorised works already authorised by the permission which were completed before the expiry of that permission.*"⁸

⁶ In Case C-50/09 *Commission v Ireland*, the CJEU confirmed that where a project requires the consent of more than one competent authority, the assessment undertaken by each competent authority for each application must ensure that the interaction between the relevant environmental factors is comprehensively covered and assessed.

⁷ *Coyne v An Bord Pleanála* [2023] IEHC 412

⁸ *Ironborn Real Estate Limited v Dun Laoghaire Rathdown Co Council* [2023] IEHC 477, citing paragraph 79 of the judgment of Mulcahy J. The judgment in this case related to an extension of duration application that had been refused.

The Irish High Court in *Ironborn v DLRC*⁹ confirmed that severance of a planning permission may occur by operation of law where a permission expires before the development can be completed. This is distinguishable from a situation where a developer seeks to self-sever certain elements of a permission by omitting works or incorporating new or different elements of development, materially deviating from the permission.

Section 40(1) has the effect that, where development is commenced during the appropriate period of its planning permission, the permission ceases to have effect in respect of the part of the development that is not completed within that period, but this does not prejudice the validity of anything done pursuant thereto prior to the expiration of the permission. This provision has, as such, a severing effect as between works carried out during the term of the grant of permission and any works remaining to be done upon the expiry of its term. While section 160 planning injunction caselaw in relation to material deviations from the grant of permission prior to its expiration has identified limitations to the applicability of section 40(1) of the 2000 Act to such enforcement proceedings¹⁰, the Substitute Consent and Section 37L Applications are not made in response to section 160 injunction proceedings or any other enforcement action.

The Substitute Consent Application seeks retrospective planning permission for the works undertaken between 11th July 2023 and 20th May 2024, within the scope of the domestic planning legislative framework. To the extent that the Observer has a concern about the scope of the works that are the subject of the Substitute Consent Application, it is not a concern that has any basis in EU law, for the reasons outlined above.

1.2.3 Legal basis for Parallel Substitute Consent and Section 37L Applications

The Observer's submission on the Section 37L Application suggests that ACP lacks jurisdiction to consider the Section 37L Application until after the Substitute Consent Application is determined. This is incorrect. The 2000 Act and corresponding provisions of the PDR expressly envisage that the Applications can be made and considered in parallel, while the Section 37L Application shall not be determined until after the Substitute Consent Application has been determined.

Section 37L expressly enables a person who is making an application for substitute consent under Section 177E to "*also apply for permission*" for development of the land the subject of, or adjoining, the substitute consent application. The Section 37L Application is properly made to ACP within the temporal limits set in Section 37L(4)–(7) and is to be considered by ACP "*in conjunction with*" the Substitute Consent Application. This is the very point of Section 37L.

On receipt of the Section 37L Application alongside the Substitute Consent Application, ACP is to take steps to ensure the decision made under Section 37N issues as soon as possible after the decision on the Substitute Consent Application. The Section 37L Application is subject to distinct procedural requirements set out in the 2000 Act and the PDR.

ACP does not lack jurisdiction to consider and assess the Section 37L Application alongside the Substitute Consent Application, indeed that is what is envisaged by the statutory scheme, provided ACP decides the Substitute Consent Application first, and only decides the Section 37L Application after the Substitute Consent Application

⁹ [2023] IEHC 477, paragraph 84: "*But, in any event, it is clear that whatever about the legal effect of a developer deciding not to complete a development in accordance with the terms of the permission by omitting elements, or incorporating new or different elements, i.e. seeking to 'self-sever' certain elements of the permission, 'severance' by operation of law can occur and does not have the effect of rendering the completed portion of a development unauthorised.*"

¹⁰ See for example *Donegal County Council v Planree & Mid-Cork Electrical* – S 160 PDA 2000 [2024] IEHC 93 (High Court, Holland J); and [2024] IECA 300 (Court of Appeal, Butler J)

has been determined. This statutory scheme has an inherent logic consistent with the EU caselaw cited above. It ensures that ACP's consideration of proper planning and sustainable development and environmental assessments of the whole project looks backwards and forwards and considers all material interactions between environmental factors likely to be affected.

An analogy may be drawn with the dual application process considered by the High Court in *Coyne v An Bord Pleanála* [2023] IEHC 412, paragraphs 387-388. In that case, Holland J held that, where ACP is dealing with two applications for proposed development that together form a single project for EIA and AA purposes, the EIA and AA for each such application shall be conducted in a connected manner, leaving no gaps in the analysis as between the two distinct procedures. The Court accepted that the EIAs for each application arguably must be distinct, given that one application was required to be made to the planning authority in the first instance, the other directly to ACP, but the relationship between the EIAs/applications "must be such as to ensure that the obligation imposed by the EIA Directive to perform EIA of the whole project... has been met".

1.3 Suggestions of Conflicts and Deficiencies in the r/EIAR and r/NIS

1.3.1 Unlawful baseline

The Observer's submission on the Section 37L application and appended comments on the Substitute Consent application suggest that the rEIAR and rNIS are confined to the works undertaken between 11th of July 2023 to the 20th May 2024. This is incorrect. The rEIAR and rNIS describe the works undertaken before the 11th July 2023 separately to those undertaken after the 11th July 2023 when the planning permission expired. The full cumulative and in-combination scope of all works undertaken to date from the commencement of development under Planning Ref 17/967 until the cessation of works on 20th May 2024 has been assessed.

The Observer has suggested that the baseline used for the assessments fails to identify the actual baseline conditions prior to the commencement of works. This is incorrect. Firstly, the EIA and AA screening undertaken by Galway Co Council prior to the grant of Planning Ref 17/967 was based on surveys and assessments carried out prior to the commencement of any works. Further survey data was collected following the cessation of works on 20th May 2024, as set out in the environmental assessments submitted with the Applications, to supplement the baseline condition data. These combined data informed the rEIAR and rNIS, and the EIAR and NIS, submitted with the Applications. It is for ACP to determine whether the information submitted with the Applications is adequate for it to undertake a lawful EIA and AA of the whole project, and the Applicant submits that it is.

1.3.2 Inconsistencies in AA Screening between 2017 and 2024¹¹

The Observer has suggested that there are various inconsistencies in data contained in previous AA Screening Reports. This is incorrect. The Applications are submitted with the rNIS and NIS for each application as required by both EU and Irish law, and this information is provided to enable ACP to undertake the requisite backwards and forwards Appropriate Assessment of the whole project since the commencement of the works under Planning Ref 17/967 as required by EU law and Irish law. The Observer has not raised any reasonable or objective scientific doubt as to the adequacy or accuracy of the information provided to ACP in this regard.

¹¹ It is assumed that the reference to 2022 data in the Observer's Section 37L Submission and appended Substitute Consent Comments is intended to mean 2024.

1.3.3 Data Gaps and Inconsistencies in the Substitute Consent Application

The Observer has suggested that the AA Screening Report submitted with the application for Planning Ref 17/967 as an appendix to the EIS submitted with that application was invalid as it was not submitted as a stand-alone document. There is no legal basis for this, nor is it relevant to the determination of the current Applications.

As noted above, pre-construction surveys undertaken prior to the commencement of works under Planning Ref 17/967 have informed the rEIR and rNIS submitted with the Substitute Consent Application and the EIR and NIS submitted with the Section 37L Application, together with additional surveys undertaken following the cessation of works on 20th May 2024. The combined surveys and results are included in Appendix 8A of the rEIR submitted with the Substitute Consent Application and Appendix 8A of the EIR of the Section 37L Application. There are therefore no data gaps capable of affecting ACP's jurisdiction to undertake a lawful EIA or AA of the whole project consistent with EU and Irish law.

1.3.4 Gaps in Data and Qualitative Assessment (section 5.4 of the Section 37L Submission)

As already confirmed above, the information submitted with the rEIR and rNIS covers all works undertaken under Planning Ref 17/967 until the cessation of works on 20th May 2024. There are therefore no data gaps capable of affecting ACP's jurisdiction to undertake a lawful EIA or AA of the whole project consistent with EU and Irish law.

1.3.5 Contamination of Marine Samples and Damage to Marine Ecosystems (section 5.5 of the Section 37L Submission)

The lower and upper-level guidance values outlined in Cronin et al (2006) and the lab results for the sediment samples taken as part of the marine assessment for the rEIR and EIR are presented in Tables 8-6 to 8-11 in the Marine EIR chapter. A comparison of the guidance levels and the results indicate that all dredged sediment samples tested for contaminants were well below the lower and upper-level guidance values outlined in Cronin *et al.* (2006). These sediments are therefore considered uncontaminated. The Observation does not provide ACP with any objective scientific information to the contrary.

1.4 Cumulative Assessment of Relevant Plans, Projects and Programmes –

The Observer suggests that there is a failure in the Applications to adequately assess the cumulative and in-combination effects of the whole project with other plans, projects or programmes liable to cause significant environmental effects. This is incorrect.

The rEIR and rNIS submitted with the Substitute Consent Application confirm no adverse effects on the environment or on European sites from the works carried out under Planning Ref 17/967 until the cessation of works on 20th May 2024, either individually or in combination with / in cumulation with any other plans, projects or programmes for the period relevant to those works.

The EIR and NIS submitted with the Section 37L Application assessed potential in combination / cumulative effects with the previous works already undertaken under Planning Ref 17/967 until the cessation of works on 20th May 2024, and any other relevant plans, projects and programmes for the likely period of the works the subject of the Section 37L Application.

The Observer has highlighted "Figure 6.1" which appears to be an abstract from the Galway County Council planning applications map. This Figure identifies all planning applications that have been made for this area,

including historic planning applications that have been granted or refused or withdrawn, and those which have already been constructed as well as those which were not commenced. This Figure, therefore, does not undermine the methodology used by the Applicant in defining and assessing potentially relevant plans, projects and programmes which are capable of giving rise to potential cumulative and/or in-combination effects with the project the subject of the Substitute Consent and Section 37L Applications. Furthermore, it is for ACP to undertake the requisite in combination and cumulative impact assessment based on the information available to ACP when undertaking the EIA and AA of the project in accordance with EU and Irish Law.

1.4.1 Discharge issues

The Observer suggests that there are unassessed cumulative effects arising from the project together with all the sewage and other polluted water discharges into the Cashla Bay. It is suggested that the pollution effects of the project should be assessed in combination with all other pollution sources. Many of these third-party pollution sources lack requisite data (i.e. from private septic tanks associated with various dwellings and other existing facilities and the wastewater treatment plants).

The Applicant considers it more appropriate to assess the project against the existing monitored water quality data for the bay, which by nature is a cumulative assessment. This data indicates that the water quality in Cashla Bay is very good and of high ecological value. The rivers discharging into the Bay also have good to high ecological value. The Bay is assessed as not at risk of a deterioration in water quality or meeting the quality objectives set out in the Water Framework Directive and corresponding provisions in Irish law (see part 1.5 below).

1.4.2 Use of unauthorised material

The Observer raises concerns over the legality the materials used as part of the development works. We wish to confirm that all material used in the development works was procured from authorised sources.

1.5 Water Framework Directive Assessment

A Water Framework Directive (WFD) Compliance Assessment (WFD Assessment) is an assessment to determine if a proposed development would result in a deterioration in the current WFD status of the water bodies within the WFD study area, and also to ensure that a project does not compromise the achievement of the WFD objectives for the improvement in the overall status of these water bodies.

A WFD Assessment was undertaken. Relevant details are included in the rEIAR and EIAR (Water and Marine Chapters) submitted with the Applications. These Chapters identify relevant water bodies (coastal/ marine and terrestrial), current water quality status and future objectives, and relevant protected areas.

The potential for all activities associated with the development to affect water quality was assessed in these Chapters, drawing on water quality and turbidity monitoring undertaken by Gavin & Doherty Geosolutions, with two data buoys deployed on site from 14th of March 2023 until 12th of July 2024. The buoys monitored Dissolved Oxygen (DO) and turbidity during this period. There were short spikes in turbidity at Buoy 2 from April until May 2023 that can be attributed to the reclamation works carried out by the contractors and the installation of the protective berm. These spikes in turbidity quickly returned to low levels in the absence of construction activity and with tidal movements. The sensitivity of the various marine species to changes in turbidity and light and heavy smothering is assessed in the Marine Chapters. Sensitivities ranged from “not sensitive” to “medium” for most species. The only “highly sensitive” species are the sea grasses which are located on the west bank of the Cashla Bay. These were largely unaffected by changes in turbidity. Considering the relatively small quantities of material being removed, short duration of the pressure, and since the dispersion of suspended sediment is limited

by tidal flow and direction, the magnitude of impact to benthic communities as a result of changes in suspended sediments and siltation rates is assessed as 'Low'. Consequently, the significance of the effects on marine species was slight to not significant.

Dissolved Oxygen (DO) is a key indicator of the water quality and the health of the ecosystem which exists within the water body. DO can vary depending on several factors, including temperature and salinity. Low levels of DO can have a significant effect on aquatic life in the water body and can lead to eutrophication if not addressed. Aquatic environments and ecosystems are generally in good health if the level of DO in the water is 5mg/l or higher. The data on DO collected from the buoys during the construction works in 2023 and 2024 shows that while there were some fluctuations in the level of DO, it is consistently above 5mg/l. The dip in DO levels from June to October 2023 are related to the increase in temperature of the water body during summer months and subsequent cooling down. Colder water contains more DO due to the lower evaporation rate of the water and decreased solubility of gases with lower temperatures.

1.5.1 Cumulative Assessment with other Discharges

Please see response to 1.4 above.

1.5.2 Derogation Needed

WID suggests that there is or will be a deterioration in the WFD risk rating and a derogation is needed. This is not correct. As indicated in the rEiAR and EiAR Water and Marine Chapters, the project does not give rise to any requirement for a derogation under the WFD.

1.6 Other Consents

For the avoidance of doubt, the Applicant is vested with the legal power and responsibility to manage fisheries harbours within its remit, including Ros an Mhíl harbour. No proprietary consents are required to occupy the harbour for the purposes of the project, whether under the Maritime Area Planning Act 2021, as amended, or the Foreshore Act 1933, as amended, or any other statute. The Applicant does not require a Marine Usage Licence (MUL) under the Maritime Area Planning Act 2021, as amended, as the project is the subject of an application for Substitute Consent and Section 37L development permission under the 2000 Act. A Dumping at Sea Permit is not required from either the EPA or the Maritime Area Regulatory Authority as the project does not involve the dumping of dredge material at sea.

1.7 Actual Use for Ros an Mhíl Deep Water Quay

The proposed use of the project is as specified in the Substitute Consent Application and Section 37L Application. Insofar as any other person may have envisaged using the harbour for any other purpose, such potential future use is not the subject of the Applications, nor does it form part of the project for which the EIA and AA are required to be undertaken by ACP¹².

¹² For the avoidance of all doubt, [2022-MAC-007 - MARA - Maritime Area Regulatory Authority 2022-MAC-007 for Scierde Rocks](#) was surrendered on 17 December 2025, while the corresponding planning application to ACP has also been withdrawn [Notice of withdrawal: ABP-321697-25 | An Coimisiún Pleanála](#) -. Any other suggestions made by WID are purely speculative. See for example the decision of the High Court of Ireland in [100-Meter-Tall Group -v- ABP \[2025\] IEHC 42, paragraph 166](#):

*“166. More fundamentally, this case doesn’t have anything to do with project-splitting because it isn’t part of the project to have a connection with the grid **and no such connection is proposed**. The turbine would serve the related factory on a specified basis. The “project” consists of (a) the original consent – already in existence (b) the extension of that – something that also already exists - and (c) the retention permission – with which the board was concerned here. **There isn’t some further and future element (d) of the “project” that has been “split” and that hasn’t been considered**. The applicants’ pleaded concern regarding a future connection to the grid is **purely fictional and speculative...**” (Emphasis added).*

