**Technical Capability Assessment for a**

**Maritime Area Consent**

**(Excluding Schedule 10 Projects)**

**Guidance and Application Form Templates**



 August 2023

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# 1 Introduction

## 1.1 Purpose

The purpose of this Guidance is to outline the technical capability requirements that will apply to applicants for, and holders of, Maritime Area Consents (MAC) under the Maritime Area Planning Act 2021 (the Act). This Guidance does not apply to applicants who are seeking a MAC for projects of strategic national importance as identified in the Eighth Schedule of the Planning and Development Act (also Schedule 10 of the Act) or those who are seeking a Licence for a Schedule 7 usage under Section 117 of the Act. Separate guidance (See <https://www.maritimeregulator.ie/>is available for projects of strategic national importance as identified in the Eighth Schedule of the Planning and Development Act (also Schedule 10 of the Act).

Applicants for a MAC should consider this Guidance as part of a suite of three distinct yet interrelated MAC assessment documents, which comprise of:

* *Application for a Maritime Area Consent (MAC) in accordance with Section 75 or 76 of the Maritime Area Planning Act 2021*, including the *General Guidance Document for Completing a New Application for a Maritime Area Consent*
* *Technical Capability Assessment for a Maritime Area Consent (Applying to Schedule 10 Projects)*, or *Technical Capability Assessment for a Maritime Area Consent (Applying to non-Schedule 10 Projects)* (this document), whichever is relevant
* *Financial Capability Assessment for a Maritime Area Consent*

## 1.2 Interpretation

Unless specified otherwise, the capitalised terms in this Guidance have the same meanings as given to them in the Act. In the event of any inconsistency or ambiguity, the Act takes precedence over this Guidance. A glossary of terms used in this Guidance can be found at Section 6.

The MARA may elect to depart from, or amend, the methodology in this Guidance, which is for guidance purposes only.

## 1.3 Statutory basis

**Context**

The Act is the primary legislation governing the management of development and activities in the maritime area. The Act establishes a new marine planning system and with the exception of fishery related activities (including aquaculture), the new regime replaces the existing overlapping dual consenting regime of foreshore and development consent and streamlines arrangements on the basis of one State consent (MAC) to enable occupation of the maritime area and one development permission (planning permission), with a single environmental assessment. Public participation will be undertaken as part of the development permission process under Part 8 of the Planning and Development Act.

The Act incorporates a forward planning model, with decisions to be taken in a manner that secures the objectives of the National Marine Planning Framework (NMPF) which provides the spatial and policy context for decisions about the maritime area.

**Technical Capability Assessment (TCA) for Fit and Proper Person Test**

Schedule 5(5) and Schedule 2 of the Act require an applicant for or the holder of a MAC to be a fit and proper person. In determining whether the relevant person is a fit and proper person to be granted a MAC or to retain a MAC, Schedule 2(2)(g) of the Act specifies that the MARA shall have regard to:

*whether the relevant person, or a person acting for or on behalf of the relevant person in the relevant person’s capacity as such, has (or has access to), or continues to have (or have access to), as the case may be, the requisite technical knowledge or qualifications, or both, to undertake the proposed maritime usage, or continue to undertake the maritime usage, as the case may be;*

This Guidance provides further detail regarding the process that the MARA will apply to determine whether an Applicant or Holder is technically capable of delivering on its commitments or obligations with respect to a MAC.

A TCA is required in respect of:-

* **Initial MAC applications** – Under Schedule 5(5) of the Act, the MARA will assess whether an Applicant is a fit and proper person both at the time the application is made and the time of the MAC application determination.
* **Changes to a MAC** – The MARA will assess the Holder of a MAC against the fit and proper person test at the time of any proposed:
	+ Assignment of a MAC – Under Section 85 of the Act, where the Holder wishes to assign the MAC to an assignee, the Holder and the Assignee must make a joint application in the specified form for the MARA’s consent. In assessing the application, the MARA shall determine if it is satisfied that the proposed assignee meets all the requirements that the proposed assignor had to meet before the proposed assignor was granted the MAC (i.e. consistent with Schedule 5(5) above).
	+ Material amendment to a MAC – Under Section 86(1), where the Holder wishes to amend the MAC in any material way, the other provisions applicable to a MAC application shall apply (i.e. including the fit and proper person test).
* **Ongoing MAC conditions** – Schedule 6 of the Act lists conditions that the MARA may attach to a MAC, including that the Holder must:
	+ adhere to a work programme (including a schedule for completion)
	+ give notice of any change in circumstances
	+ continue to be a fit and proper person

## 1.4 Scope

This Guidance aims to ensure that the TCA is:

* **effective** – to qualify only those relevant persons with the technical capability to deliver projects
* **efficient** – to ensure that the information requirements and process timeframes for the TCA are reasonable and rigorous
* **transparent** – to ensure that the assessment process is fair and clearly understood by Applicants from the outset and by Holders in terms of their ongoing obligations.

It is important to note that this Guidance:

* is for guidance purposes only and the MARA may, at its absolute discretion, elect to depart from the methodology set out in this Guidance
* is supplementary to the Act, which takes precedence over this Guidance
* is not a substitute for any regulation or law and does not have binding legal effect
* is not a substitute for any other technical assessments that may be carried out by another regulator
* is made specifically and exclusively for the purposes set out within
* will be kept under review by the MARA and may be amended as deemed appropriate by the MARA
* applies to Applicants and Holders – and does not apply to maritime usages that do not require a MAC

# 2 Assessment methodology

## 2.1 Assessment outcome

The technical capability of each relevant person will be assessed on a case-by-case basis using the technical criteria set out within this Guidance. A relevant person that meets all the technical criteria set out in this Guidance (including any further information requested) will be deemed technically capable of delivering the usage applied for.

Where the MARA determines that information provided by a relevant person does not demonstrate that the relevant person meets all the technical criteria the MARA will have the right to request further information to allow the completion of the relevant person’s TCA. Where an applicant is unable to comply with any of the TCA, this will not automatically result in the Applicant failing the TCA. However, the onus is on the Applicant to provide sufficient explanations along with supporting evidence of extenuating circumstances or mitigating actions, which should include reference to specific arrangements to address non-compliance. In considering non-compliance, the response from the Applicant should provide MARA with the necessary assurance that all technical challenges relating to the MAC project can be met.

The outcome of this TCA will be considered together with other assessments taken into consideration by the MARA in respect of an application for a MAC and/or conditions that may be attached to a MAC under the Act. Irrespective of the outcome of the TCA, it remains at the sole and absolute discretion of the MARA to determine whether an Applicant or Holder meets the fit and proper person test. The MARA’s decision in this regard will be final and the applicant is deemed to have agreed to abide by the principles established in this guidance document by submission of their application.

## 2.2 When this Guidance should be applied

In accordance with the requirements of the Act (as summarised at section 1.3 of this

Guidance), a TCA under this Guidance is required when:

• an initial MAC application is required under the Act

• material amendment to a MAC is proposed by the Holder, including where the amendment has a significant impact on the associated technical requirements and/or risk profile of the Project

• assignments or transfer of interests is proposed in respect of a MAC

• significant changes to the shareholding or control of the MAC Holder are proposed

• any other provision under the Act which would require consent of the MARA in respect of a MAC.

The circumstances highlighted above are not exhaustive and this Guidance may be applied in other cases where the technical capability of the relevant person is considered relevant to the ability of a relevant person to meet its commitments in respect of a MAC.

## 2.3 Relevant Person

The applicant for, or holder of, a MAC is considered a relevant person. Where an application is submitted on behalf of another entity, the party committed to delivering the project is deemed the relevant person for the purposes of the TCA.

## 2.4 Assignment or Change of Control

Where a MAC Holder retains a share in an existing MAC post an assignment of interest or change of control, a TCA will be performed on all parties which retain an interest in the MAC which may include the existing MAC Holder.

## 2.5 Reliance on Third Party Consultants/Agents

A relevant person may, in order to prove their technical capability, rely on the resources of a third party engineering consultancy firm or technically competent agent. Third party consultants/agents must be suitably qualified and capable of demonstrating prior experience in the design, consenting and construction supervision of projects of a similar scale and nature. In such a scenario the third party consultant/agent and not the relevant person will be subject to the TCA.

## 2.6 Consortia

Where a MAC involves a consortium, each party whose resources are being relied on will be deemed a relevant person. As a result, each consortium member whose resources are being relied on will be required to provide the information outlined in Section 3 of this Guidance.

Each consortium member will be assessed based on its technical capability in relation to its role in delivering the Project(s).

Where one member of the consortium may be challenged to evidence its technical capability, the MARA may request that each relevant person, as part of the consortium, agrees to be joint and severally liable to deliver the project(s) under the relevant MAC(s) and demonstrate how the consortium will contract joint and several liability.

## 2.7 Multiple MACs

Where a relevant person has applied for and/or been awarded more than one MAC, the TCA will be based on the relevant person’s ability to meet commitments individually for the maritime usage applied for under each MAC.

# 3 Information Requirements

## 3.1 Source documentation

A relevant person (including each consortium member if applicable) is required to provide the information set out within this Guidance. In cases where information is missing, the MARA reserves the right not to accept the application.

A relevant person must submit details for three reference projects which demonstrate their experience, or the experience of their third party consultant/agent as required under Section 4.1 in the format specified in Appendix Tec A, Table (ii).

The relevant person must submit a Preliminary Operation and Maintenance Statement that satisfies the requirements of 4.2. Where the Project is proposed to be delivered by a Consortium, only one Preliminary Operation and Maintenance Statement, submitted jointly by all Consortium members, is required. Refer to Appendix Tec B.

The relevant person must submit a Development Programme that satisfies the requirements of 4.3. Where the Project is proposed to be delivered by a Consortium, only one Development Programme, submitted jointly by all Consortium members, is required. Refer to Appendix Tec C.

All relevant persons will be required to list the documentation being relied upon to demonstrate that the relevant person meets the technical capability requirements. This documentation forms the basis for the TCA. Refer to Appendix Tec D.

For MAC applications associated with construction projects of a significant scale, capital value, and/or of a technically complex/innovative nature, the MARA reserves the right to seek additional material relating to any other relevant information.

# 4 Technical Capability Assessment Criteria

The MARA will assess the relevant person’s technical capability to comply with the Terms and Conditions of a MAC based on set criteria considered appropriate to the delivery of the project. The relevant criteria are outlined below.

## 4.1 Evidence of qualifications/membership of professional bodies and experience in relation to development(s) of a similar scale and nature

A relevant person with previous similar project experience or an applicant who has engaged a suitably qualified and experienced third party consultant/agent is more likely to be able to deliver on their commitments under a MAC. Applicants or their third party consultants/agents must as a minimum:-

* be a chartered member of Engineers Ireland or another relevant professional body and;
* be a member of the Association of Consulting Engineers Ireland or other similar body and;
* hold valid Professional Indemnity Insurance and;
* have adequate arrangements for quality assurance (ideally EN ISO 2001)

Confirmation of the above minimum requirements should be provided on Table (i) in Appendix Tec A.

The applicant shall provide details for three reference projects of a similar scale and nature for which they or their third party consultant/agent have been responsible for the management of the consenting process and for undertaking the detailed design of the scheme. Relevant experience should be demonstrated by providing a comprehensive description of the projects and should clearly detail the relevant person’s or their third party consultant/agent’s role in delivering the projects. Information should be provided on Table (ii) in Appendix Tec A.

The relevant experience shall be within the 10 years immediately preceding the date of submission of the application documentation under Section 79 of the Maritime Area Planning Act 2021 (Application for Grant of MAC).

## 4.2 Capability to Operate and Maintain Maritime Infrastructure

As the maritime area is recognised as a harsh environment, the MARA shall conduct an assessment of the capability of a relevant person to operate and maintain the proposed infrastructure for which they are seeking consent. This is required in order to minimise the potential for general nuisance and adverse impacts in the maritime area. Acknowledging that a fully detailed Operation and Maintenance Plan can only be produced after project completion, applicants are requested to submit a Preliminary Operation and Maintenance Statement*.* This statement should set out in broad terms how they intend to manage the operation and maintenance of the proposed infrastructure for the entire duration of the term of the MAC. Where an applicant has prior relevant experience in the operation and maintenance of infrastructure of a similar scale and nature evidence of this should also be provided. Information shall be provided as per the format in Appendix Tec B.

For infrastructure which has a specified design life and will require decommissioning/rehabilitation of the maritime area at the end the MAC term, the applicant should also submit a Preliminary Rehabilitation Plan.

## 4.3 Delivery Timelines

The relevant person must provide an outline of delivery timelines that demonstrates how the project will progress to completion, taking note of any relevant Government targets and objectives.

Key delivery timelines will be expected to include, as a minimum:-

* Submission of planning application
* Receipt of development permission
* Construction stage
* Substantial completion
* Planned maintenance activities
* Decommissioning/rehabilitation (if relevant)

While the dates are anticipated to be indicative, timeline should to be realistic, acknowledging areas of uncertainty, and demonstrate the understanding of the relevant person with respect to both development of projects and the expected timeframes of the consenting framework in Ireland. Information shall be provided as per the format in Appendix Tec C.

# 5 Queries and feedback

## 5.1 Feedback

Once MARA has made a preliminary determination of the overall assessment it will inform the applicant in writing if it is minded to part grant, grant with conditions or refuse an application. The applicant may then submit further information within a period specified in the notice. MARA will inform all applicants of its final decision in writing and publish the relevant details on its website.

# 6 Glossary

|  |  |
| --- | --- |
| **Term** | **Definition** |
| The Act | The Maritime Area Planning Act 2021 |
| Applicant | Applicant for, or holder of, a MAC |
| Consortium | A group of parties submitting a combined application for a MAC or a group of parties that jointly hold a MAC |
| Construction Stage | Construction Stage includes all construction related activities including any site investigations undertaken as part of pre-construction following the grant of development permission, all installation activities related to project. The Construction stage is deemed to finish at substantial completion (at first generation for ORE windfarm projects). |
| Substantial Completion | Where works are completed to a stage where they can be used for their intended purpose and no significant defects remain to be rectified by the contractor and the Substantial Completion Certificate has been issued. |
| Third Party Consultants/Agents | Suitably qualified Engineers capable of demonstrating prior experience in the design, consenting and construction supervision of projects of a similar scale and nature. |
| Guidance | Technical Capability Assessment for a Maritime Area Consent (Excluding Schedule 10 Projects) |
| Holder | The holder of one or more MAC(s) under the Act |
| Maritime Area Consent | Maritime Area Consent, as defined under the Maritime Area Planning Act, 2021 |
| MARA | The Maritime Area Regulatory Authority |
| NMPF | The National Marine Planning Framework |
| Relevant person | The Applicant for, or Holder of, a MAC |

# MARA-logo

# Appendix Tec A: Evidence of qualifications/membership of professional bodies and experience in relation to developments of a similar scale and nature

The following table must be used by relevant persons to demonstrate each relevant person’s qualifications and relevant experience in as required under section 4.1.

|  |
| --- |
| **Table (i) - Evidence of qualifications/membership of professional bodies** |
| **Question** | **Response** |
| **Is the Applicant or their third party consultant/agent a chartered member of Engineers Ireland or another similar professional body?** | YES/NO/COMMENT**Note:** A copy of incorporation is to be submitted with the application |
| **Is the Applicant or their third party consultant/agent a registered member of the Association of Consulting Engineers of Ireland or another similar body?** | YES/NO/COMMENT**Note:** A copy of registration is to be submitted with the application |
| **Does the Applicant or their third party consultant/agent hold valid Professional Indemnity insurance?** | YES/NO/COMMENT**Note:** A copy of current Professional Indemnity Insurance is to be submitted with the application |
| **Does the Applicant or their third party consultant/agent have recognised a Quality Management System?** | YES/NO/COMMENT**Note:** A copy of associated QMS certification is to be submitted with the application |

|  |
| --- |
| **Table (ii) - Experience of Three Projects of a Similar Scale and Nature** |
| **Reference Project 1** |
| **Name of Project** |  |
| **Detailed Description of the Project****(max 500 no. words)** |  |
| **Overview of role of the relevant person of their third party consultant/agent in delivering project** |  |
| **Current status of the Project** |  |

|  |
| --- |
|  **Reference Project 2** |
| **Name of Project** |  |
| **Detailed Description of the Project****(max 500 no. words)** |  |
| **Overview of role of the relevant person of their third party consultant/agent in delivering project** |  |
| **Current status of the Project** |  |

|  |
| --- |
| **Reference Project 3** |
| **Name of Project** |  |
| **Detailed Description of the Project****(max 500 no. words)** |  |
| **Overview of role of the relevant person of their third party consultant/agent in delivering project** |  |
| **Current status of the Project** |  |

# Appendix Tec B: Operation, Maintenance and Rehabilitation

The following table must be used by relevant persons to demonstrate each relevant person’s qualifications and relevant experience in as required under section 4.2 in relation to Operation, Maintenance and Rehabilitation.

|  |  |
| --- | --- |
| **Question** | **Response** |
| **Please provide a Preliminary Operation and Maintenance Statement which sets out in broad terms how the operation and maintenance of the proposed infrastructure will be managed over the term of the MAC** |  |
| **If available, please provide details of prior experience in the operation and maintenance of facilities/infrastructure of a similar scale and nature.** |  |
| **If relevant, please provide a Preliminary Rehabilitation Plan** |  |

# Appendix Tec C: Delivery Timelines

Please provide expected dates for the Project in relation to the Key Milestones outlined in the below table, as requested in Section 4.3. Dates are expected to be indicative.

|  |
| --- |
| **Delivery Timelines** |
| **Submission of Planning Application** |  |
| **Receipt of Development Permission** |  |
| **Appointment of Main Contractor** |  |
| **Works Start Date** |  |
| **Substantial Completion** |  |
| **Planned Maintenance Activities** |  |
| **Decommissioning/Rehabilitation** |  |

## Appendix Tec D: Documentation Checklist

Applicants must complete the documentation checklist below and submit it with their application.

|  |  |  |
| --- | --- | --- |
| **Document Title** | **Comments****(if required)** | **Completed and Submitted with Application****(insert ✓)** |
| **Copy of Certificate of Chartership** |  |  |
| **Copy of Certificate of Registration with ACEI** |  |  |
| **Copy of Quality Management System Accreditation** |  |  |
| **Appendix Tec A** |  |  |
| **Appendix Tec B** |  |  |
| **Appendix Tec C** |  |  |
| **Appendix Tec D** |  |  |