ISLE OF MAN GOVERNMENT

Consultation: Marine Infrastructure (Consenting Process) Regulations 2024

Consultation Report

October 2024

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1. INTRODUCTION

1.1 In 2016, the Marine Infrastructure Management Act 2016 ("the Act" or "MIMA") received Royal Assent. MIMA makes provision for a consenting process for certain activities in the Island marine environment and for connected purposes.

1.2 A limited number of provisions under MIMA were enacted before 2024, and, as part of an exercise to bring the remaining parts of MIMA into operation, the Department of Infrastructure ("DOI" or "the Department") carried out a public consultation on the scope of the associated secondary regulations. These regulations (the Marine Infrastructure (Consenting Process) Regulations 2024 or the "**MIMA Regulations**") were made on 18 July 2024.

1.3 This public consultation ran from 8 January 2024 to 16 February 2024. As part of the consultation, consultees were asked if their response could be published (either in full or anonymously) or not. All responses, regardless of confidentiality, were considered by the Department as the Regulations were finalised. Responses that have been anonymised are noted as such in this consultation summary.

1.4 Responses that cannot be published are set out in a Confidential Annex to this summary.

2. MOOIR VANNIN CONSULTATION RESPONSES

2.1 **Question 1**: Do you agree that the Department is considering the inclusion of the principles contained within the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 as adapted and modified within the Marine Infrastructure Regulations?

2.1.1 **Response**: Mooir Vannin Offshore Wind Farm Limited ("Mooir Vannin") supports the Departments intention to include the principles contained within the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the "EIA Regulations") adapted and modified within the Marine Infrastructure Regulations ("MIR"). Mooir Vannin have previously set out an example of how the EIA Regulations could be amended to incorporate Regulation 10 (Application of a Scoping Opinion) into the MIR.

Mooir Vannin has also noted that the Department proposed to keep abreast of the review of the EIA process in the UK and the move to Environmental Outcome Reporting ("EOR"). Mooir Vannin are of the view that the Department should focus upon incorporating the EIA Regulations already in force (subject to necessary amendments for the purpose of incorporating the EIA Regulations) and only seek to incorporate or move to EOR once the approach is known and lessons have been learnt from its implementation. As the Department is aware, the implementation of EOR has been delayed and Mooir Vannin is of the strong view that seeking to incorporate EOR will only lead to unnecessary flux and uncertainty at a time when the regime is in its infancy in the Isle of Man.

2.1.2 **DOI Answer**: Noted. The Department has had reference to the EIA Regulations in preparing the MIMA Regulations. At this time, noting that proposals for EOR are at an early stage, a decision has been made not to incorporate EOR.

2.2 **Question 2**: Do you agree with the proposed list of consultees and the circumstances under which they will be consulted?

2.2.1 **Response**: Mooir Vannin is largely in agreement with the list of consultees but would like to propose some amendments and would also like to seek clarification as to the proposed circumstances under which the consultees will be consulted.

The Department has referred to s11 of the Marine Infrastructure Management Act 2016 (the "Act") which sets out pre-application consultation requirements. S11(4) refers to Row 4 of the Table in section 10 which states that "Consultation must – (a) begin after the issue of the Scoping Opinion; and (b) allow at least 40 working days for responses".

The Department also refers to s15 of the Act with specific reference to Scoping Opinions and confirms at s15(5) that "the Department should consult "before issuing a Scoping Opinion with (a) the Department of Environment, Food and Agriculture; (b) the Department of Enterprise (c) Manx National Heritage and (d) any other person the Department thinks appropriate". S5(6) refers to Row 1 to 3 in the table at s10.

Mooir Vannin is unclear as to whether the Department proposes for the same list of consultees to be consulted pursuant to s11 (post Scoping Opinion) and s15 (pre–Scoping Opinion) of the Act. Unfortunately, the Climate Change (Infrastructure Planning) (Environmental Impact Assessment) Application) Order 2023 (the "Climate Change Order") consultation has not provided clarification in this regard. This is addressed further in our response to the Climate Change Order consultation.

Mooir Vannin would also request that the Department clarifies the consultation timescale as pursuant to this consultation the timescale is 40 days in line with the Act but under the Climate Change Order the period of consultation is stated as 42 days.

Regarding the specific list of consultees, reference is made to the Marine Fisheries Agency however this agency has merged with the Marine Management Organisation (MMO) and so can be removed. Mooir Vannin is not advocating the inclusion of the MMO as the Department has included the Secretary of State for the relevant department in England.

The Department has also suggested consultation with the Isle of Man Energy and Gas Networks Ireland in relation to developments "in close proximity" with such proximity to be determined at a later stage. Mooir Vannin would advocate including a specific "proximate" distance of 250m

In relation to the Departments statement that they "will determine which Local Authorities to be consulted dependent on the application and the potential impacts from that application" Mooir Vannin would advocate for an early and clear steer as to which Local Authorities to consult to ensure adequate consultation occurs. The same principle applies to Transboundary Consultees with the necessity for an early and clear steer as to which Transboundary Consultees to consult.

2.2.2 **DOI Answer**: The MIMA Regulations distinguish between those consultees that must be consulted at the scoping stage (restricted to more technical stakeholders) and those that must be consulted at the pre-application and examination stages (which represent a wider range of stakeholders). Schedule 1 to the MIMA Regulations sets those consultees that must be consulted at the scoping stage ("section 11 consultees"), and regulation 4 (Interpretation) then provides that the Department can exercise its discretion in determining which of those section 11 consultees are relevant to a particular scoping request. The list of consultees reflects those set out in the Climate Change Act Application Order.

The Department considers that transboundary consultees may require to be consulted, and clarification has been added in regulation 4 (Interpretation) for the circumstances in which these transboundary consultees must be consulted. As scoping relates primarily to technical matters, and given the Act does not significantly extend onshore, local authorities are not considered to be section 11 consultees for scoping. Local authorities will, however, require to be consulted at later stages in the process where relevant.

Consultees with apparatus or infrastructure in close proximity to a proposed development are not included as section 11 consultees for scoping but are set out as section 23 notifiable persons for an application. The Department has chosen not to restrict this to a specific proximate distance, as different types of apparatus or infrastructure may require different distances, or the distance may also need to be extended depending on the nature of a proposed development.

2.3 **Question 3**: Are there any other consultees that you think should be identified in the list above?

2.3.1 **Response**: As noted above Mooir Vannin largely agrees with the List of Consultees (subject to the minor amendments/clarifications suggested in the answer to the previous question). The Statutory Nature Conservation Bodies (SNCB's) are advisors to the relevant Transboundary Consultee, and it is the Transboundary Consultee's responsibility to obtain advice as appropriate. This principle applies in the context of any transboundary impacts upon protected sites in neighbouring jurisdictions. The relevant government department should obtain advice from the SNCB regarding any implications under the applicable Habitats Regulations.

2.3.2 **DOI Answer**: As noted at paragraph 2.2.2 above, the list of consultees reflects those set out in the Climate Change Act Application Order. The Department has not included transboundary SNCBs as prescribed section 11 consultees (or as consultees for other stages of the application process). It is considered that inclusion of the transboundary consultees is sufficient as it would be the responsibility of any transboundary consultee to seek SNCB advice as required.

2.4 **Question 4**: Do you agree with this level of publication, by an applicant, of a proposed application?

2.4.1 **Response**: Mooir Vannin would like further clarification as to the stage of the application to which the publication requirements apply. The key point to note is that the publication requirements so far as timings and names of publications should be consistent at every stage of the application to avoid any administrative errors by the applicant. This point applies to the "Handling and examination of an application for consent" section of this consultation which refers to different newspapers and include "once in a UK newspaper" and "one or more local newspapers" rather "than two newspapers" as is required pre-application. Publication in newspapers is an expensive exercise and a proportionate approach should be taken to publication to ensure adequate consultation.

Mooir Vannin is of the view that there should not be an obligation to provide hard copies of consultation materials. This is for cost and sustainability reasons. It is more appropriate for hard copies of consultation materials to be made available on request as is the case in the UK.

Mooir Vannin would also request an early and clear steer as which of the transboundary publications is considered appropriate.

2.4.2 **DOI Answer**: The MIMA Regulations have been amended to make clear when publication is required and where this is the applicant's responsibility (as opposed to the Department or the Council of Ministers). While the Department appreciates that newspaper publication is an expensive exercise, it is considered that newspaper publication remains a proportionate means of publicising an application. Newspaper notices require to be published in "one or more newspapers" as it is appreciated that not all applications may be relevant for multiple papers. Where a newspaper has an online version, the notice must also be published there.

The Regulations do not require hard copies of consultation materials to be provided to consultees and incorporate a mechanism for these to be requested.

Transboundary publications have been limited to the Gazette (depending on which jurisdiction(s) a project may interact with) and Iris Oifigiuil (if the Republic of Ireland is likely to be affected).

2.5 **Question 5**: Do you agree that a similar process to the PEIR should form part of the pre-application consultation process for Marine Infrastructure Consent?

2.5.1 **Response**: Mooir Vannin welcomes the consultation on the requirement for a PEIR and advocates for a similar process. The Department is aware that Mooir Vannin is actively preparing an Environmental Impact Assessment Progress Report (EIAPR) which fulfils the purpose of the PEIR as set out in UK Guidance including Guidance on the pre-application process and Advice Note 7 Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements. The EIAPR is currently scheduled for consultation on 8th July 2024. Mooir Vannin trusts that its approach to the EIAPR is consistent with PEIR and is therefore compliant with any legislative proposal for a PEIR. Further discussion in this regard is welcome.

2.5.2 **DOI Answer**: Following consideration, and to reflect the diverse range of consultation responses, the Department has not made PEIR a mandatory inclusion under the pre-application consultation requirements in the MIMA Regulations. The Regulations do provide for PEIR (or a similar equivalent) to be consulted on during pre-application consultation at the discretion of a prospective applicant (see regulation 18(1)(a)). The Department considers that consulting on PEIR, or a similar equivalent, will likely result in a more robust application that has addressed stakeholder concerns and welcomes Mooir Vannin's commitment to prepare an EIAPR. The Department notes, however, that PEIR may not be proportionate for all types of activities that require consent under MIMA.

2.6 **Question 6**: Can you see any benefits from the inclusion of a requirement pre-application whereby stakeholders have the opportunity to review and consider the preliminary studies and work done to date, and have an opportunity to provide feedback prior to an application being submitted?

2.6.1 **Response**: Mooir Vannin can see some benefit for including a requirement pre-application whereby stakeholders have an opportunity to review and consider the preliminary studies and work done to date however obtaining feedback on specific studies and work done would have to be balanced against the need to avoid undue delay. Applicants benefit from early, consistent and pragmatic advice from stakeholders

however it may be preferable for the discretion to be left with the applicant as to whether to seek the advice rather than for it to be a mandatory pre-application requirement.

2.6.2 **DOI Answer**: As noted at paragraph 2.5.2 above, pre-application consultation on preliminary studies and assessments is not mandatory under the MIMA Regulations and, instead, may be consulted on at the applicant's discretion. While consultation on these studies may result in a more robust application, it is noted that this is ultimately a decision for an individual applicant and may not be proportionate for all activities or applications under MIMA.

2.7 **Question 7**: Is there another mechanism that you propose which would benefit the overall application and decision making process ensuring there is sufficient stakeholder engagement at an early, pre-application stage?

2.7.1 **Response**: Mooir Vannin would encourage the Department to introduce powers for the Department and Local Planning Authorities (LPA's) to enter into agreements like a planning performance agreement. A planning performance style agreement would provide a framework to ensure the Department and LPAs are sufficiently resourced. Charging for discretionary services such as pre-application advice would be separate to the planning application fee. The charges should be clear and calculated transparently.

2.7.2 **DOI Answer**: Following consultation with external legal advisors, it was decided not to include provision for PPAs in the MIMA Regulations as this is already authorised under MIMA. Specifically, section 37(8) of MIMA allows for the Department to enter into agreements (which could include planning performance style agreements, where necessary).

2.8 **Question 8**: Do you agree that the proposed contents of an EIA as listed above adequately covers all areas of interest to be included within an EIA and subsequent Environmental Statement?

2.8.1 **Response**: Mooir Vannin agrees with the proposed contents of an EIA. Mooir Vannin notes in the narrative that reference is made to an Examiner being able to request further information should the information provided by insufficient. Mooir Vannin supports the inclusion of this provision but would like to understand the implications of such a provision, for example does the Department envisage the inclusion of Regulation 20 of the EIA Regulations relating to further environmental information and the publication requirements that follow. Mooir Vannin would advocate for the ability to supplement the Environmental Statement as appropriate without necessarily triggering the onerous suspension and publication requirements as detailed in the EIA Regulations.

2.8.2 **DOI Answer**: Noted. Under the MIMA Regulations, further information (which may include further environmental information) can be requested by the Examining body from any party participating in the examination, including the applicant. However, there is no requirement for this to be notified or publicised in the same manner as the UK's EIA Regulations. As such further information can only be requested during an examination (which has already been publicised and during which third parties will receive updates on hearing, etc.), the Department considers that no separate notification requirements are necessary. This process follows the approach taken under the EIA Regulations in Scotland where additional information is requested by a Reporter during the course of a public local inquiry process.

2.9 **Question 9**: Do you agree that the above activities should be exempted from requiring a Marine Infrastructure Consent (they would still require relevant consents under the extant consenting regimes prior to being undertaken)?

2.9.1 **Response**: Mooir Vannin notes the proposed removal of specific activities associated with oil and gas. These are narrow exemptions, however in the explanatory text, the Department states that advice is being sought as to whether to remove oil and gas activities from the Act. Mooir Vannin wants to see the MIR in place sooner rather than later and would therefore support any action that may expedite the implementation of the MIR. Having said that, Mooir Vannin is aware that the Petroleum Act 1986 may not be fit for purpose and that the Department may need to adapt the Oil and Gas regime in the UK and North Sea Transition Authority Guidance to apply to the proposed oil and gas activities in Isle of Man territorial seas. It is important that there is a degree of scrutiny applied to the consenting of any offshore oil and gas activities that reflect the level of scrutiny applied to offshore wind. Mooir Vannin therefore supports a separate regime for oil and gas activities providing there is a transparent process that includes third party consultation.

Mooir Vannin has also considered whether "survey work including geological and geophysical" and "activity site repairs and works to and in respect of existing cables…" should be considered as "exempt" pursuant to the proposed MIR. Mooir Vannin has obtained legal advice from Pinsent Masons LLP in this regard and is of the view that operations and maintenance activities (O&M) do not need to be "exempt" from the requirement to obtain an Marine Infrastructure Consent (MIC) as there is no requirement for them to obtain an MIC in the first place, as they are not "controlled marine activities" for the purposes of section 6(1) of the Act. The same is true for geotechnical and geophysical surveys.

It is noted that there is the ability, but not the obligation, to include activities such as surveys and O&M activities as "associated marine activities" so that planned/anticipated post-consent works can be licenced in the MIC. It is imperative that the Act does not seek to list such O&M activities and survey work as "controlled marine activities" because if such work is unplanned a MIC would be required which would be disproportionate to the works being undertaken and require a considerable amount of foresight to ensure all such activities were exempt.

Mooir Vannin would advocate the following approach to the MIR:

(a) to make clear the scope of activities that are intended to be captured under the definition of "controlled marine activities" and therefore involve the requirement for a MIC.

(b) to make it clear that any other activities that fall outside of this defined scope, including any activities that may be included within a MIC as "associated marine activities" do not need to be exempt because the requirement for a MIC does not apply. This would include all survey works and O&M activities (albeit post-consent surveys and known O&M activities could be covered by the MIC as associated marine activities). This would give Mooir Vannin the certainty that an MIC would not be required for any pre-consent surveys and unknown O&M activity.

(c) it is noted that s50 of the Act gives the Department the "power to exempt and "in particular, the Department may provide for an exemption for (a) survey work; (b) work in relation to some or all outfall pipelines (c) repairs and emergency works (d) decommissioning works") (s50(2)). Mooir Vannin is of the view that inclusion of "survey work" within this list is confusing as survey work would never give rise to the need for MIC because is not a controlled marine activity. Therefore, it does not need to be exempt.

2.9.2 **DOI Answer**: The Department agrees that survey work does not constitute a controlled marine activity; however, it may be taken to constitute "associated marine activities" and, accordingly, it is appropriate for survey work to be provided as a possible exemption from the requirement for MIC.

In respect of O&M activities, the Department considers that in some circumstances (i.e. planned maintenance) it is appropriate for this to be the subject of a MIC, as it will have been known at the application stage and considered as part of the environmental assessments that accompany a consent application.

Maintenance activity does not constitute a controlled marine activity in its own right, and emergency maintenance activities would therefore not need MIC.

The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities, and the Department considers this the more appropriate mechanism to set out certain exemptions, as it is recognised that the wider context of a proposed development or works may be a factor in determining whether MIC is required or not.

2.10 **Question 10**: Are there any other activities that you feel should be exempted from requiring a Marine Infrastructure Consent (noting that it only already applies to Controlled Marine Activities, as identified in section 6 of the Act)?

2.10.1 **Response**: As noted in the answer to the above question, Mooir Vannin is of the view that certain activities listed as potentially exempt do not fall under the definition of "Controlled Marine Activities" and so cannot be "exempt." This question acknowledges that the exempt activities should only apply to Controlled Marine Activities as identified in s6(1) of the Act which supports the projects' view. If, however the Department believes that "Controlled Marine Activities" should be defined more broadly to include surveys or O&M activities, then this would potentially include a substantial number of other activities that may unnecessarily require an MIC. This would be disproportionate for future MIC's (or an amendment to the initial MIC) to be required for such works that cannot be envisaged to fall within the scope of the initial MIC. It would also disregard the purpose of "associated marine activities" and leave uncertainty on what works s6(2) of the Act is intended to cover.

2.10.2 **DOI Answer**: See response at paragraph 2.9.2 above. The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities. The Department would welcome further discussions on the specific nature of any such additional surveys or O&M activities in due course.

2.11 **Question 11**: Do you agree that the consent process under MIMA should be as cost neutral as possible, to Government, and that costs are recovered as far as possible from the applicant?

2.11.1 No response.

2.12 **Question 12**: Do you agree that the Isle of Man should seek to charge a comparable amount as is charged in the UK through the Planning Inspectorate?

2.12.1 No response.

2.13 **Question 13**: Do you suggest any other charging mechanisms that have been successfully used to recover costs to Government from the handling and examination of applications for Marine Infrastructure Consent regardless of the outcome of any such applications?

2.13.1 No response.

2.14 **Question 14**: Do you agree that elements of an application which are proposed to sit outside the Controlled Marine Area should be considered as part of a Marine Infrastructure Consent?

2.14.1 **Response**: Mooir Vannin is supportive of the Departments proposal to include elements that sit outside of the Controlled Marine Area within the MIC. Mooir Vannin has interpreted this to mean works landward side of the Mean High-Water Mark and is referred to below as "Onshore Development." This would normally include works pursuant to the Town and Country Planning Act 1999 or works where highways licences and consents may be required. There are notable advantages to having the ability to include Onshore Development in an MIC both in terms of understanding the impacts of the whole development but also ensuring the consent is delivered within a clear statutory timescale.

2.14.2 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore.

Regulation 6 of the MIMA Regulations provides that MIMA will apply to works that are located within 250m landward of mean high water.

2.15 **Question 15**: Do you believe that it should be limited to some elements of an application for Marine Infrastructure Consent, or should it be applicable to all elements that sit outside the Controlled Marine Area?

2.15.1 **Response**: Mooir Vannin is not clear as to what the Department means by the above question. In principle it should be left to the developer to determine what elements should be included in the application as potentially "associated development" as defined at s115(2) of the Planning Act 2008 should the Department be minded including such a provision. This can only apply to Onshore Development as works seaward of the Controlled Marine Area would fall under a separate jurisdiction and therefore under a separate regime.

2.15.2 **DOI Answer**: Noted. See response at para. 2.14.2 above in respect of onshore infrastructure.

2.16 **Question 16**: Are there any specific elements of an application which are proposed to sit outside the Controlled Marine Area that you believe could be considered as part of a Marine Infrastructure Consent?

2.16.1 **Response**: Mooir Vannin would reiterate its answer to the above with regards to Onshore Development being within an MIC. Mooir Vannin would further reiterate its response to the questions relating to exemptions, so that any additional surveys and O&M activities onshore could be included within an MIC as associated marine activities. Mooir Vannin welcomes further discussion in this regard.

2.16.2 **DOI Answer**: See response at para. 2.14.2 above in respect of onshore infrastructure. As noted in the response at paragraph 2.9.2 above, the MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities. The Department would welcome further discussions on the specific nature of any such additional surveys or O&M activities in due course.

2.17 Further comments were then received from Mooir Vannin in respect of the draft Regulations that were circulated in April 2024. These comments, and the Department's responses to these, are as follows (noting that the numbering of regulations changed significantly from the version circulated in April 2024 to that made on 18 July 2024).

2.17.1 **Response**: Reg. 4(1): List of consultees at schedule1 is similar to the APFP Regs 2009. It is helpfully split into three parts: (1) Scoping consultees; (2) pre-application consultees; and (3) acceptance consultees.

2.17.2 **DOI Answer**: Schedule 1 is no longer split into three parts and now only sets out those parties that are "section 11 consultees" (scoping consultees). Pre-application consultees are not defined. Rather, regulation 17(1) sets out those parties that must be consulted at the pre-application stage in addition to those prescribed under s. 11(1)(a) to (c) of MIMA. This includes any party that may be affected be an application (i.e. landowners or individual receptors) as well as any person identified in the Scoping Opinion. Acceptance consultees are now referred to as "a section 23 notifiable person" (defined in regulation 4(1) and further provisions in regulation 27).

2.17.3 **Response**: Reg. 4(1): The list(s) include many UK bodies (such as the EA, MMO, Civil Aviation Authority etc.). The project doesn't necessarily need a cross-jurisdiction element for many of these consultees to apply which we find surprising. The list is therefore broader than we'd expected, as many UK focused bodies are being pulled across into the IoM regime.

2.17.4 **DOI Answer**: Noted, however, the definition of section 11 consultee (regulation 4(1)) includes a definition of a '*relevant* section 11 consultee' (emphasis added) being "such a person who, in the particular circumstances of the case, the Department considers may be affected by the controlled marine activity which is the subject of an application for consent".

This allows for the Department to exercise discretion in choosing which section 11 consultees require to be notified of a scoping request.

2.17.5 **Response**: Reg. 6(2): The provisions largely align with Reg 10 of the EIA Regs 2017.

2.17.6 **DOI Answer**: Noted. These provisions, which are largely unchanged, are now in regulation 8(1).

2.17.7 **Response**: Reg. 6(2): The contents to be included in a scoping report is the same as the EIA Regs, save that sub-section (d) of the Marine Regs also requires "sufficient information to enable the Scoping Consultees to form a view and give feedback on the contents of the scoping report". This is a change from the wording in the consultation version which was "such other information or representations as the person making the request may wish to provide or make" and is subjective and unclear for legislative drafting. For example, what happens if a consultee doesn't consider the information sufficient? Suggest it is removed / amended back to the consultation wording.

2.17.8 **DOI Answer**: This wording has been retained in regulation 8(1)(d). This obligation is on the party submitting a scoping report rather than a consultee and is necessary to ensure that the request for the scoping report is not frivolous or lacking in detail to allow it to progress to the next stage. Regulation 9(4) sets out the process which would be followed if it were considered that the scoping request were insufficient.

2.17.9 **Response**: Reg. 7: This sets out a clear process, with defined timescales, that the DoI must follow when considering a scoping request / when issuing a scoping opinion.

2.17.10 **DOI Answer**: Noted. This process is now set out in regulation 9.

2.17.11 **Response**: Reg. 8(2)(a): Suggest defining what constitutes a 'transboundary consultee'.

2.17.12 **DOI Answer**: Transboundary consultee is now a defined term within regulation 4(1) (with further clarification as to what constitutes a transboundary effect, and a significant transboundary effect, set out in regulation 4(6)).

2.17.13 **Response**: Reg. 8(2)(b): The requirement to publish information in the London, Edinburgh, Belfast and Irish Gazette (which we had previously queried) is limited to applications for a scoping opinion where the proposed development has significant transboundary effects on that relevant jurisdiction – this seems reasonable.

2.17.14 **DOI Answer**: The requirement to publish a notice regarding the request for a scoping report has been removed given the tight timescales set by MIMA for the scoping process. Rather, regulation 9(3) and 10 require the Department to provide the request to the consultee or transboundary consultee.

2.17.15 **Response**: Reg. 8(3)(b): This requires the DoI to send "information on the nature of the decision which may be taken" to the countries or transboundary consultees. Unclear what this is referring to – i.e. is it referring to a decision those countries/consultees may make, or an indication of the scoping decision that the DoI is considering?

2.17.16 **DOI Answer**: This is now set out in regulation 10(2). Its purpose is to set out the wider context of MIMA to a transboundary consultee – that is, to explain where scoping sits in the wider consenting process so a transboundary consultee can take a view as to whether it wishes to participate in the remainder of the process.

2.17.17 **Response**: Reg. 10(4): This prohibits a person who gives pre-app advice being appointed to the Panel of Examiners. This prohibition has now been removed under the Planning Act 2008 and would suggest it is also removed here. The rationale for the prohibition is unclear and it is a useful way of enabling an Inspector to be familiar with the project early in the process.

2.17.18 **DOI Answer**: Noted. This has now been removed.

2.17.19 **Response**: Regs. 12 to 14 and Schedule 2: The EIA process; procedure to facilitate preparation of environmental; and form and content of ES aligns with the EIA Regs 2017.

2.17.20 **DOI Answer**: Noted. This process is now set out in regulations 12 to 15 and Schedule 3.

2.17.21 **Response**: Reg. 16(2): Requirement to consult with the pre-application consultees only which does not include reference to landowners. Should this be expanded since cross jurisdictional (i.e. onshore scope) is facilitated by Reg 61 (below)?

2.17.22 **DOI Answer**: Landowners are not specifically identified as pre-application consultees given the limited extent of MIMA and the MIMA Regulations onshore. Rather, regulation 17(1) makes provision for any persons "affected or likely to be affected" by the proposed activity to be consulted at the pre-application consultation. This gives the applicant flexibility when considering which parties should be included for pre-application consultation.

2.17.23 **Response**: Reg. 16(2): Consultation is only required 'in broad terms' but must indicate the "maximum potential size and scope of the proposed development". We could seek to confirm that there is no indication that where MIC is sought for offshore renewable energy generating stations, there is a cap on MW output and the intention here is for maximum footprint. Or we could make that assumption when preparing the information.

2.17.24 **DOI Answer**: This has now been removed. Regulation 18(1)(a) (report on pre-application consultation) provides that the materials consulted on must "enable a consultee to form a reasoned view of the likely significant environmental effects of the proposed controlled marine activity and to respond to the consultation accordingly". It will be for the applicant to consider what level of detail is necessary to comply with this, although it can seek advice from the Department on this point under regulation 5(1)(a).

2.17.25 **Response**: Reg. 16(2): A PEIR is optional but consultation report required.

2.17.26 **DOI Answer**: As noted in paragraph 2.17.24 above, the consultation report will need to demonstrate that consultees were able to form a reasoned view of the likely significant environment effects of the proposed activity. While the Department considers that a PEIR (or equivalent) would likely satisfy this requirement, it is recognised that a full PEIR may not be proportionate for all application types and sizes being promoted under MIMA.

2.17.27 **Response**: Reg. 18(1)(d): Duty to publicise – 40 working days for responses (noticeably longer than 28 days under APFP Regs 09) but now aligns with MIMA 2016.

2.17.28 **DOI Answer**: Noted. Timescales under the MIMA Regulations must align with MIMA (which has different timescales from the Planning Act 2008 and its associated regulations). The Department is considering what scope there is to amend this timetable.

2.17.29 **Response**: Reg. 18(2): Need for hard copies removed since initial consultation. This is positive.

2.17.30 **DOI Answer**: The requirement for hard copies has been removed throughout the MIMA Regulations to reflect changing approaches post-Covid. Regulation 19(2) provides that

materials must be made electronically on an applicant's website but then provides discretion for an applicant, who may wish to provide hard copy consultation materials.

2.17.31 **Response**: Reg. 20(1): Duty to notify – includes prescribed consultees that are: Manx National Heritage; Manx Utilities; the Cabinet Office; and the Council of Ministers. Seems reasonable albeit broader than PA 08 which just requires notification to the SoS.

2.17.32 **DOI Answer**: This is to ensure that key stakeholders are given advance notice of an application and can prepare resources accordingly.

2.17.33 **Response**: Schedule 3: This aligns mostly with the documents you'd expect with a DCO application.

2.17.34 **DOI Answer**: Noted. This is now set out in Schedule 4. References to items and matters that were already prescribed under MIMA have been removed to avoid duplication.

2.17.35 **Response**: Schedule 3: However, a site plan is required specifying "any area of seabed within 5 km of the proposed development which is the subject of another marine infrastructure consent or a proposed marine infrastructure consent or has been awarded lease or exclusivity rights".

2.17.36 **DOI Answer**: This has now been amended (see para. 6(d) of Schedule 4) and includes projects in neighbouring jurisdictions within 5km "to the best of the applicant's knowledge".

Under regulation 27(2), the Council of Ministers must notify a section 23 notifiable person of acceptance – this includes any persons with a commercial interest in, or in close proximity, to the application site or a person planning to place (or who has already placed) infrastructure in close proximity. The purpose of this site plan is therefore to assist the Council of Ministers in discharging its duty under regulation 27(2).

2.17.37 **Response**: Schedule 3: Paragraph 14 and 15 detail the project information required where there is submarine cables and offshore renewable energy generation respectively. The info on decommissioning also seems onerous at such an early stage of development.

2.17.38 **DOI Answer**: The requirements around decommissioning within Schedule 4 have been refined to reflect the level of detail that would be known at an application stage, and it is considered that this level of information would be commensurate to that used for EIA purposes. As there is currently no equivalent to section 105 of the Energy Act 2004 under Manx legislation, some mechanism around decommissioning is required under MIMA.

2.17.39 **Response**: Reg. 24: Requirement for EIA to be made available by applicants online and in hard copy. Seems onerous.

2.17.40 **DOI Answer**: As noted at paragraph 2.17.30 above, the requirement for hard copy documents has been removed.

2.17.41 **Response**: Reg. 25: Sub-para (1) requires the applicant to display a copy of the application accepted for examination at the site and registered business address, whereas sub-para (2) suggests it is only meant to be a notice of application for consent accepted for examination. Suggest this needs clarifying as a copy of the full application seems burdensome.

2.17.42 **DOI Answer**: This is now set out in regulation 28. The intention is that the notice of the application would be displayed with directions to the government website for accessing the full application.

2.17.43 **Response**: Regs. 29 to 39: General provisions in relation to hearings, procedure at hearings and other matters involving the role of the Examiners. Nothing of concern for applicants.

2.17.44 **DOI Answer**: Noted.

2.17.45 **Response**: Regs. 40 to 44: Generally standard provisions relating to the decision making process.

2.17.46 **DOI Answer**: Noted.

2.17.47 **Response**: Reg. 42: The language around design envelope options at Reg 42(2) needs clarification. “”Design envelope options” are permitted – not quite clear what is meant by this, as the very nature of a “design envelope” is that it inherently has a number of options embedded within the maximum design, but it is the maximum design which is assessed. The provision goes on to require that an EIA is required in respect of all of the options – as you know in the UK we would normally only carry out an EIA on the maximum design. A clear steer required from the DoI towards the UK approach.

2.17.48 **DOI Answer**: Noted. This is now in regulation 41, and references to the design envelope have been removed.

2.17.49 **Response**: Regs. 45 to 55: This deals with NMCs and material changes post-consent. When consulting on such changes, persons have 30 working days to respond.

For NMCs, the Council of Ministers can make the change themselves. For MCs, a reference must be made to an Examiner who must Examine the MC request akin to the MIC application. This is burdensome and would be useful to have provision enabling quicker resolution of a MC application.

2.17.50 **DOI Answer**: The Department has removed “post-consent” steps from the MIMA Regulations and the intention is that these will follow in separate regulations made shortly. It is intended that the process will be similar to that in the UK.

2.17.51 **Response**: Regs. 56 and 57: This provides consultation requirements on the Council of Ministers where there is a transboundary element.

2.17.52 **DOI Answer**: This is now in regulations 10 and 44.

2.17.53 **Response**: Regs. 58 and 59: See earlier discussions around exemptions attached. In short, whilst I appreciate that MIMA 2016 gives the DoI the ‘Power to Exempt’ “(a) survey work; (b) work in relation to some or all outfall pipelines; (c) repairs and emergency works; (d) decommissioning works” (s50(2)), the inclusion of the three matters listed at Reg 59(1) is confusing and are unnecessarily referred to, because none of those works would invoke the requirements for an MIC. Therefore they do not need to be exempt (particularly survey works, noting the pipeline works may be related to the laying of submarine pipelines).

2.17.54 **DOI Answer**: Noted. The Department is no longer progressing exemptions under MIMA (although it may progress exemptions in future). As noted, these works would not (in their own right) be considered controlled marine activities such that they would require a MIC. There is provision for such activities to be included as associated marine

activities where they are known at the point of an application and to therefore be contained within the MIC as such.

2.17.55 **Response**: Reg. 61: The retained use of terminology of 'cross-jurisdictional works' is relatively confusing terminology to refer to onshore and offshore works.

The Regs helpfully interpret section 55 of MIMA 2016 to provide that "associated marine activities" "shall be taken to include onshore infrastructure and works where such infrastructure or works– (a) are immediately part of, and required in connection with, controlled marine activities; and (b) are located within [1000m] of MHWS."

2.17.56 **DOI Answer**: This has now been restricted to 250m. See regulation 6.

2.17.57 **Response**: Reg. 62: This refers to ongoing compliance and enforcement – and preserves the right of other consenting authorities under any of the consenting regimes to take enforcement for breach of health and safety, enviro provisions or pollution control. Given how "consenting regimes" is defined in s9(5) of MIMA 2016 it doesn't appear that these would cover health and safety.

2.17.58 **DOI Answer**: This has not been included in the MIMA Regulations as made, as it is considered that MIMA only extends to consenting, permitting or otherwise approving activities – it does not extend to enforcement actions or ongoing compliance (save for compliance with MIC conditions).

2.17.59 **Response**: Reg. 63: This usefully enables DoI to "direct that anything done in preparation or anticipation of these Regulations coming into operation shall have effect as if done under, and for the purposes of, these Regulations when they do come into operation". There are conditions which have to be met and the drafting here is quite poor.

2.17.60 **DOI Answer**: This has been removed from the MIMA Regulations as it required to be approved by Tynwald. It has been set out in the Marine Infrastructure Management Act (Transitional Provision) Regulations 2024 which were made on 20 May 2024 and approved on 17 July 2024.

3. KEY CONSULTATION RESPONSES FROM OTHER PARTIES

Note that responses have been taken directly from consultee responses and are unedited.

3.1 **Question 1**: Do you agree that the Department is considering the inclusion of the principles contained within the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 as adapted and modified within the Marine Infrastructure Regulations?

3.1.1 **Anonymised Response**: It makes sense that the IOM Government import as much legislation as possible from the UK government. This not only saves time, expense and resources, but also allows us to use well trialled and tested measures. It will also allow for ease of interpretation and commonality for entities that need to abide by both sets of rules). There is surely not much justification for rewriting our own versions of the legislation.

3.1.2 **DOI Answer**: Noted. In preparing the MIMA Regulations, the Department has had regard to the Infrastructure Planning Regulations as well as requirements in other UK jurisdictions with a view towards a consistent legislative framework that also represents best practice.

3.1.3 **Anonymised Response**: We are not the UK and also, the UK has a poor track record of marine protection. To base any legislation on this is to adopt these flaws also.

3.1.4 **DOI Answer**: As noted at paragraph 3.1.2 above, the Department has taken a consistent approach with neighbouring jurisdictions. It is considered that this is a robust and proportionate decision to ensure that the Island remains competitive in the region. However, the Department has also made changes to the UK legislation to strengthen the position – for example, in removing the ability for development to be screened out of EIA.

3.1.5 **Response**: Makes sense to include provisions and principals of the UK regulations as it seems highly likely that any contractor for services in connection with matters covered by these regulations will be familiar with UK EIA regulations.

3.1.6 **DOI Answer**: Noted and discussed in more detail at paragraph 3.1.2 above.

3.1.7 **Response**: The Department proposes to model the MIMA Regulations on the UK's Marine Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. [Climate Change Transformation Team (CCTT)] is supportive of this approach and urge the Department, when considering possible modifications of the UK legislation to make it suitable for the Island, that care is taken to maintain at least the same levels of protection for the marine environment as are afforded by the UK.

In principle, yes. There is an acknowledged lack of legal context defining EIA for the IoM, though currently accepting UK legislation as guidance. We note, however, the differing legal context and therefore references to the Birds and Habitats Directives would need consideration, as they do not apply here.

3.1.8 **DOI Answer**: Noted and discussed in more detail at paragraph 3.1.2 above. The Birds and Habitats Directives do not apply within the Isle of Man, and MIMA does not give the power to bring these into force as part of its secondary legislation (i.e. separate legislation would be required). The Department is mindful that the Birds and Habitats Directives, as enacted in UK and Irish jurisdictions, give protection to mobile species that may use Manx waters and habitats. The MIMA Regulations make provision for impacts on such protected sites in other jurisdictions to be assessed and considered as part of the consideration of a marine infrastructure consent application.

3.2 **Question 2**: Do you agree with the proposed list of consultees and the circumstances under which they will be consulted?

3.2.1 **Anonymised Response**: The Northern Lighthouse Board is the General Lighthouse Authority for the Isle of Man (see Harbours Act 2010 Part 6 Section 70 (a). For consistency with Local Lighthouse Authority (DoI) in the bullet point list above, "General Lighthouse Authority" should be followed by "Northern Lighthouse Board" in brackets.

3.2.2 **DOI Answer**: Noted. Northern Lighthouse Board has been added as a consultee.

3.2.3 **Response**: It is the view of the Commission that bodies such as Manx Wildlife Trust and Manx Birdlife should be consulted in these matters.

3.2.4 **DOI Answer**: The Department considers that named consultees should be restricted to government and statutory stakeholders, as it would be disproportionate to list all charities and organisations that may wish to respond to an application. The Department (and other prescribed stakeholders, such as Manx Museum and National Trust) has the

power to name certain organisations that should be engaged with as part of the scoping process.

3.2.5 **Anonymised Response**: Yes, but common sense must prevail and the list should be kept as minimal as possible (depending on the application). Respondees should be given strict timescales to reply. There is a clear risk of 'paralysis by analysis' otherwise.

3.2.6 **DOI Answer**: Noted. The Department has considered the list of consultees and restricted this to government and statutory stakeholders. Consultees are given fixed timescales within which to respond.

3.2.7 **Response**: Yes – the likely impact and the distance from the proposed impact (especially for wind turbines) are important factors for determining consultees.

3.2.8 **DOI Answer**: The Department has not restricted consultees to being within a certain distance of a proposed development, as it is recognised that some impacts may be felt at larger distances than others. However, it is expected that a Scoping Opinion issued under the MIMA Regulations would set out suggested consultees in respect of certain areas of assessment and would provide clarity on study areas to be used.

3.2.9 **Anonymised Response**: Why would we consult with the [MCA] in regards to safety of life at sea when we have our own Ship Registry who have the jurisdiction within territorial waters over all vessels transitting - understand from a 'transboundary' perspective, but not otherwise.

3.2.10 **DOI Answer**: The Ship Registry is listed as a consultee within the MIMA Regulations.

3.2.11 **Anonymised Response**: There may be a case to also include Isle of Man Maritime as a formal consultee- there is input from DfE, D o I and DEFA, but as an organization with specific and specialist knowledge, their input could be invaluable.

3.2.12 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

3.2.13 **Response**: Manx Utilities note the inclusion of Isle of Man Energy in relation to offshore gas pipelines. Please note that Isle of Man Energy does not have any responsibility for offshore gas pipelines in the Isle of Man, or any responsibility for gas Transmission on Island. This duty falls under Manx Utilities.

The subsea gas pipeline is owned and operated by Gas Networks Ireland, through its subsidiary company Gas Networks Ireland (Isle of Man) Limited, a company incorporated in Ireland (not an Isle of Man company). Whilst Manx Utilities very much has an interest in the pipeline, GNI's interest will be greater and GNI should be included as owner/operator.

GNI would be the relevant consultee in relation to developments proposed within close proximity to the offshore gas pipeline, though Manx Utilities should also be included as being dependent on it, and responsible for costs associated with it.

We suggest that the list should include GNI and the existing stakeholder list should be updated as follows:

"Manx Utilities and its subsidiaries including MCC in relation to: electricity supply, waste water, treated water, gas, communications and applications proposed within close proximity to strategic assets, including the electricity interconnector, offshore gas pipeline and any associated infrastructure or connections such as tee-ins and waste water or treated water outfall pipes or for applications which are required to be considered under the MIMA 2016 and may be in close proximity to any of these assets."

3.2.14 **DOI Answer**: Manx Utilities and its subsidiaries have been added as consultees.

3.2.15 **Response**: Would expect industry bodies such as Isle of Man Maritime and the Chamber of Commerce also to be consulted, and I guess whilst not explicitly stated as they fall under DfE that the Isle of Man Ship Registry and Aircraft Registry should be consulted.

Would also expect Isle of Man Steam Packet Company to be consulted given the potential impact on ferry routes development could potentially have.

Don't see the need to consult MNH or Local Authorities.

3.2.16 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

3.2.17 **Response**: Passenger/Freight Transportation Services should be included within the list of consultees.

3.2.18 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

3.2.19 **Anonymised Response**: These are all Government organisations, there is a need to include a general statement/option that covers other relevant organisations with centres of expertise in the marine environment, such as other local groups and Wildlife Trusts. The IOM is different from the UK with DEFA being the only department with expertise in biological marine environment and this could be a single person rather than a large team of experts often seen in the UK. This potentially relies on individual knowledge and therefore should extend to other experts/specialists outside of Government.

3.2.20 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

3.2.21 **Response**: The document (linked to the MIMA timetable) also seems to state that before the issue of a Scoping Opinion (ie. before pre-application consultation can occur), that DoI will consult with all of those agencies, including transboundary, within 30 working days? That seems optimistic.

DEFA wishes to understand clearly where it will be consulted, and at what stages?

In general, the lack of detail makes the process very hard to follow, and therefore difficult to effectively comment on. In order to answer the questions in the consultation, the process should be outlined much more clearly.

In listing the responsibilities of DEFA there is no reference to Health and Safety, assuming it is the intention for DEFA to regulate these activities (or is this outside of MIMA?).

Noting: Isle of Man Energy: In relation to developments proposed within close proximity* to the offshore gas pipeline. Isle of Man Energy do not operate offshore gas pipelines, this reference should be to MU, which does operate the IOM Spur.

DEFA is incorrectly listed as Department of Environment, Agriculture and Food.

In principle, yes. Regarding marine environment, and transboundary issues, JNCC will cover UK waters outside of 12nm, but UK SNCOs may need to be consulted on national waters e.g. Natural England, and in Ireland, unless contact with the ministers is considered to cover this.

3.2.22 **DOI Answer**: The Department must work within the timescales set by MIMA for determining an application, including the timescales set for scoping. The Department recognises that these are tight timescales, and both MIMA and the MIMA Regulations make provision for advanced notice of an application to be given by an applicant.

DEFA is named as a consultee for all stages of an application (i.e. scoping, pre-application consultation, application and examination stage).

It is not the intention for MIMA to regulate Health and Safety activities, as these are not controlled marine activities for the purposes of MIMA.

Provision is made in the MIMA Regulations for UK and Irish consultees to be included where relevant to a proposed development.

3.2.23 **Response**: The proposed list of consultees seems to only include government offices, statutory providers and energy departments in your list. These are not the only experts. You need to consider the main stakeholders and users of the marine space in the Territorial Sea. There are many people who run their businesses' party or wholly from/within the marine environment and these have not been considered.

For example, the Manx commercial fishing fleet which consists of over 60 fishing vessels with an equal share of static fishermen (pots, creels) fishing for whelk, Brown crab and Lobsters and mobile vessels, targeting King scallop, Queen scallops, Herring, other whitefish and flatfish. Additionally, there is the proposed development of a Nephrops creel fishery which has the potential to greatly increase exports from the Isle of Man. These businesses and those that rely on them such as island based processors (with export value close to £10 million), fishmongers, boat repairers, marine engineers, etc, can be hugely affected by marine infrastructure developments and must be added to the list of consultees. Commercial fishing is a valid user of the marine space with an extended history of access to what is a Manx public resource and is represented by the Manx Fish Producers Organisation and the Scallop Management Board, with both organisations having experts in their fields. The commercially fished species within the Isle of Man Territorial Sea are managed in a sustainable way and are increasingly held up as an example of sustainable management, so much more advanced than in UK

waters. Both King and Queen scallops have the highest rated fisheries (by the Marine Conservation Society) in the whole of UK and Crown Dependency waters. The Manx Fish Producers Organisation (that represent the majority of Manx fishermen) together with the Fisheries Department in DEFA are experts in the field of sustainable fishing and protection of the sea-bed and key ecological features. They have every right to be added to the list of consultees along with the Scallop Management Board who represent both Manx and UK licence holders who have access to the fisheries in the Territorial Sea.

Also, there are boats that carry out tourist and fishing trips who should be consulted as well as Marine Diving Companies and Coasteering operations. All of these are key stakeholders and should also be added to the list. In addition, there is a need to consult UK and local NGO's such as Manx Wildlife Trust and Manx Whale and Dolphin. This list should not be limited to the above companies and a full review of the proposed list needs to be carried out so that all stakeholders can have an opportunity to be involved in the process at an early stage.

3.2.24 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations and known commercial interests. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

The Department would expect that any application for MIC would, as part of the environmental impact assessment process, consider impacts on the wider socio-economic marine environment, which would include fishing fleets and other users of the marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space, and it would be disproportionate to include all such parties as consultees in the MIMA Regulations.

The MIMA Regulations require that, as part of its pre-application publicity, an applicant must publish a notice in Lloyd's List and in an appropriate trade or professional journal relevant to fishing (regulation 19(4)). Similar notice provisions (in this instance, made by the Council of Ministers) are required when an application has been accepted for examination (regulation 28(1)). This ensures that commercial stakeholders active in the marine sector are made aware of an application.

Similarly, where the Council of Ministers reasonably believes that any other party (that is not already a prescribed consultee) has a commercial interest in, or within a close proximity of, the site of the proposed controlled marine activity, that party must be notified of an application (regulation 4, definition of "section 23 notifiable person").

3.2.25 **Anonymised Response**: A large number of vessels transit the Irish Sea each year. Some consultation is required for these users.

3.2.26 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application

consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

The MIMA Regulations require that, as part of its pre-application publicity, an applicant must publish a notice in Lloyd's List and in an appropriate trade or professional journal relevant to fishing (regulation 19(4)). Similar notice provisions (in this instance, made by the Council of Ministers) are required when an application has been accepted for examination (regulation 28(1)). This ensures that commercial stakeholders active in the marine sector are made aware of an application.

3.2.27 **Anonymised Response**: The list of prescribed consultees seem to mostly represent human interests of various types. The interests of nature and wildlife seem to be under-represented. Where are the NGOs? Where are the Manx Wildlife Trust, Manx Birdlife, RSPB, Marine mammal/fish/invertebrate experts and bat charities etc etc.

Will the Climate Change Transformation Team be specifically consulted and the Ecosystem and Biodiversity Policy teams at DEFA specifically be consulted?

Do any of the IoM Government Departments have a requisite level of experience and expertise with developments of this scale and nature to be able to fully assess the likely environmental and ecological consequences of such developments?

3.2.28 **DOI Answer**: As noted at paragraph 3.2.4 above, the Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

MIMA requires the Council of Ministers to have access to sufficient expertise to determine an application. This ensures that the environmental and ecological impacts of a proposed development have been robustly assessed and understood before a determination is made.

3.2.29 **Response**: Too all encompassing - no mention of specific regulations related to oil and gas drillling NSTA rules and regs should be considered .

I am very concerned that this is a back door way by interested parties to stop the developments of oil and gas.

3.2.30 **DOI Answer**: It is important that, regardless of the type of development being considered under a MIC application, the Council of Ministers has a full understanding of the impacts (beneficial and adverse) of that development and that the MIMA Regulations do not make separate provisions for different types of development.

The Department would expect any environmental assessment to consider impacts on other users, which would include, in the case of renewable energy developments, impacts on offshore oil and gas developments in the vicinity.

3.2.31 **Response**: It is completely beyond comprehension that you would not include the gas exploration licence holder. It is also astonishing that you would not also include Orsted - also an Isle of Man Government licence holder

3.2.32 **DOI Answer**: As noted above in previous answers, it would be disproportionate to list all individual parties and persons that have or may have an interest in the vicinity of any

proposed developments, and such a list would quickly become out of date. However, the MIMA Regulations do make provision for such parties to be notified of the acceptance of an application and to be able to participate in an examination, where desired. See the definition of "section 23 notifiable person" in regulation 4(1) which includes any person whom the Council of Ministers reasonably believes:

(a) has a commercial interest (for example, as a lessor or licensee) in, or within an area in close proximity to, the site of the proposed controlled marine activity; or

(b) is planning to place infrastructure (or has already done so) in close proximity to the site of the proposed controlled marine activity.

3.3 **Question 3**: Are there any other consultees that you think should be identified in the list above?

3.3.1 **Response**: Manx Wildlife Trust In relation to fisheries, marine environment, energy policy, climate change

3.3.2 **DOI Answer**: The Department considers that named consultees under the MIMA Regulations should be restricted to government and statutory stakeholders, as it would be disproportionate to list all charities and organisations that may wish to respond to an application. However, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for scoping publicity, pre-application consultation, and application publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space, and it would be disproportionate to include all such parties as consultees in the MIMA Regulations.

3.3.3 **Response**: Manx Wildlife Trust and Manx Birdlife

3.3.4 **DOI Answer**: See paragraph 3.3.2 above.

3.3.5 **Response**: British Telecom, Vodafone and Aqua Comms (Celtix Connect 2) have telecoms assets within the Isle of Man marine environment. International Cable Protection Committee (ICPC) have interest in protecting sub-sea cables globally.

3.3.6 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space. is planning to place infrastructure (or has already done so) in close proximity to the site of the proposed controlled marine activity;

Similarly, where the Council of Ministers reasonably believes that any other party (that is not already a prescribed consultee) has a commercial interest in, or within a close proximity of, the site of the proposed controlled marine activity, that party must be notified of an application (regulation 4, definition of "section 23 notifiable person").

3.3.7 **Response**: Isle of Man Steam Packet Company Ltd - given potential of effecting lifeline ferry routes. Isle of Man Maritime Ltd - as martime industry representative body. Chamber of Commerce - as general Island business representative body.

3.3.8 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space.

3.3.9 **Response**: All relevant passenger and freight transportation services either serving the Isle of Man or passing through the stipulated Manx waters.

3.3.10 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space.

3.3.11 **Anonymised Response**: Manx Wildlife Trust and other Wildlife Trusts relevant to the specific situation. Manx Whale and Dolphin Watch. Manx Birdlife. Anglers Forum. Natural History and Antiquarian society. Yacht clubs.

3.3.12 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space. The Department expects that many of these parties would also be identified at the scoping stage.

3.3.13 **Response**: The Marine and Fisheries Agency is now the Marine Management Organisation

There is no obvious reference to Welsh and Irish equivalents to Marine Scotland; e.g., DAERA (Department of Agriculture, Environment and Rural Affairs), AFBI etc. It is important to find the equivalent organisation for all of the potential transboundary jurisdictions.

Notwithstanding that the list of consultees includes only Government Departments and statutory boards, DEFA considers it appropriate for prospective applicants to consult with any other such organisations on the Island that are representative of interests likely to be substantially affected by the proposed marine activity, for example including (but not limited to) the Manx Fish Producers Organisation (MFPO) as a representative organisation of the Island's fishing industry.

This would appear to be consistent with the requirement to publish details of a proposed application in "a trade or professional journal relating to the profession of fishing".

Early engagement with such organisations will assist in the development of culture of trust and transparency between prospective applicants and the Island's wider community of marine stakeholders.

3.3.14 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space. The Department expects that many of these parties would also be identified at the scoping stage.

Transboundary consultees are included where a proposed development may have significant effects on the environment in that country, and those consultees could, in turn, request that their relevant SNCBs and partner organisations participate in consultation.

MIMA requires a consultation report to be submitted with an application, and the MIMA Regulations make provision for this to also demonstrate "how the applicant has engaged with the consultees" (regulation 18(1)(d)).

3.3.15 **Response**: Fisheries Department in DEFA (and by association Bangor University - appointed fisheries biologists for the Department); Manx Fish Producers Organisation; Scallop management Board; Marine Dive companies; Pleasure fishing and marine Tourist operators; Manx Wildlife Trust; Manx Whale and Dolphin

This list is not complete and a thorough review of potential consultees needs to be carried out. This cannot be seen to be a closed shop.

3.3.16 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space. The Department expects that many of these parties would also be identified at the scoping stage.

3.3.17 **Anonymised Response**: Leisure users of the waters and harbours and marinas around the island should be consulted through the Manx Yachting Association (MYA) and probably other properly constituted clubs or associations.

3.3.18 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space. The Department expects that many of these parties would also be identified at the scoping stage.

3.3.19 **Anonymised Response**: As above - locally to include the IoMSPCo & Mezeron but also some of the major companies that pass the IoM regularly

3.3.20 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space.

3.3.21 **Anonymised Response**: [Anonymised party] believe there should be broad consultation with Wildlife/Bird/Bat/Invertebrate (both migratory airborne and marine - including benthic) experts and these may be employed within academic institutions or NGOs both on Island and within the UK (eg. Manx Wildlife Trust, Manx Birdlife, British Trust for Ornithology, RSPB etc etc etc). The UK NGOs are likely to have more experience of the possible impacts of such infrastructure on wildlife. Without clear indication of the kinds of marine infrastructure the regs will ultimately cover, it is difficult to ascertain who would be most appropriate to consult.

Local fishermen?

Steam packet or other ferry companies?

3.3.22 **DOI Answer**: See paragraph 3.3.2 above. The Department would expect that any application for MIC would, as part of its EIA, consider impacts on the wider marine environment. This would likely involve consultation with any individuals, organisations or parties that are active within this space.

Transboundary consultees are included where a proposed development may have significant effects on the environment in that country, and those consultees could, in turn, request that their relevant NGOs participate in consultation.

3.3.23 **Response**: NSTA. Crogga - should be consulted

3.3.24 **DOI Answer**: As noted above in previous answers, it would be disproportionate to list all individual parties and persons that have or may have an interest in the vicinity of any proposed developments, and such a list would quickly become out of date. However, the MIMA Regulations do make provision for such parties to be notified of the acceptance of an application and to be able to participate in an examination, where desired. See the definition of "section 23 notifiable person" in regulation 4(1) which includes any person whom the Council of Ministers reasonably believes:

(a) has a commercial interest (for example, as a lessor or licensee) in, or within an area in close proximity to, the site of the proposed controlled marine activity; or

(b) is planning to place infrastructure (or has already done so) in close proximity to the site of the proposed controlled marine activity.

3.3.25 **Response**: Crogga. Orsted. Unless you consult with YOUR Licence holders you will not understand how damaging and flawed the results of your consultation will be.

3.3.26 **DOI Answer**: See paragraph 3.3.24 above.

3.4 **Question 4**: Do you agree with this level of publication, by an applicant, of a proposed application?

3.4.1 **Anonymised Response**: It should also be required to be published on social media.

3.4.2 **DOI Answer**: The MIMA Regulations require an applicant publish details of its pre-application consultation (and its consultation report, in due course) on its website and any social media platform through which it communicates (regulations 18(2)(b) and 19(5)). Similarly, where newspaper notices are published (i.e. in connection with scoping, acceptance of an application, etc.), these must also be published in any online version of the newspaper(s) in question.

3.4.3 **Anonymised Response**: In addition there should be requirement to use broadcast media to publicise the proposed application. To confine the requirement to publicise to newspapers and a Government website is inappropriate these days.

3.4.4 **DOI Answer**: A decision has been taken not to include a requirement to publicise applications using broadcast media. The Department considers that the MIMA Regulations should focus on targeted publicity measures with broadcast media being too general and difficult for an applicant to control.

3.4.5 **Anonymised Response**: Easily accessible online publication should be prioritised.

3.4.6 **DOI Answer**: Noted, in addition to newspaper print notices, the MIMA Regulations include a requirement for notices to be published on a newspaper website (where in existence) and on the government website.

3.4.7 **Anonymised Response**: [Anonymised party] think Irish newspapers should also be included.

3.4.8 **DOI Answer**: Irish publications have been included where an application may be relevant to Northern Ireland or the Republic of Ireland.

3.4.9 **Response**: ...but with the addition of social media channels, local radio stations, etc, which are perhaps the dominant means by which the public are alerted and informed.

3.4.10 **DOI Answer**: See paragraphs 3.4.2 and 3.4.4 above in respect of social media and broadcast notices.

3.4.11 **Anonymised Response**: [Anonymised party] don't see the need. It is only likely to create unnecessary delays.

3.4.12 **DOI Answer**: Noted.

3.4.13 **Anonymised Response**: Given the nature of the activities this spread is necessary but may additionally benefit from publication in other professional journals allied to the nature of the application.

3.4.14 **DOI Answer**: Given the wide range of professional journals that may be aligned with a proposed application, and given the range of publication dates (and preparatory time for notices) of these, the Department has not included a requirement to publish notice in professional journals with the exception of trade fishing journals and Lloyd's List.

3.4.15 **Response**: Assuming passenger/freight transportation services are included as consultees then consultation should also be published within appropriate passenger/freight transportation publications/journals. If passenger/freight transportation services are not included as consultees then it is essential that consultation is published within appropriate passenger/freight transportation publications/journals.

3.4.16 **DOI Answer**: See paragraph 3.4.14 above in respect of bespoke publications and journals. Some shipping and navigation stakeholders are included as consultees (for scoping, pre-application and application/examination), and it is expected that, as part of their consultation responses, they would be best placed to provide an applicant with additional notification suggestions.

3.4.17 **Anonymised Response**: This needs to be widened to include publications on websites and social media. This should be advertised for a minimum of a month.

3.4.18 **DOI Answer**: See paragraphs 3.4.2 above in respect of social media. In addition to newspaper print notices, the MIMA Regulations include a requirement for notices to be published on a newspaper website (where in existence) and on the government website. Application materials must also be made available on an applicant's own website. As MIMA constrains the timescales for the determination of an application (including pre-application stages), a decision has been taken to only require a minimum of two weeks of publication, in line with other jurisdictions. This is separate from the consultation period, however, which will only commence once the last notice is published.

3.4.19 **Response**: The list is too general and, given that the potential developments are most likely to be wholly within the Territorial Sea, this should be more targeted to ensure that local stakeholders are informed. For example, a trade or professional journal relating to the profession of fishing is non-specific. There is no such journal that relates directly to the Isle of Man. Fishing News would be the best example of a UK wide journal but there needs to be a process targeting local stakeholders, in addition to this publication. This could be through a system of notifications similar to Notice to Mariners or, for the Manx commercial fishing operations, directly to the Manx Fish Producers Organisation

and the Scallop Management Board who represent the majority of commercial fishing businesses on the Isle of Man.

The website maintained by or on behalf of the Ministers could be of a similar type to the Consultation Hub.

3.4.20 **DOI Answer**: Given the wide range of professional journals that may be aligned with a proposed application, and given the range of publication dates (and preparatory time for notices) of these, the Department has not included a requirement to publish notice in professional journals with the exception of a trade fishing journal. There will be additional notices (i.e. in newspapers and online, on public deposit depending on the nature of the application) which will also serve to notify local stakeholders.

3.4.21 **Anonymised Response**: Where leisure or related activities may be affected, the RYA magazine and website (or similar Irish publication such as Afloat) should be notified.

3.4.22 **DOI Answer**: See paragraph 3.4.14 above in respect of bespoke publications and journals.

3.4.23 **Anonymised Response**: [Anonymised party] would like local media to be included - especially Manx Radio and the local papers

3.4.24 **DOI Answer**: The Regulations require notices to be published in local newspapers. A decision has been taken not to include a requirement to publicise applications using broadcast media. The Department considers that the MIMA Regulations should focus on targeted publicity measures with broadcast media being too general and difficult for an applicant to control

3.4.25 **Anonymised Response**: Such developments will, [anonymised party] assume, be advertised in all the adjacent jurisdictions which could be impacted?

[Anonymised party] suggest that one of the local papers should be the Courier as it does not require people to purchase a paper. It should be advertised on local media webpages too as not everybody receives a Courier or reads a local paper.

3.4.26 **DOI Answer**: Yes, adjacent jurisdictions will be notified where a proposed development may have a significant environmental impact in that jurisdiction.

The MIMA Regulations do not specify which Island newspapers must be used for publication of notices, as it is recognised that this may vary depending on the location of the development in question. In addition to newspaper print notices, the MIMA Regulations include a requirement for notices to be published on a newspaper website (where in existence) and on the government website.

3.4.27 **Response**: Very concerned that this is being pushed through to stop the development of the Crogga Field .

You cannot use these regs to drill oil and gas .

This regs are no good for wind farms , oil and gas and would be a disaster for the development of Isle of Man waters .

The Isle of Man regs need to mirror the UK .

3.4.28 **DOI Answer**: The purpose of the Regulations is not to stop development of the Crogga Field. The Regulations have considered the position in other UK jurisdictions and have, where possible, reflected those regulations.

3.5 **Question 5**: Do you agree that a similar process to the PEIR should form part of the pre-application consultation process for Marine Infrastructure Consent?

3.5.1 **Anonymised Response**: Such a document would be useful as a means to start debate and consideration amongst stakeholders and the public in general who may be unaware of the proposed development and its potential impacts. However, in recognition of the effort and costs of producing a PEIR of some sort its content and structure should be defined in order to avoid an unwieldy and complex document. It should be short, sharp and to the point.

3.5.2 **DOI Answer**: Following consideration, and to reflect the diverse range of consultation responses, the Department has not made PEIR a mandatory inclusion under the pre-application consultation requirements in the MIMA Regulations. The Regulations do provide for PEIR (or a similar equivalent) to be consulted on during pre-application consultation at the discretion of a prospective applicant (regulation 18(1)(a) which requires "any environmental information compiled by the prospective applicant which may enable a consultee to form a reasoned view of the likely significant environmental effects of the proposed controlled marine activity and to respond to the consultation accordingly"). The Department considers that consulting on PEIR, or a similar equivalent, will likely result in a more robust application that has addressed stakeholder concerns, but it notes that PEIR may not be proportionate for all types of activities that require consent under MIMA.

3.5.3 **Response**: The inclusion of the PEIR approach will provide relevant information which will inform stakeholders from an early stage and as they go on to consider proposals.

3.5.4 **DOI Answer**: See paragraph 3.5.2 above.

3.5.5 **Anonymised Response**: No need. Just creates additional paperwork that will make things slower, more costly and more difficult.

3.5.6 **DOI Answer**: See paragraph 3.5.2 above. The Department thinks it important that the MIMA Regulations provide flexibility on this point, recognising that PEIR will not be appropriate for all types of development.

3.5.7 **Response**: A preliminary environmental information report is essential to allow consultees to understand the likely impacts and engage with the developer at the earliest possible point in the process.

3.5.8 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above.

3.5.9 **Anonymised Response**: PEIR would seem to be an appropriate approach but should probably be limited to a desk top study and report as the costs involved with a full, in the field, survey and report could be prohibitive and be a major barrier to early dialogue, discouraging investment from the private sector, which the Isle of Man so needs.

3.5.10 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above. The Department has not been prescriptive as to what any PEIR (or equivalent) should contain or the structure it should follow, as this will vary depending on the type of development. This is something that consultees may provide feedback on at the scoping stage.

3.5.11 **Response**: Projects currently being undertaken within Manx waters all have intended connections planned to England and Wales. Subsequently, a PEIR will be required to be submitted under the EIA Regulations for these jurisdictions and the Isle of Man should follow a consistent process within its marine infrastructure applications. Should

future connections to Scotland be undertaken, the PEIR approach would appear to be a higher bar.

In addition the process provides advance notice to consultees to enable consideration of the proposal and early identification of risk which benefits both the project and the Island overall.

3.5.12 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above. The Department expects that projects with connections in England and Wales will likely choose to adopt a PEIR approach for consistency with applications in other jurisdictions, but given that PEIR is not mandatory across other UK jurisdictions, the Department considers this flexible approach to be proportionate.

3.5.13 **Response**: points will be likely covered in EIA's, a PEIR introduces more cost and delays for developers.

Responsible developers will likely themselves promote these points to stakeholders prior to making a planning application in order to get "buy in" for their proposals, so I don't view a PIER should be a mandatory requirement.

3.5.14 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above.

3.5.15 **Anonymised Response**: It will front load the process helping benefit both the applicant and the consultees/general public.

3.5.16 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above.

3.5.17 **Response**: Noting the points made elsewhere (by separate submission) in relation to Pre-Application and EIA, and early consultation, particularly with relevant on-island stakeholders, e.g. DEFA to advise on the requirements of a Scoping Report, then a PEIR process may provide such an opportunity.

The consultation document notes the following, 'It is recognised that the preparation of the PEIR is an extra requirement to be provided by the applicant at significant expense and requires additional pressures on the stakeholders involved in the process as they need to consider the report, its outcomes and provide sufficient feedback if they determine it would be beneficial to their area of expertise.'

This appears to highlight only the potential 'costs' of a PEIR, but does not similarly highlight the potential benefits of producing a more comprehensive and representative process from the earliest opportunity. This is presumably why England and Wales adopted a PEIR step?

Given the general lack of experience in consenting and managing marine developments in Manx waters, it may be argued that more consultation with expert or affected groups is likely to be beneficial, and therefore DEFA supports, in principle, further, stakeholder-based consideration of the inclusion of a PEIR step.

Climate Change Transformation Team (CCTT) agree that a similar process to the PEIR should form part of the consultation process for Marine Infrastructure Consent. As the consultation states, this process would "allow stakeholders to develop an informed view of the potential impacts of the development and to consider any proposed mitigation measures if they have been put forward by the applicant. This process involves identifying potentially likely significant effects resulting from the projects, allowing

them to be avoided or minimised where possible, as well as identifying any potential beneficial environmental impacts."

Alternatively/in addition; the Isle of Man should retain flexibility and not necessarily require a formal PEIR consideration as is currently standard in the UK, though not ruling out its use if an applicant wishes to consult early. However, there should be encouragement to consult and engage with stakeholders prior to the submission of the application in order to resolve issues before they are fixed in the process and can no longer be mitigated flexibly. In a Biosphere we should pick up best practice but also recognise the issues and allow new, better approaches. A form of wording should be sought which allows for progressive improvement whilst enshrining the necessary protection of the environment and encouraging early engagement with stakeholders, thus avoiding unnecessarily turning down applications due to lack of forethought on mitigation/redesign within the proposals. An interactive system, with or without formal PEIR, seems to be most effective.

3.5.18 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above. The Department expects that projects with connections in England and Wales will likely choose to adopt a PEIR approach for consistency with applications in other jurisdictions, but given that PEIR is not mandatory across other UK jurisdictions, the Department considers this flexible approach to be proportionate.

3.5.19 **Response**: Yes, provided the list of consultees was complete. It is often the experts who cover limited fields who ask the key questions - who identify details, and not just the bigger picture. The Isle of Man must always consider the impact of any new development on the Environment. The island and the marine space (which occupies 87% of the Manx Biosphere) is unique. We have to be better than others, setting standards above the UK level.

The MFPO, who I represent, have been very closely involved with Orsted (Mooir Vannin) during the preliminary stages and development of the Scoping Document relating to their proposal for a wind farm off the east coast of the Isle of Man. To date this has been an excellent and well managed process and Mooir Vannin are a very good example of how these processes should be examined, challenged and developed. During the process, Mooir Vannin produced a draft Scoping Report, very professionally produced, but in many parts a re-hash of other scoping reports produced by other wind farm operators from the wider Irish Sea. Many parts of this report were not relevant to the Isle of Man and emphasised how much a box ticking exercise the process appeared to be. For example, the shellfish and fish baseline had out of date information, stock information based on areas that were not comparable and failed to recognise the advanced level of sea fisheries management and knowledge of the marine environment that exists within Manx waters. Having said all of that, the process highlighted these issues, and the documents are being changed to reflect these discussions. Mooir Vannin have listened and acted - the process works. This highlights the value of constant reviews of the material that is presented in support of new marine developments and the need to have an appropriate list of consultees. Without a procedure in place this would not be possible. This is why all new marine developments need to be included in MIMA. There should be no exceptions for new proposals.

The MFPO has also had communications with a local company who are wishing to explore for gas in the same area. The process could not be more contrasting. With that

company there has been a reluctance to engage, limited, if any, note of the concerns of current and past marine users, and challenges regarding the need for an EIA and baseline stock assessments. It was hoped that MIMA, when the secondary legislation is passed, would then have all marine infrastructure developments following the same process. This was the aim of the Act. There cannot be a watered down process. In the statements under pre-application and Environmental Impact Assessment (EIA) it is stated that 'The Department remains committed to ensuring that the MIMA regime is appropriate and proportionate for the requirements of the Isle of Man.' This is the opportunity to ensure that this is the case. Unfortunately, under the exemptions section, later in this consultation, there seems to be an escape clause as the potential exemptions include many of the requirements of initial offshore gas and petroleum exploration. Why should gas exploration not have to go through the same process as a wind farm application or tidal energy? Given the fact that we have a commitment to Carbon Zero this is totally contradictory.

3.5.20 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above. The Department has not been prescriptive as to what any PEIR (or equivalent) should contain or the structure it should follow, as this will vary depending on the type of development. This is something that consultees may provide feedback on at the scoping stage. As noted above, the Department does consider that consulting on a PEIR will often lead to a more robust application.

3.5.21 **Anonymised Response**: As indicated previously, [anonymised party] believe that the process we adopt in relation to environmental protection, EIAs and Marine developments should be more rigorous than that adopted in the UK (to better protect our living environment and nature and to protect our Biosphere status), so we should have a PEIR. We also have, [anonymised party] suspect, considerably less experience and expertise locally to enable us to deal with applications of this nature (than they do in the UK), so the more information provided by applicants at the earliest opportunity the better, as it may assist proper assessment of the environmental impacts and help ensure nothing is missed.

Marine developments have the potential to inflict considerable environmental harm, so the process should be onerous for developers to demonstrate that they anticipate all the potential harms, and are making plans at the earliest stages to avoid or minimise (or at worst, how they intend to mitigate) these harms. If having a PEIR makes the process more costly for applicants so be it. If it makes it more costly for stakeholders so be it. We have one living world - we need to protect it. If we can't afford to properly protect the environment whilst developing the marine environment, we should forget about developing the marine environment. I think that this approach should prevail regardless of whether a particular activity is ultimately exempted from MIMA (albeit currently within its remit). If an applicant cannot afford a PEIR or rigorous EIA, they are unlikely to be able to afford the clean up/environmental remediation if things go pear-shaped! [anonymised party] believe there should be very significant financial hurdles to be met at the outset of the process for all these activities to ensure that applicants have adequate means to deal with the potential environmental consequences.

3.5.22 **DOI Answer**: See paragraphs 3.5.2 and 3.5.6 above. The Department has not been prescriptive as to what any PEIR (or equivalent) should contain or the structure it should follow, as this will vary depending on the type of development. This is something that

consultees may provide feedback on at the scoping stage. As noted above, the Department does consider that consulting on a PEIR will often lead to a more robust application.

3.6 **Question 6**: Can you see any benefits from the inclusion of a requirement pre-application whereby stakeholders have the opportunity to review and consider the preliminary studies and work done to date, and have an opportunity to provide feedback prior to an application being submitted?

3.6.1 **Anonymised Response**: This ensures that time and effort is not wasted upon works and processes that may have to be modified based upon later data

3.6.2 **DOI Answer**: Noted. The Department has not been prescriptive as to what any pre-application consultation materials should contain or the structure it should follow, as this will vary depending on the type of development. This is something that consultees may provide feedback on at the scoping stage.

3.6.3 **Anonymised Response**: The initial step should be aimed at highlighting the proposed development and it potential impacts and therefore needs to be broadbrush. It must not be long and involved otherwise there is a risk that two EIA consultation processes are required.

3.6.4 **DOI Answer**: Noted. See paragraph 3.6.2 above.

3.6.5 **Response**: It is the view of the Commission that a pre-application requirement will assist in ensuring the process results in projects coming to fruition which best serve the Island's needs and climate responsibilities, etc. The inclusion of PEIR is likely to improve the discussion of and the outcome of the final project.

3.6.6 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMA requires pre-application consultation; however, the Department has taken the view that there should be a degree of flexibility in what materials are considered during this stage.

3.6.7 **Anonymised Response**: [Anonymised party] can imagine that ultimately it wouldn't make any difference - why prepare a load of documentation for stakeholders to consult, if ultimately those stakeholders have no influence on the outcome. It is pointless.

3.6.8 **DOI Answer**: The Department considers feedback from stakeholders at pre-application to be valuable and necessary for a transparent consenting process. Pre-application feedback will enable developments to be refined to reflect environmental, socio-economic or other constraints. Moreover, regulation 18 of the MIMA Regulations requires an applicant's consultation report to demonstrate how pre-application consultation has been undertaken and responses considered as part of an application, and regulation 17(1)(c) specifically requires the applicant to consult with any person or party that the applicant "considers likely to be affected by" its proposals, which would encompass the local community.

3.6.9 **Anonymised Response**: Yes, but only if this feedback cannot be 'reversed' at a later stage of the process.

3.6.10 **DOI Answer**: Within the consultation report submitted with an application, an applicant will need to explain (amongst other matters):

(a) how the applicant has taken account of any consultation responses;

(b) a description of how the application was informed and influenced by those responses, outlining any changes made as a result and showing how significant relevant responses have been addressed; and

(c) if appropriate, an explanation as to why responses suggesting major changes to the proposed development were not followed.

This will then be considered as part of the wider determination. Where an applicant has failed to demonstrate robust consultation, this may result in the MIC application not being considered until the applicant can demonstrate this (on the grounds that the application is incomplete) or it may result in an application being refused.

3.6.11 **Response**: As above, the process provides advance notice to consultees to enable consideration of the proposal and early identification of risk which benefits both the project and the Island overall. In addition stakeholders effectively have more time to review and raise risks across the project and identify possible mitigations to conflicts or issues.

Some projects may present conflicts with other schemes which if identified early enough may instead be complimentary.

3.6.12 **DOI Answer**: Noted. While the Department has retained some flexibility for applicants in respect of pre-application consultation materials, it considers that a more robust pre-application consultation process is likely to result in a stronger application with a more straightforward examination process.

3.6.13 **Response**: developers already likely to do this to get buy in from stakeholders.

3.6.14 **DOI Answer**: Noted.

3.6.15 **Response**: The potential for a more comprehensive and informed application, albeit at the expense of more time, cost and effort of all stakeholders/consultees.

The potential for consultees and other stakeholders to consider the views of other consultees in coming to their own view.

A PEIR would highlight early in the process (rather than wait for the final application stage) if there are any significant issues to the overall development/scheme. This could put more pressure on stakeholders. Of particular concern would be the ability of assessment departments within IoM Government to cope, e.g., DEFA, DoI.

3.6.16 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMA requires pre-application consultation; however, the Department has taken the view that there should be a degree of flexibility in what materials are considered during this stage.

3.6.17 **Anonymised Response**: It will help highlight an issues early on in the process and enable them to be dealt with early enabling alternative approaches/way forward to addressing those concerns and will likely save money in the long run.

3.6.18 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMA requires pre-application consultation; however, the Department has taken the view that there should be a degree of flexibility in what materials are considered during this stage.

3.6.19 **Response**: Yes, see above. Agree this would be beneficial however, we wish to clarify that pre-application is early engagement with the Department at the pre-scoping stage.

CCTT believes there would be "benefits from the inclusion of a requirement pre-application whereby stakeholders have the opportunity to review and consider the preliminary studies and work done to date, and have an opportunity to provide feedback prior to an application being submitted". This approach would improve the quality of applications to be submitted, potentially making the process of reviewing and determining the application quicker. It would also enable stakeholders to ensure that suitable information is provided to address any concerns.

3.6.20 **DOI Answer**: No, this reference to pre-application is after scoping but prior to an application being submitted – that is, it is an opportunity for a developer to consult on the initial results of its environmental assessments (as defined by the Scoping Opinion).

3.6.21 **Response**: The benefits are clear. If stakeholders have an opportunity to review the preliminary studies then the whole process could be shortened and applicants may not have to reconsider or reapply if they are shown not to have full and complete information within their application. This is also the reason why the list of consultees should not be exclusively government departments and statutory providers.

3.6.22 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMA requires pre-application consultation; however, the Department has taken the view that there should be a degree of flexibility in what materials are considered during this stage.

The Department has restricted the list of consultees to government and statutory stakeholders; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for pre-application consultation and publicity ensure that other organisations and members of the public are aware of proposed developments and can participate as desired.

Moreover, regulation 18 of the MIMA Regulations will require an applicant's consultation report to demonstrate how all pre-application consultation has been undertaken and considered as part of an application, and regulation 17(1)(c) specifically requires the applicant to consult more widely than the Scoping Opinion and to include "any other person the prospective applicant considers likely to be affected by" the proposed development. While these persons will vary depending on the nature of the application, this would extend to relevant non-statutory undertakers including charitable and expert organisations and members of the public.

3.6.23 **Anonymised Response**: This should be done once the full project application with supporting studies etc has been submitted. Otherwise a lot of time and money may be wasted on irrelevant or fallacious argument.

3.6.24 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMA requires pre-application consultation; however, the Department has taken the view that there should be a degree of flexibility in what materials are considered during this stage, as it is recognised that different types of development may be progressed at different rates and using different levels of detail.

3.6.25 **Anonymised Response**: It may be that problems are identified at a very early stage which make consent unlikely to be obtained. An early examination of initial studies may indicate that a development can not proceed on any basis and could save money in the long run. Equally, feedback may steer the development to avoid particular impacts

or highlight a requirement for particular additional studies. We must ensure that whoever is reviewing this information has adequate expertise and experience.

3.6.26 **DOI Answer**: Noted. See paragraph 3.6.2 above. MIMAs require the Council of Ministers to have access to sufficient expertise to determine an application. This ensures that the environmental and ecological impacts of a proposed development have been robustly assessed and understood before a determination is made.

3.7 **Question 7**: Is there another mechanism that you propose which would benefit the overall application and decision making process ensuring there is sufficient stakeholder engagement at an early, pre-application stage?

3.7.1 **Anonymised Response**: Public consultations and even referenda

3.7.2 **DOI Answer**: Both MIMA and the MIMA Regulations make provision for pre-application consultation (which the public can participate in).

3.7.3 **Anonymised Response**: Public access to proposals in good time after officially being submitted and before being accepted/rejected

3.7.4 **DOI Answer**: The MIMA Regulations, and MIMA, set timescales for pre-application consultation and for interested parties to submit their representations on an application before examination. The MIMA Regulations make provision for the applicant to publicise its pre-application and application documents, including making documents available online.

3.7.5 **Response**: As part of the Climate Change Act, a number of tools have been derived to assist in estimating likely climate impact – are these being considered by the advisors alongside the UK models to see if they can be used as part of any pre-application assessment?

3.7.6 **DOI Answer**: Climate impact forms part of an environmental impact assessment and would, therefore, be considered within an environmental statement and preliminary assessment materials. The scoping process will allow for the Department, and consultees, to provide commentary as to which climate impact tools should be used within any specific assessment.

3.7.7 **Anonymised Response**: For substantial developments public meetings are useful for the airing of views, if properly chaired and managed.

3.7.8 **DOI Answer**: The Department considers it appropriate to retain flexibility at the pre-application consultation, as some developments may require more (or less) consultation events, or structure consultation in a different fashion, than others. As is set out in regulation 18 of the MIMA Regulations, an applicant's report on pre-application consultation (which must be submitted with an application), must contain, amongst other matters an overview of the consultation process, including any other engagement undertaken by the applicant. This report must also demonstrate engagement with any persons (which would include community groups, charitable organisations and expert organisations) that the applicant considers may be affected by the proposed development.

3.7.9 **Response**: See Ørsted's Proportional EIA process.

In terms of other mechanisms, CCTT has no specific recommendations other than that the consenting process, including pre-application, be at least as transparent and robust as the equivalent processes in the UK.

3.7.10 **DOI Answer**: Noted. The Department has considered the pre-application and consenting process across the UK, and for different consenting regimes, and considers that the process set out under MIMA and the MIMA Regulations to be robust.

3.7.11 **Response**: Make sure that your list of consultees is complete so that all stakeholders have early knowledge of any applications. It may be worth setting up a board that consists of government and key private stakeholders where all applications can be initially considered. This would help in the dissemination of information.

3.7.12 **DOI Answer**: Noted. The Department has restricted the specified list of pre-application consultees under the MIMA Regulations to government and statutory stakeholders to provide clarity to applicants; however, it is expected that many of these government and statutory stakeholders would, in turn, consult with partner organisations. Similarly, the requirements for pre-application consultation and publicity ensure that other organisations and members of the public are made aware of proposed developments and can participate as desired.

3.7.13 **Anonymised Response**: What opportunity is there for non-statutory consultees to express their views and at what stage of the process? Some of the proposed controlled developments have an environmental impact on a global scale so the opinions of anyone suffering those impacts should be considered.

Public engagement events attended by representatives for the applicant but also DOI and/or DEFA representatives.

3.7.14 **DOI Answer**: Members of the public will be able to express their views at any stage in the application process, with the exception of later in an application examination (where they may be able to participate at the discretion of the Examiner or Panel of Examiners). It would not be standard for representatives from the Department or DEFA to attend pre-application public engagement events, as these are opportunities for an applicant and the public to discuss a proposed development that is still being refined.

3.7.15 **Response**: MIMA has not consulted with Crogga or the NSTA in the UK .

What expertise do any of the proposed parties have related to oil and gas !

The IOM government does not have the expertise to consider an independent approach and this will jeapodise inward investment

3.7.16 **DOI Answer**: The consultation on the MIMA Regulations has been open to all members of the public and to companies and organisations.

The MIMA Regulations make provision for licence-holders (or potential licence-holders) to be notified of applications to enable them to participate in an examination.

3.8 **Question 8**: Do you agree that the proposed contents of an EIA as listed above adequately covers all areas of interest to be included within an EIA and subsequent Environmental Statement?

3.8.1 **Anonymised Response**: Additional consideration should be given to carbon emissions.

3.8.2 **DOI Answer**: The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations. These include an estimate of expected residues and emissions from the proposed development.

3.8.3 **Response**: The proposed coverage of the EIA appear wide-ranging and appropriate, but the quality of the detail requested is a matter that would need assessment.

3.8.4 **DOI Answer**: Noted.

3.8.5 **Anonymised Response**: It makes sense that the IOM Government import as much legislation as possible from the UK government. This not only saves time, expense and resources, but also allows us to use well trialled and tested measures. It will also allow for ease of interpretation and commonality for entities that need to abide by both sets of rules).

There is surely not much justification for rewriting our own versions of the legislation.

3.8.6 **DOI Answer**: Noted. While the Department has had regard to equivalent UK legislation, it has (together with its external advisors) revised this to reflect the Island.

3.8.7 **Response**: On review, this seems very limited. For example there is no consideration of economic impact to the Island, which is fairly critical given the nature of some projects e.g. disruption to shipping, fuel deliveries, food supplies, ferry routes, fishing.

We understand the broad context approach taken here but the scope of an EIA would be expected to be more detailed.

It would perhaps be sensible to ensure all of the current requirements for onshore EIA developments are also included in offshore schemes so that a consistent approach is taken for all projects in the Isle of Man.

3.8.8 **DOI Answer**: The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation 13. It would not be appropriate for the Regulations to attempt to list every specific topic that should be assessed. Rather, it is a proportionate approach to set out 'main' topics that can be taken to cover multiple sub-topics. For example, "economic impact" is considered as part of an assessment on population, human health and material assets, and may include aspects such as disruption shipping, ferry routes and fishing depending on the proposed development. The purpose of the scoping stage is to ensure that the scope of the EIA to be carried out is fully defined, with reference to the known baseline, nature of the proposed development and emerging best practice.

3.8.9 **Response**: The EIA should also describe and assess the installation and operating greenhouse gas emissions and impact on climate change. No scheme should be allowed to progress if it is contrary to or contradicts the Isle of Man Government's Climate Change Act and road map. The EIA should consider the holistic environmental impact of any proposed scheme.

3.8.10 **DOI Answer**: The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations. These include an estimate of expected residues and emissions from the proposed development. It is not for the MIMA Regulations, or for the Department, to prejudge an application by determining that it cannot progress if it contradicts the Climate Change Act – this will be for the Council of Ministers to determine on the merits of an individual application and having weighed all of the considerations in favour of or against the development.

3.8.11 **Anonymised Response**: This needs to include commercial fisheries, ecosystem goods and services and blue carbon sequestration.

3.8.12 **DOI Answer**: Noted. The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation 13. See paragraph 3.8.8 above as to why it would be inappropriate to specify a full list of topics and sub-topics.

3.8.13 **Response**: No. Marine Resource Users, including but not limited to commercial fisheries, should be included as an explicit consideration within EIA's.

Further, and as noted elsewhere, DEFA has concerns relating to the proposed exemptions to the requirements of a Marine Infrastructure consent, particularly with respect to EIA; and seeks reassurance that, where the purposes of an EIA may be relevant (see below) to those proposed exempted activities, that they will have proportionate and appropriate environmental assessment processes before commencing;

The proposed content of the EIA is insufficient because the required standards of environmental, fisheries and marine protection have not been determined through the authorising regulations.

The emission of greenhouse gases has not been included in the list of proposed content of EIAs under MIMA, however the term 'climate' may refer to this more generally. CCTT strongly recommend that marine infrastructure projects are required to provide detailed assessment, using a suitable methodology, of the lifetime emissions of a project – including construction, operation, fugitive emissions, decommissioning etc. If this is not achieved via the EIA process then an alternative method for requiring assessment the impact of proposed marine infrastructure projects on emissions should be implemented.

The EIA topics list appears reasonable from a terrestrial nature conservation perspective, but recognises that this may not be appropriate for marine environment and interests, and defers to specific comments from DEFA marine officers.

3.8.14 **DOI Answer**: Noted. The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation 13. See paragraph 3.8.8 above as to why it would be inappropriate to specify a full list of topics and sub-topics.

The lack of determination on required standards of environmental, fisheries and marine protection does not render an EIA insufficient, as the purpose of an EIA is to determine significant environmental effects and not compliance with policy or regulations. That will be determined separately by the Council of Ministers when it weighs all of the considerations in favour of or against the development.

3.8.15 **Response**: Item b should be expanded to include all species that live on or above the sea-bed within the marine environment plus those that live above the sea. The reference to 'particular attention to species and habitats protected under Manx law' is insufficient as the list is limited and has not been updated for some time.

The general statements here are positive, and an EIA is essential in order to protect the environment. However, this means nothing if exemptions are permitted. Why should one proposed marine development be different to another? If wind farms, tidal energy, marina developments etc are all required to go through the MIMA process and produce

a PIER and EIA then why shouldn't all new developments have to do the same. The later proposals within this consultation, for some of the exemptions, particularly those related to gas and petroleum exploration, make a mockery of all of the statements within this consultation. All marine infrastructure developments have a potential to damage, alter or harm the marine environment and this needs to be thoroughly examined and challenged. Any single development could irreparably damage our unique marine environment and they all need to be included under the same process, through MIMA. Isn't that the intention of MIMA? Certainly that is what is stated in the Overview at the start of this consultation.

3.8.16 **DOI Answer**: Noted. The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation 13. See paragraph 3.8.8 above as to why it would be inappropriate to specify a full list of topics and sub-topics.

Following consultation feedback, the Department's intention is that there will only be limited exemptions under MIMA.

3.8.17 **Anonymised Response**: [Anonymised party] have yet to see a robust Risk Assessment or comprehensive mitigation strategy for land based, windfarms -notably the extremely high risk of superheated wildfires spreading through several dense plantation. Nor does there appear to be a Fire Department strategy to deal with this inevitable risk, nor where to source sufficient manpower, aerial water bombers, or fresh water to extinguish rapid spreading, superheated wildfires. [Anonymised party] would add to this that a study of the HyWind floating windfarm off the East Coast of Scotland be undertaken as a potential alternative solution, not least as 'strike prices' for floating windfarms are expected to be similar to land based windfarms. Finally, in view of this, the IOM needs to assess how floating windfarms could avoid paying vast amounts to the Crown.

3.8.18 **DOI Answer**: Noted, however this would be included as part of an environmental impact assessment, which requires to include "A description of the expected significant adverse effects of the proposed controlled marine activity on the environment deriving from the vulnerability of that activity to **risks of either, or both, major accidents or disasters** which are relevant to the activity concerned" (emphasis added). The other matters in this response relate to pricing, which go beyond the remit of the MIMA Regulations.

3.8.19 **Anonymised Response**: Add "effect on passing marine traffic"

3.8.20 **DOI Answer**: Noted. The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation . See paragraph 3.8.8 above as to why it would be inappropriate to specify a full list of topics and sub-topics.

3.8.21 **Anonymised Response**: It is unclear how the UK regs are to be 'adapted and modified' to make them appropriate to the Island. Are we diluting or strengthening them?

Given the proposed exemptions, it appears that these regs may only apply to some cable/pipe laying and possibly offshore renewable generation (if the latter is to be included). It was clearly the intention of Tynwald that all gas exploration and extraction activities should require an EIA, so [anonymised party] do not understand why these activities may now be removed from MIMA's scope.

[Anonymised party] cannot see why we are giving special consideration under b) to species protected under Manx law (is this drafted differently from the other consultation on Climate Change Act regs?). This seems rather narrow. Species do not respect territorial boundaries so surely we should be considering species protected under the law of any territory if those species may be found in the air or water or on the seabed surrounding the proposed developments. Does Manx law automatically protect species protected elsewhere but not actually appearing on the Island itself?

In the case of fossil fuel extraction infrastructure (should MIMA continue to include this), the climate impact of the activity will be felt globally. Greenhouse gas emission driven temperature rises impact on biodiversity on a global basis. To restrict an EIA to the impact on species protected by IOM law seems completely arbitrary and to ignore the global impact of local activities.

If we give special consideration to species that have particular protection, we presumably tend to ignore or give less consideration to thousands of other species (which if every other jurisdiction does the same, will soon become threatened).

3.8.22 **DOI Answer**: Following consultation feedback, the Department's intention is that there will only be limited exemptions under MIMA at this time.

The Habitats Directive and the Birds Directive have not been enacted under Manx law and, as such, it is not competent for the MIMA Regulations to require compliance with these. However, the Department recognises and agrees that species do not respect territorial boundaries and, as such, has included in regulation 13(3) a requirement to assess the likely direct and indirect significant effects of a proposed development on "biodiversity, with particular attention to species and habitats protected under Manx law, international law and, where the proposed controlled marine activity has or may have transboundary effects, the laws of any other country that may be affected by it".

3.8.23 **Response**: Profit, Cost , and exposure (accountability) are not addressed

3.8.24 **DOI Answer**: Noted. Profit and costs are commercial factors that are not relevant to the principle of whether development should or should not be granted consent. The matters to be contained within the environmental statement are set out in Schedule 3 to the MIMA Regulations and at a higher-level in regulation 13. This includes impacts on population, human health and material assets, which cover wider socio-economic issues.

3.9 **Question 9**: Do you agree that the above activities should be exempted from requiring a Marine Infrastructure Consent (they would still require relevant consents under the extant consenting regimes prior to being undertaken)?

3.9.1 **Anonymised Response**: These activities should be regulated like any other

3.9.2 **DOI Answer**: Following consultation feedback, the Department's intention is that there will only be limited exemptions under MIMA at this time.

3.9.3 **Anonymised Response**: Greater detail should be given as to what type of drilling, drilling rigs, and exploration should be exempt. Exploration for fossil fuels or any other potentially harmful activity should be subject to the highest level of scrutiny.

3.9.4 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

3.9.5 **Anonymised Response**: Given that this is likely to be a one-off project, it makes total sense to use existing legislation and piggyback UK legislation, rather than waste time, money and resources on trying to shoehorn it into MIMA which is realistically going to be our legislation 'going forward'.

3.9.6 **DOI Answer**: Noted. However, as noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

3.9.7 **Anonymised Response**: We need to hold all accountable to scrutiny and also to deter those harvesting our resources for their own gain (none for the island) and damage our environment

3.9.8 **DOI Answer**: See response at paragraph 3.9.2 above.

3.9.9 **Response**: Manx Utilities is explicitly concerned over the safety/integrity of our own marine infrastructure with the exemptions for intrusive activity being mooted. Due care is required regarding intrusive activities (namely d, e and f) in case a high level of rigour is not included within other consenting regimes listed as 'alternatives'. A quick review would suggest that taking this approach would suggest there is neither requirement for screening, scoping nor a full EIA within some of the alternative approaches so enabling exemptions could remove any scrutiny of future applications or ability to identify major risks to the Island's infrastructure.

Manx Utilities believes there should be a fairness in the approach with all marine projects requiring to undertake the same level of detailed survey prior to impacting the marine environment.

The scope of the activities detailed here are not described or defined sufficiently to enable us to comment further e.g. there is no definition of a defined area for 'e'.

Exemption should only be applied to existing infrastructure, including the extension of existing waste-water outfalls, but the definition should be changed to "maintenance, operations, replacement, refurbishment, enhancements and asset protection measures"

3.9.10 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

3.9.11 **Response**: The Department should revert to using the provisions of the Petroleum Act 1986 and the Seaward Innovate Production Licence, as the quickest means of, by Order, adopting the UK regulations relating to ensure that any exploration and production appraisal wells can be drilled without further delay and indecision. This has been done before in 1995/96 and worked.

The potential transformational economic benefit to the Island of a discovery of gas that flows can only be determined by drilling a well. Therefore the above activities should be exempted from MIC and industry consulted whether 40 days and 6 wells is sufficient.

3.9.12 **DOI Answer**: Noted. However, as noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

The exclusion of these activities from exemptions at this stage does not preclude them being deemed exempt at a later stage under subsequent regulations.

3.9.13 **Response**: As the legal owner of Douglas foreshore and Port Skillion beach, no infrastructure should be permitted on either without the need for a Marine Infrastructure Consent following consultation with Douglas City Council.

3.9.14 **DOI Answer**: Works on the foreshore or beach may require a MIC depending on the nature of the activities. The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities, and the Department considers this the more appropriate mechanism to set out certain exemptions, as it is recognised that the wider context of a proposed development or works may be a factor in determining whether MIC is required or not.

3.9.15 **Anonymised Response**: All should be included and should be assessed on a case by case basis. They are all marine infrastructure projects and all could have a potential impact on the marine environment and therefore should not be exempt.

The application process comments

As there is no where specifically to comment on this it is stated here.

Why is the examiner from the UK? They would be unlikely to know the Island as well as someone from the Island. Also is it appropriate that someone from outside the Island would decide who the interested parties are? Surely it should be a panel of people and ensure at least one of the panel are local.

3.9.16 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

An Examiner/Panel of Examiners will not necessarily be from the UK and will, rather, be drawn from a list of the best qualified in respect of that application (i.e. an expert with sufficient knowledge). The Examiner will not determine who is or is not an interested party – that is defined in the MIMA Regulations, with provision for any local members of the public or organisations to take part, should they wish.

3.9.17 **Response**: Noting that: 'The Department is currently considering whether it is appropriate to exempt some activities from the requirement of a Marine Infrastructure Consent, all of which will be subject to advice and based on experiences from elsewhere'

What is the process for seeking this advice, and from which organisations?

Noting that experiences from elsewhere may not always be relevant to the Isle of Man, given its domestic interests, size and environment.

Perhaps a wider and specific consultation on potential exemptions from MIMA, with justifications and the evidence base presented would provide a more thorough and informed assessment of this section?

The specificity of some of the proposed exemptions may appear to be tailored towards particular individual activities or events; legislation should be more generalised, and allow for individual assessment, rather than individual exemption.

For example, exemptions to a Marine Infrastructure consent could be applied for, via a clearly documented process, and not pre-exempted.

In general, the absence of the draft secondary legislation (regulations) in the consultation documentation (and to which the purpose of the consultation appears to relate to) does not provide sufficient rationale or justification for the proposed exemptions.

It is understood that the purpose of the MIMA was to provide a single, coordinated planning consent process for the marine environment and, in large part, provide an updated regime to offset the perceived limitations of older legislation.

This view appears broadly supported by the scope of activities intended to be covered by MIMA 2016.

It therefore appears to be a retrograde step to be proposing;

1) splitting out components of a 'controlled marine activity' for possible exemption.

2) accepting that those exemptions revert to consenting by much older legislation, which have not been updated to account for the current marine consenting landscape.

3) the proposed exemptions do not appear to have been considered with respect to how they will actually be consented, ie. If they are being exempted, is Government certain that they can be consented under other legislation to the same standard as MIMA? It is presumably the role of Government to ensure that processes are as good as they can be, hence the introduction of MIMA in the first place. As such, to propose exemption from MIMA requires that those exemptions are not then being undertaken to a lesser standard, for example under out-dated legislation.

It would seem reasonable, that for the proposed exemptions, some kind of assessment and justification process would have been carried out and presented in the consultation documents in support of the proposals. This does not seem to have occurred.

In addition and noting: 'The Department is also seeking confirmation from its external legal advisors as to whether the inclusion of 'Exploration for and exploitation of natural gas and petroleum (within the meaning given by section 9 of the Petroleum Act 1986 (interpretation))' should remain within the provisions of MIMA or should the Department revert to using the provisions of the Petroleum Act 1986 and the Seaward Innovate Production Licence. It had been the Department's intention that by including it within MIMA, it would provide a robust, transparent consenting regime. However, initial discussions with the legal advisors have led the Department to reconsider if this is the most appropriate means for this particular activity. As such, whilst the Department is seeking your comments in respect of these proposed exemptions, depending on the final advice provided to the Department from its external advisors, it might not be relevant should it be determined that the exploration for and exploitation of natural gas and petroleum is to be excluded from MIMA, and the Department would seek to remove by way of an order, as permitted under section 6 of MIMA. The Department will work alongside the legal advisors to understand how such projects should and could be considered appropriately.'

If this is to be the case and the DOI revert to using the Petroleum Act 1986 and the Licence for the exploration/exploitation of natural gas, the Petroleum Act is legislation

under the control of the DOI, would they then envisage regulating H&S as was the case previously?

Please clarify.

Noting: 'The Department proposes that the Regulations could exempt the following from the requirement for Marine Infrastructure Consent….' (but they would still require relevant consents under the extant consenting regimes prior to being undertaken).

What is the reasoning for exempting the activities listed in this section?

What extant consenting regimes are being referred to?

As currently presented DEFA considers that the exemptions section is not sufficiently detailed to provide a comprehensive response. Noting that DEFA is the Department responsible for environmental regulation. We also strongly insist any exempted activities must have adequate H&S and environmental controls in place prior to being allowed to proceed.

No. DEFA recommends that the activities listed should only be exempted if appropriate, applicable EIA Regulations exist and can be applied. Should appropriate EIA Regulations not exist then DEFA would also recommend that it should lead on their development which will require additional, adequate resourcing.

DEFA would also like to highlight that seismic survey work is regulated by the Controlled Marine Area (Seismic Survey Works) Byelaws 2016 and work within a Marine Nature Reserve (MNR) such as the Lhen Trench is regulated by the Manx Marine Nature Reserves Byelaws 2018. These activities require a permit from DEFA prior to commencing any works.

The consultation document proposes a number of exemptions from the requirement for consent under MIMA and makes reference to consents required under 'extant legislation'. However, it does not appear that any of the relevant extant legislation provides the necessary framework for ensuring that such activities are subjected to the EIA process. Without assurance that other measures will be put in place to ensure such processes are implemented, CCTT cannot support the proposed exemptions.

Is 50(2) the scope of potential exemptions, or examples from 50(1)? If the latter, why specify them at all?

If 50(2) is the extent of potential exemptions, then are the specific activities proposed for exemptions therefore ultra vires?

Or is drilling exploration wells considered to be 'survey'? Please clarify.

Does the exemption apply to 6 exploration wells, but not 1-5 or 7? It states a single number, but not less than, or more than. Is this deliberate?

As such, any proposed exemptions, where there is reasonable expectation of; '…direct and indirect significant effect of the proposed activity on the following […]' should be proposed with specific details of how their potential environmental impacts will be assessed, including the applicable legislation, if not through MIMA.

Or, as noted above; Exemptions to a Marine Infrastructure consent should be applied for, via a clearly documented process, and not pre-exempted.

In the absence of specific detail to ensure adequate consideration and regulation under other legislation, or under what controls the MIMA exemptions might operate, DEFA has concerns about the proposed exemptions list as presented, in particular proposed exemptions a (without further definition), and d - g.

3.9.18 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

The exclusion of these activities from exemptions at this stage does not preclude them being deemed exempt at a later stage under subsequent regulations.

The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities, and the Department considers this the more appropriate mechanism to set out certain exemptions, as it is recognised that the wider context of a proposed development or works may be a factor in determining whether MIC is required or not.

MIMA and its Regulations are intended to consent the principle of a development and, in some cases, to impose conditions for operation (in the same manner as planning conditions under TCPA permissions). It is not the intention that MIMA will disapply or otherwise subvert the enforcement functions, or any operational, environmental or health and safety compliance functions, of other consenting authorities.

3.9.19 **Response**: This proposed list of exemptions results in a whole series of questions. As described earlier in this response:-

The list of potential exemptions makes a mockery of the original purpose of the Act. Why should there be an escape clause for many of the requirements of initial offshore gas and petroleum exploration, including potentially damaging geophysical surveys. Why should gas exploration not have to go through the same process as a wind farm application or tidal energy? How is then appropriate and relevant to the Isle of Man, when you will be relying on UK legislation and not fully implementing our own. Given the fact that we have a commitment to Carbon Zero this is totally contradictory.

The current process that Mooir Vannin are undertaking (and to which the MFPO have been a major participant) is a valuable insight into the need for ALL new marine infrastructure to go through the appropriate process. Mooir Vannin need a consenting regime that they know and understand. Presumably this is the reason, and need, to pass this legislation by July. But there is no possible reason why gas and petroleum be exempted and therefore not controlled through MIMA.

The disappointing aspect of this section is that it seems clear that no matter what is said in the consultation responses that this will be decided outwith of this process due to legal issues. So why consult at all? Is this just a box ticking exercise to be able to state that the public have been consulted.

Examining the list of exemptions, items a, d, e, and f are all those that an existing applicant has seemingly challenged as to whether an EIA should be required. This is based on the UK legislation. Does this suggest that legally the Isle of Man government is in a position whereby it cannot control or challenge a pre-existing application? Is that why these exemptions have been included? It cannot be right that one industry is

allowed a potential loophole. How can it be stated that this will provide 'a robust, transparent consenting regime' when clearly it doesn't if a major industry is excluded from the process that was meant to cover all marine infrastructure developments. If this is permitted, then could this leave the Isle of Man vulnerable to other unchallenged developments within the same field?

So again, the question needs to be asked - why should one proposed marine development be different to another? If wind farms, tidal energy, marina developments etc are all required to go through the MIMA process and produce a PIER and EIA then why shouldn't all new developments have to do the same. If applications related to gas and petroleum exploration are excluded this makes a mockery of all of the statements within this consultation. All marine infrastructure developments have a potential to damage, alter or harm the marine environment and this needs to be thoroughly examined and challenged under one system. Any single development could irreparably damage our unique marine environment and they all need to be included in the same process. Wasn't that the intention of MIMA, as stated in the Overview? Could granting such exemptions actually leave the Isle of Man open to challenges from NGO's?

For items b and c, these relate to existing marine infrastructures that already are present in the Territorial Sea. It is necessary to carry out maintenance work on these or there could be a potential problems far worse than the impact of any proposed work. These are not new developments and so could go through a shortened process.

DOI Answer: Following consultation feedback, the Department's intention is that there will only be limited exemptions under MIMA. Maintenance on existing onshore infrastructure or cross-boundary infrastructure has been included as an exempt activity (regulation 6).

3.9.20 **Anonymised Response**: only exempt b, c, g

3.9.21 **DOI Answer**: Noted.

3.9.22 **Anonymised Response**: Absolutely not. What [anonymised party] believe is needed is one piece of clear consolidating legislation and associated regs that gives clarity to everyone (including applicants, government departments, the public) about the procedures to be followed for any significant marine development/activity (certainly including all the activities currently defined as 'controlled marine activities' in MIMA to ensure, amongst other things, that the environment is adequately protected and the environmental impacts be properly ascertained/quantified/eliminated or minimised. According to s4 of MIMA 2016, this appears to be exactly what was intended when it was enacted. It should surely not be necessary for everyone to be an expert on Manx law in order to establish which environmental provisions of which Act or legislation or contract may apply to which type of development or activity (particularly when that information may not even be readily publicly available).

It is unclear upon what basis the legal advisers are suggesting that gas exploration and extraction should be removed from the MIMA regime. This is surely critical information. The legal advice given surely depends entirely on the question being asked (ie the answer is likely to be different if one asks: 'how can we best ensure all the potential environmental impacts of gas drilling are ascertained, quantified, avoided and/or mitigated using all the legislation and legal tools at our disposal?' or 'how can

we speed up the consenting process?') What question was the external legal adviser asked to advise or opine upon? What is the rationale for the advice?

The proposed exemptions look to include most of, if not all, Crogga's proposed activities. [Anonymised party] find this concerning. If these are exempted from MIMA, what environmental provisions will prevail, what scoping and EIA requirements are in place? Any? Who is making the decisions/consenting? DOI ? What expertise and relevant experience must those assessing the EIA or the likely environmental impacts (if no EIA is required) and making the decisions have? What obligations to consider environmental and climate impacts are imposed on the decision-makers? What consultation locally and internationally will be required? When Crogga were granted their licence in 2018 MIMA was in existence and consents pursuant to MIMA appear to have been incorporated into the contract, so Crogga would have known that they would have been required to undertake an EIA and consenting process pursuant to MIMA. Why the change?

Given that the exploration and extraction of fossil fuels will likely have the most widespread and long-lasting environmental consequences of any of the proposed marine developments the Island could ever conceivably be involved in (in terms of any methane or oil leaks during exploration/drilling/extraction/transport and processing, and the resultant combustion products increasing global greenhouse gas emissions and contributing to global temperature increases), it must surely be subject to the most rigorous and transparent of environmental impact assessments, consultation and decision-making processes, including a full and publicly available climate impact assessment for all life-stages of the process and all products which may be extracted). Gas-related activities should be subject to an open and very rigorous scoping/EIA/consultation/consenting process. [Anonymised party] do not believe they should be excluded from MIMA (unless of course they will be subject to a considerably more rigorous and open scoping/EIA/consultation and consenting process under some other legislation).

When [anonymised party] tried to look at the Petroleum Act 1986, to see what (if any) environmental/EIA provisions it contains, the link (https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0047/PetroleumAct1986.pdf) would not work - [anonymised party] got an 'Error:404 Page not found' message. [Anonymised party] had a very quick look at the Seaward Innovate Production Licence (https://www.gov.im/media/1367238/licence.pdf) and couldn't see any explicit provisions requiring or detailing an EIA but perhaps [anonymised party] am missing something (or perhaps detail is contained in the unviewable Petroleum Act)? It is certainly not immediately apparent what environmental impact assessment and environmental protection (if any) there would be if gas exploration and drilling is removed from MIMA. [Anonymised party] believe that this should have been very clearly outlined in the consultation.

One hopes that fossil fuel-related activities are not being excluded from MIMA in order to 'hurry things along' at the expense of adequate environmental protection and public scrutiny.

3.9.23 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

The exclusion of these activities from exemptions at this stage does not preclude them being deemed exempt at a later stage under subsequent regulations. The intention is to bring in separate legislation (whether under MIMA or under the Petroleum Act 1986) that incorporates EIA and environmental provisions for oil and gas developments.

3.9.24 **Anonymised Response**: [Anonymised party] find all government consultations highly unsatisfactory - the questions are always ambiguous or too closed or leading. This consultation is also a very strange one - it seems that the Government has not yet decided exactly what we are being consulted on or is giving inadequate information to allow a considered response. Surely the scope of MIMA and what it includes or excludes is fundamental to the consultation on the regs? [Anonymised party] feel this is little more than a consultation in name only.

The consultation does not seem to be consulting on huge swathes of the proposed legislation- large parts are mentioned in passing without any detail, but no opinion or comment is sought. For instance what determines how many examiners the Council of Ministers chooses to appoint? Is there a legal requirement for the examiners appointed to have the necessary experience and expertise to determine marine development applications and in particular to adequately weigh up and evaluate the environmental information they are presented with?

It appears that very little of what was included in MIMA may remain after amendments have been made, so the Island will still have a rather fragmented and opaque consenting procedure to many marine activities. This appears to frustrate the intention of MIMA and gives little comfort to the public or our nature and wildlife.

3.9.25 **DOI Answer**: As noted at paragraph 3.9.2. above, the Department's intention is that there will only be limited exemptions under MIMA and exemptions relating to drilling and exploration have not been progressed.

The exclusion of these activities from exemptions at this stage does not preclude them being deemed exempt at a later stage under subsequent regulations.

MIMA requires the Council of Ministers to have access to sufficient expertise to determine an application. This ensures that the environmental and ecological impacts of a proposed development have been robustly assessed and understood before a determination is made.

Examiners will be drawn from a list maintained for TCPA and other planning application and, as such, will have experience in determining planning and consenting applications.

3.10 **Question 10**: Are there any other activities that you feel should be exempted from requiring a Marine Infrastructure Consent (noting that it only already applies to Controlled Marine Activities, as identified in section 6 of the Act)?

3.10.1 **Anonymised Response**: Activities which may be included within a National Policy Directive (NPD) as set out in the Town and Country Planning (NPD) Regs 2019, May also justify exclusion given that the provisions of an NPD should take precedence as per the regulations.

3.10.2 **DOI Answer**: As is noted elsewhere, it is not the intention for MIMA or its Regulations to authorise onshore development save where it is fully connected with and necessary to an offshore activity and where it is located within a narrow onshore area (within 250m

of MHWS). As such, it would not be appropriate to exempt NPD activities or to allow these to take precedence.

3.10.3 **Response**: Laying and maintaining Subsea Cables [Power interconnector and telecommunication cables]

With respect to new assets, we believe in a fair process for all marine projects. A fair process would ensure consistency between Isle of Man and relevant UK legislation or consenting process for equivalent asset. It should be noted that the equivalent consenting process in England and Wales for power interconnectors recognises the limited impact of such a development on the marine environment and subsequently the Environmental Impact Assessment process is less burdensome. This process is already captured in the Submarine Cables Act, 2003, and consistent with UK Legislation. Manx Utilities feels that this legislation is already sufficient in ensuring due process is followed.

The aim of MIMA is identified as "to ensure a sustainable approach to marine development and provide additional clarity and certainty of the consenting process for potential developers".

It is important to recognise the need to have processes and controls to ensure sustainable development in IOM waters by assessing the development in meeting the needs of the present, without compromising the ability of future generations to meet their own needs".

With that in mind, "Laying of Interconnector and Telecommunication Cables [Used for the purpose of connecting the electricity or telecommunications systems of neighbouring countries]" present a minimal/negligible risks to sustainable marine development now and in the future.

Installing and operating power or telecommunication cables in the marine environment have none of the characteristics associated with their development/activities listed above, which would be detrimental to sustainable marine development.

To support this it is worth looking at the United Nations Convention on the Law of the Sea [UNCLOS] which offers certain freedoms to subsea cables, meaning they do not require consent to be laid or repaired outside of Territorial Waters and have these freedoms on the understanding that linear submarine power cables do not exploit natural resources; however transmission cables connecting renewable developments are subject to licencing out to the extent of the 200NM limit.

Submarine cables operate in close proximity to other marine sectors and have minimal or negligible impact on their development and operation with the following examples common to many subsea cables through their operational phase of their life:

- They do not displace or change commercial fishing activities in the vicinity of the cable route;

- They do not impact on marine traffic, navigation, or present a collision risk due to the lack of above sea fixed structures;

- Modern subsea cables do not contain fluids or oils like pipelines or umbilical's that can present an environmental risk from leaks or faults/breaks;

- There is no visual impact from submarine cables;

- Submarine cables can cross or be crossed by other cables or pipelines;

- Submarine cables can run in close proximity to other marine infrastructure such as wind turbines or oil and gas rigs;

- There is negligible environmental concerns associated with power cables with a number of studies undertaken which suggests the environmental impacts of cables and cable laying are small or insignificant and only temporary as a result of the initial cable laying.

Interconnector cables, even the largest and high capacity power interconnector cables are small in diameter and any disturbance to the seabed is generally limited the installation of the cable or subsequent repairs which are generally an exception and limited to a very narrow section of the seabed.

Considering the above it is reasonable to consider the requirements of the MIMA to be excessive and an unnecessary administrative burden to all parties involved when considering the installation of a submarine cable in Manx Waters.

Therefore; considering the Isle of Man already has regulations in place, which by many is considered suitable for the consenting and authorising the installation of submarine cables [Submarine Cables Act], it would be reasonable to exempt "[Power interconnectors and telecommunication cables]" from the requirements of MIMA, subject to certain conditions such as:

- No above sea fixed structures associated with the cable system/route;

- The cable is intended to be buried for the large majority of its route in Manx waters;

- The cable installation and subsequent operation/maintenance and repair will be subject to an appropriate & sufficient [1] Environmental Impact Assessment [EIA].

[1] "In England and the UK, cable installation and maintenance is recognised by the UK Government's conservation advisers, Natural England, and the Joint Nature Conservation Committee (JNCC), as having minimal effect on the environment and is an activity that is compatible to be undertaken within Marine Conservation Zones".

In addition, aggregate extraction, where it is temporary (particularly with reference to onshore installations and the delivery of components, where it is already included within EIAs under the Town and Country Planning Act, 1999, could be excluded providing an EIA is undertaken to the same standard within extent legislation). This would avoid double counting and reduce officer time.

3.10.4 **DOI Answer**: The Department is aware that, notwithstanding UNCLOS and the marine licensing/consenting position in the UK, interconnector developers take the view that an EIA should be carried out for the entire project given differing standards and EIA requirements in various jurisdictions. This also is done to facilitate compliance with lender requirements post-consent and pre-construction. The Department is also aware that interconnector developers in the UK are increasingly looking to consent projects under the DCO regime rather than solely using marine licensing and permitted development rights onshore.

While it is appreciated that MIMA and its Regulations may impose additional procedural steps for submarine cables, it is considered that this level of increased and transparent assessment is warranted given the increasingly constrained marine landscape. While the procedure under MIMA is the same for all types of development, it is noted that the timescales for an examination (and, indeed, the matters to be

considered at examination) will depend on the nature of an application and the number of matters in dispute or that otherwise need to be examined. For submarine cables, this process will likely be less onerous than for a project with multiple components (such as an offshore windfarm).

3.10.5 **Response**: Any operations carried out solely for the purposes of beach management such as the removal and redistribution of material as part of re-profiling operations. 'Works' needs to be defined. Maintenance works on existing outfalls should be exempt but extensions should not be.

3.10.6 **DOI Answer**: Without prejudice to any future application, the Department considers it unlikely that beach management and re-profiling works would constitute a controlled marine activity. Maintenance works on existing outfalls are exempt but extensions are not.

The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities, and the Department considers this the more appropriate mechanism to set out certain exemptions, as it is recognised that the wider context of a proposed development or works may be a factor in determining whether MIC is required or not.

3.10.7 **Anonymised Response**: Everything should be assessed on a case by case basis and be as inclusive as possible.

DOI Answer: Noted. The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities.

3.10.8 **Anonymised Response**: Anything that can be done to enable Gas to be produced should be done.

3.10.9 **DOI Answer**: The Department considers that a robust, proportionate and transparent consenting regime is needed pursuant to MIMA that ensures that one type of development is not favoured (or prejudiced) against another. It is important that proposed developments are assessed on their own merits but following a robust and consistent regime.

3.10.10 **Response**: If you are truly wanting 'a robust, transparent consenting regime' there cannot be exemptions for new marine infrastructure developments.

3.10.11 **DOI Answer**: Following consultation feedback, the Department's intention is that there will only be limited exemptions under MIMA, and these exemptions relate to suitably minor activities that are more likely to constitute associated marine activities (and not controlled marine activities in their own right).

3.10.12 **Anonymised Response**: Absolutely not. As indicated in my previous answer, [anonymised party] believe we need one consolidating piece of legislation that retains all the current 'controlled marine activities', excepting none (and possibly including others - marinas for instance).

3.10.13 **DOI Answer**: Noted. See paragraph 3.10.11 above.

3.11 **Question 11**: Do you agree that the consent process under MIMA should be as cost neutral as possible, to Government, and that costs are recovered as far as possible from the applicant?

3.11.1 **Anonymised Response**: but the proposed fees are too high.

3.11.2 **DOI Answer**: Noted. Fees have been included in the MIMA Regulations and have been fixed with reference to the level of fees charged in other jurisdictions and in discussions with industry experts. The Department must ensure that the Island remains an attractive and commercially viable destination for developers whilst recognising that developments promoted under MIMA will present significant resourcing challenges for government bodies, stakeholders, the private sector and the public.

3.11.3 **Anonymised Response**: It does make sense definitely, albeit the prices are rather steep! It would be unfortunate to discourage innovative but smaller, less financially equipped entities. Maybe means tested discounts could be considered.

3.11.4 **DOI Answer**: See paragraph 3.11.2 above.

3.11.5 **Anonymised Response**: All costs should be recovered from the applicant.

3.11.6 **DOI Answer**: See paragraph 3.11.2 above. In promoting an application for MIC under MIMA, it is expected that an applicant will already have incurred significant cost (e.g. carrying out environmental assessments and studies, consulting with the wider public, serving notices, etc.) and it would be disproportionate for the applicant to then also pay all costs incurred by third parties and government departments in determining that application.

3.11.7 **Anonymised Response**: [Anonymised party] feel the burden of the cost should not be punitive and should be shared more equitably, especially where the long term outcomes will greatly benefit the Isle of Man.

3.11.8 **DOI Answer**: Noted. See paragraph 3.11.2 above.

3.11.9 **Response**: Broadly Manx Utilities agrees with this principle. However, Isle of Man Government may wish to consider a waiver for projects which specifically relate to the delivery of a national strategic policy directive.

3.11.10 **DOI Answer**: See paragraph 3.11.2 above. It would be disproportionate to favour certain developments over others in this fashion, and the Department would note that this does not reflect the position in other UK jurisdictions (where, for example, 'critical national priority infrastructure' that is under the DCO regime still requires to pay the same level of fees as other projects).

3.11.11 **Response**: Seems logical, provided the fees also cover the costs of transportation to the Island and accommodation, etc. for the examiner(s) when needed.

3.11.12 **DOI Answer**: Noted. The MIMA Regulations make provision for examination costs.

3.11.13 **Anonymised Response**: It should be on a case by case basis. There will potentially be times where this is not appropriate.

3.11.14 **DOI Answer**: See paragraph 3.11.2 above.

3.11.15 **Response**: Yes. Officers in the Department provide technical specialists in many areas of environmental regulation to assist with EIA process. Should the costs of other departments be reflected in the application fees as many civil servants will be working

across a number of years on some of these major applications to ensure appropriate regulation.

CCTT agree that the consenting process should be as cost neutral as possible, to Government, and that costs should be recovered as far as possible form the applicant, with fees comparable to the UK's if that is what is required to achieve cost neutrality.

3.11.16 **DOI Answer**: See paragraph 3.11.2 above.

3.11.17 **Anonymised Response**: These look far too high. The IoM government should encourage these works by taking 50% of the costs.

3.11.18 **DOI Answer**: See paragraph 3.11.2 above.

3.12 **Question 12**: Do you agree that the Isle of Man should seek to charge a comparable amount as is charged in the UK through the Planning Inspectorate?

3.12.1 **Anonymised Response**: Using the UK fees as an initial benchmark is appropriate although some rounding is needed. In the fees regulations provision must be made for an annual review based on a Manx inflation measure.

3.12.2 **DOI Answer**: Noted. Fees have been included in the MIMA Regulations and have been fixed with reference to the level of fees charged in other jurisdictions and in discussions with industry experts.

3.12.3 **Anonymised Response**: Our costs should be kept as low as possible. Some of them are far too high.

3.12.4 **DOI Answer**: Noted. See paragraph 3.12.2 above. The Department must ensure that the Island remains an attractive and commercially viable destination for developers whilst recognising that developments promoted under MIMA will present significant resourcing challenges for government bodies, stakeholders, the private sector and the public.

3.12.5 **Anonymised Response**: It makes sense to align to the UK as closely as possible.

3.12.6 **DOI Answer**: Noted. See paragraph 3.12.4 above.

3.12.7 **Response**: No, things are not on the same scale as in the UK, costs will need to be passed on: a cheaper rate will be an encouragement to companies to come to the Island.

3.12.8 **DOI Answer**: As noted at paragraph 3.12.4 above, the Department must balance cost pressures and resourcing challenges for all participants in such an application with ensuring the Island remains an attractive and commercially viable destination for developers. While the Department will adopt a similar cost mechanism to the UK, the level of fees will reflect the Island's challenges, opportunities and priorities.

3.12.9 **Anonymised Response**: We need to be able to appoint persons with suitable qualifications and experience to evaluate and adjudicate the merits/de-merits of an application together with a familiarity of the Isle of Man jurisdiction.

3.12.10 **DOI Answer**: MIMA requires the Council of Ministers to have access to sufficient expertise to determine an application. This ensures that the environmental and ecological impacts of a proposed development have been robustly assessed and understood before a determination is made.

Additionally, MIMA and the MIMA Regulations make provisions for an application to be considered at an examination before a neutral, expert Examiner or Panel of Examiners.

3.12.11 **Response**: As per previous response, Manx Utilities believes the cost should be as cost neutral as possible to Isle of Man Government.

3.12.12 **DOI Answer**: Noted. See paragraph 3.12.4 above.

3.12.13 **Response**: Seems logical, provided the fees also cover the costs of transportation to the Island and accommodation, etc. for the examiner(s) when needed.

3.12.14 **DOI Answer**: Noted. Examination costs would be included within application fees where appropriate.

3.12.15 **Anonymised Response**: The Isle of Man should charge what it sees fit, on a case by case basis. There is no need to copy the UK.

3.12.16 **DOI Answer**: Noted. While the Department has adopted a similar cost mechanism to the UK, the level of fees will reflect the Island's challenges, opportunities and priorities.

3.12.17 **Response**: How do you know if the UK rates will ensure that MIMA is as cost neutral as possible? This should be analysed and then set at an appropriate rate.

3.12.18 **DOI Answer**: As is noted at paragraphs 3.12.4 and elsewhere above, the level of fees have not been copied directly from the UK but have been considered further and set at an appropriate level for the Island.

3.13 **Question 13**: Do you suggest any other charging mechanisms that have been successfully used to recover costs to Government from the handling and examination of applications for Marine Infrastructure Consent regardless of the outcome of any such applications?

3.13.1 **Anonymised Response**: A Community Infrastructure Levy, CIL, has long been talked about but sadly not yet brought into being. A Marine Infrastructure Levy MIL, might also be considered in which all applications should pay a levy to help fund the impact, now and into the future, on the marine and shoreline environment.

3.13.2 **DOI Answer**: This has not been included in MIMA at this stage but may be revisited to align with CIL in due course. Looking at precedent from other UK jurisdictions, CIL does not extend to offshore developments (nor, indeed, to many energy projects), nor are there provisions for MIL. This will, however, be kept under review.

3.13.3 **Response**: Isle of Man Government should allow flexibility in the approach for example recovering costs (or a proportion of the costs) through the life cycle of a project rather than up-front.

Note spreading the cost of a consent across the lifespan of the asset is only workable if the asset is developed – i.e. it could lead to more speculative projects incurring Government time and cost without prospect of recovery (corporate structures are usually put in place to allow a developer to walk away from failed schemes without retaining the schemes' financial commitments).

3.13.4 **DOI Answer**: Noted. However, given the high-level of outlays incurred in determining an application (e.g. venue costs, examiner time, etc.), it is important that these are recovered before an application substantially proceeds.

3.14 **Question 14**: Do you agree that elements of an application which are proposed to sit outside the Controlled Marine Area should be considered as part of a Marine Infrastructure Consent?

3.14.1 **Anonymised Response**: For the avoidance of doubt it is should be made clear that "outside the Controlled Marine Area" means to landward and not beyond IoM territorial waters.

3.14.2 **DOI Answer**: This has not been added to the Regulations as there is no power to legislate beyond the Island's waters.

3.14.3 **Response**: On land elements of a project should follow the appropriate planning process

3.14.4 **DOI Answer**: Noted. The Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore (and this has been incorporated in regulation 6).

3.14.5 **Response**: Yes & No.

Yes: Where assets extend into UK or ROI waters, and infrastructure (or route) may be at risk. The full scope of the project in the marine environment should be considered by statutory consultees to identify any potential conflict.

No: There is already a well-embedded process which provides visibility and rigour in the onshore environment (i.e. the Town & Country Planning Act, 1999 and Major Application Process). Different stakeholders may opine on both points. If the concern is that one of the planning applications may fail otherwise, then there would appear to be valid issues presented and the project should not proceed. In addition, Manx Utilities has Statutory Powers which are derived from the Town and Country Planning Act, 1999 and these may be impacted by such a change.

3.14.6 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore (and this has been incorporated in regulation 6).

3.14.7 **Response**: to remove need for applicants to make two applications to different legislative bodies/regimes.

3.14.8 **DOI Answer**: Noted. As explained in paragraphs 3.14.6 above, the Department does not consider that MIMA can extend significantly onshore.

3.14.9 **Anonymised Response**: This is difficult to answer as there are no examples of what this my look like or what the process would be. However, it is appreciated that this would potentially streamline the process, however this will need more information before being answered. It is likely this will be on a case by case basis and needs to be rigorous process either way.

3.14.10 **DOI Answer**: As explained in paragraphs 3.14.6 above, the Department does not consider that MIMA can extend significantly onshore. The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department

provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities.

3.14.11 **Response**: CCTT agrees in principle with proposals in relation to cross-jurisdiction works, but would appreciate more information on how the process would work on the Island. Whether or not the process is limited to 'some elements of an application' is difficult to answer without more information as to the criteria that would be applied to decide what would or would not be included.

3.14.12 **DOI Answer**: As explained in paragraphs 3.14.6 above, the Department does not consider that MIMA can extend significantly onshore. The MIMA Regulations make provision (in regulation 5(1)(b)) for a proposed applicant to request that the Department provide an indication as to whether certain development or works do or do not constitute controlled or associated marine activities.

3.14.13 **Response**: Yes, the boundaries of our Territorial sea are not the boundaries for species within the marine environment. Adjacent developments can impact on the Controlled Marine Area.

3.14.14 **DOI Answer**: Noted.

3.14.15 **Anonymised Response**: What are the rights to object to a development as a member of the public, rights of appeal if directly impacted or just as a concerned citizen etc. [Anonymised party] do not think that there is adequate information provided here to know whether this proposal increases transparency and accountability or reduces it. Whilst [anonymised party] would welcome the wider application of a requirement for EIA's in planning, [anonymised party] do not believe that the transfer of more powers to Council of Ministers is desirable.

3.14.16 **DOI Answer**: Members of the public will be able to participate in the process, both at the pre-application consultation stage during the consideration of an application at examination.

MIMA and the MIMA Regulations are not intended to replace the onshore planning regime, and only limited onshore infrastructure of works would be able to be consented under MIMA.

3.14.17 **Response**: Very confusing , but where is directional drilling considered ?

3.14.18 **DOI Answer**: It is not clear what is meant by this response, but the Department presumes it is a reference to horizontal directional drilling for cable installation. If so, this would likely be included as part of works to lay submarine cables and could be authorised onshore under the MIMA Regulations.

3.15 **Question 15**: Do you believe that it should be limited to some elements of an application for Marine Infrastructure Consent, or should it be applicable to all elements that sit outside the Controlled Marine Area?

3.15.1 **Anonymised Response**: The purpose of this provision is to simplify the application process into a single process for the benefit of all concerned. It does not seek to diminish consideration of issues outside of the Controlled Marine Area. It therefore makes no sense to impose limits as to what can and cannot be considered.

3.15.2 **DOI Answer**: Noted.

3.15.3 **Anonymised Response**: Process needs to be as simple as possible, multi agency/applications will just prolong the work and may not be dealt with in the same manner by all agencies - remove any potential for clashes.

3.15.4 **DOI Answer**: Noted.

3.15.5 **Anonymised Response**: Difficult to predict such future exclusion and so should not be a blanket exclusion

3.15.6 **DOI Answer**: Noted.

3.15.7 **Response**: Manx Utilities believes this should be limited to those elements which have a potential to impact on either the Isle of Man, or its strategic assets, within the marine space, either in Manx, Irish, or UK waters (i.e. below the High Water Mark).

This mechanism should not give consent for onshore elements of projects. However, there is benefit to statutory consultees understanding the full detail within the application and the onshore elements should still be shown, even if they do not form part of the overall planning application.

3.15.8 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore (and this has been incorporated in regulation 6).

3.15.9 **Response**: clearly with a windfarm or gas processing there are likely to be onshore installations, which consent should be given as a whole for the project.

3.15.10 **DOI Answer**: As noted at paragraph 3.15.8 above, the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore.

3.15.11 **Response**: Not all aspects of a development have the potential to impact on our waters.

3.15.12 **DOI Answer**: Noted.

3.15.13 **Anonymised Response**: [Anonymised party] do not think it should be applicable to all elements. Planning law and procedure is well-established and understood and it feels as though it is now being eroded from all sides. [Anonymised party's] fear is that as government appears to intend to make obtaining planning easier, this is unlikely to benefit the environment.

3.15.14 **DOI Answer**: The intention under MIMA is not to make obtaining consent easier, but to provide a consenting process that allows multiple offshore consents to be considered at once. This is a streamlined and more effective process for applicants, stakeholders and the public alike, as it ensures that all issues relating to a development are considered holistically.

3.16 **Question 16**: Are there any specific elements of an application which are proposed to sit outside the Controlled Marine Area that you believe could be considered as part of a Marine Infrastructure Consent?

3.16.1 **Response**: Small structures that are under a certain size or volume.

3.16.2 **DOI Answer**: Noted. The MIMA Regulations do not currently make exemptions based on the size or volume of structures, but this is something that could be considered in future.

3.16.3 **Anonymised Response**: All planning consent requirements.

3.16.4 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore.

3.16.5 **Response**: Consenting should extend only to elements with potential to impact strategic assets that lie within waters of other jurisdictions, or within proximity of Manx Utilities outfalls.

3.16.6 **DOI Answer**: Noted. However, the purpose of MIMA is to consent development within the controlled marine area and not just within the vicinity of certain other offshore assets.

3.16.7 **Response**: landside connections/installations necessary for the delivery of the project should be considered within the MIC, as planning have to be consulted in any case to gain MIC.

3.16.8 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore.

3.16.9 **Response**: Any elements that are part of a structure or infrastructure that lies predominantly within the Controlled Marine Area.

3.16.10 **DOI Answer**: While the Department notes that including onshore infrastructure within a MIC would allow for a streamlined process (both pre and post-consent), the Department does not consider that MIMA can extend significantly onshore, as its primary function relates to the controlled marine area. However, the Department does consider that MIMA can extend to some onshore elements where these are fundamentally linked to an offshore development and do not extend significantly onshore (and this has been incorporated in regulation 6).

3.16.11 **Response**: Any that relate to marine species that live across the boundaries. Spawning grounds, nursery grounds are not controlled by borders. They interrelate and changes in one area can result in changes in an adjacent one. From the MFPO point of view all commercial species are cross-boundary and so are of relevance to the sustainable management of stocks within Manx waters.

3.16.12 **DOI Answer**: Noted. MIMA and the MIMA Regulations relate to development located throughout the controlled marine area and are not restricted to certain areas of seabed.

3.16.13 **Anonymised Response**: [Anonymised party] repeat my responses to the previous two questions. This seems to be a very specific question and it is impossible to have an opinion on this when it is entirely unclear from this consultation, what marine developments/activities are, in the final draft, going to be covered by MIMA.

As we are in the middle of a biodiversity crisis and the Island's biodiversity is in decline, [anonymised party] fundamentally believe that environmental controls/considerations and biodiversity protection should be the primary consideration in planning decisions.

3.16.14 **DOI Answer**: Environmental impact assessment (which incorporates considerations on biodiversity) is a fundamental pillar of the MIMA Regulations and EIA conclusions will be considered as part of any MIC application.

3.16.15 **Response**: Under sea deep mines proposed by Copland Council for the long term depositing of nuclear waste.

3.16.16 **DOI Answer**: Nuclear (including nuclear decommissioning and waste storage) is not currently considered under MIMA and would require separate legislation.

4. POINTS RAISED BY PARTIES DURING FURTHER ENGAGEMENT

Note that responses have been taken directly from stakeholders and are unedited.

4.1 **Party**: Manx Utilities

4.1.1 **Response**: Manx Utilities has compulsory land purchase powers under the Electricity Act, 1996 (but not within the Gas and Electricity Act, 2003) to support gas infrastructure. Manx Utilities has previously used these powers to support the laying of our own gas infrastructure, but also used the same powers on behalf of Manx Gas (now IEG) to support their schemes as requested by IOMG. The powers seem to relate to infrastructure associated with electricity generation only, though they also appear to have also been used for gas supply in the case of Manx Gas and likely our own wider transmission network. I am conscious that an offshore gas developer could in future also request Manx Utilities to undertake this work on their behalf, depending on future plans. Subsequently, these powers would appear to be lost if the proposed changes prohibit compulsory purchases.

4.1.2 **DOI Answer**: Currently, there are limited compulsory acquisition powers within MIMA and these are reflected in the MIMA Regulations. However, given the decision noted above that MIMA cannot extend significantly onshore, it is not expected that compulsory acquisition will be featured as part of many MIC applications.

4.1.3 **Response**: Manx Utilities has statutory powers to lay cables (compulsory easements). Hopefully this would not be impacted as it does not relate to buying land. However it is worth flagging that should any easement be appealed, DOI are the Department who would make the final decision on whether this should go ahead. I assume DEFA would continue to manage the Planning process under MIMA rather than DOI so there would not be a perceived conflict with this role.

4.1.4 **DOI Answer**: To clarify, the Council of Ministers is the ultimate decision maker in respect of applications under MIMA, with the Department serving an administrative function in processing applications. The Department then assumes the role of a consultee in the same manner that MU would participate in any offshore application, as it has wider responsibilities to manage the seabed.

4.1.5 **Response**: Manx Utilities currently uses Permitted Development Orders which stem from the Town and Country Planning Act, 1999, for the delivery of some utilities. Planning is not required for these developments providing they fall within the criteria laid out. These include small substations, street lighting etc. among other areas. Some of these developments may be utilised for marine infrastructure projects e.g. a substation for a marina. It may be worth considering whether the Permitted Development Orders would carry through to any MIMA planning application.

4.1.6 **DOI Answer**: It is not the intention of MIMA or the MIMA Regulations to disapply existing permitted development rights, and this has been reflected in regulation 6(3). However, the provisions of MIMA (and the MIMA Regulations) would apply to (and supersede) permitted development rights where onshore elements are fundamentally linked to an offshore development such that they are considered to be associated marine activities.

4.1.7 **Response**: When considering the deployment of a new substation (or other infrastructure) for a developer, Manx Utilities may take the opportunity to link in any other projects/services/schemes to this substation e.g. connections to other customers/developers. In the case of a substation being built to support an offshore development, it would be helpful to understand the boundary between MIMA and Town & Country Planning Act e.g. would the additional connections be considered within the 'offshore energy' proposal.

4.1.8 **DOI Answer**: Under MIMA and the MIMA Regulations, there is scope for an applicant to request advice from the Department as to whether elements of a proposed development constitute associated marine activities, and the Department is unable to give a definitive answer to this at this stage as it will vary on a case by case basis. However, generally, the Department would consider onward connections to be separate from an offshore energy proposal especially if these connections were being progressed by separate customers/developers and at different timescales. If this were the case, then such developments would be progressed under TCPA.

4.1.9 **Response**: The Climate Act, 2021, does not appear to be relevant to offshore energy projects which have no impact on the Island's decarbonisation pathway. Manx Utilities has a target relating to the decarbonisation of electricity stemming from the 2030 Interim Target (legally binding) via the Climate Plan 2022 – 2027. As we will already have achieved this target by 2030, any schemes expected to come on line after 2030 would only have economic benefit to the Island. The interconnector would be a project which could be classed as supporting the Climate Act, 2021. The other offshore energy projects which I am aware of do not appear to meet this criteria.

4.1.10 **DOI Answer**: Noted, however, this will be a matter for a Panel of Examiners, and the Council of Ministers, to consider and give weight to at the time any application is determined. As part of that weighing and balancing exercise, a decision maker will also require to consider the potential a project may have for reducing emissions together with the likelihood that other emissions-reducing projects will be developed and operational before any emission targets.