



Coastwatch

Hosted in Civil, Struct and Env engineering, Trinity College Dublin, Dublin 2

PLANNING AND DEVELOPMENT AND FORESHORE (AMENDMENT) Bill 2022

Joint Committee on Housing, Local Government & Heritage - HLGH-i-537

Response to the Foreshore Act Part of the

PART 3 AMENDMENT OF THE FORESHORE ACT 1933

- 8. Interpretation in this Part
- 9. Amendment to section 1 of the Principal Act
- 10. Amendment to section 3 of the Principal Act

Coastwatch is grateful for the opportunity to make a submission and possibly address the Committee on this bill. Our submission relates to Part 3 only as time is very tight and we are aware that IEN is focussing on the ABP sections.

Introduction

We agree that it is essential for government to be able to manage all parts of our land, sea and air.

However, we question whether the Foreshore Act is the place to give extra powers to the minister and suggest an alternative approach would provide the same result but be safer. We also propose that some glaring shortcomings of the Foreshore act should be addressed.

The Foreshore Act is from another era. It has little regard to the Aarhus Convention on public information, participation and access to justice. It is worth considering what kind of decisions have been made under it. As an example Coastwatchers are heavily involved in:

It was possible for the minister to advise an industrialist applying for a native kelp forest cutting license in Bantry bay over 1000s of acres to decide that no EIS is needed and that it was in the public interest to advertise this license in a local West Cork paper with tiny winter readership without even providing detail which would allow the reader to deduce the exact location or size of the application. The Minister was then satisfied that the public had been consulted although not a single comment came back and proceeded to grant the license.

The subsequent uproar and court cases right up to the supreme court have had a huge economic and society cost.

Thankfully the Foreshore Act is being repealed section by section as other legislation is passed or commenced and we understood when the Maritime Area Planning Act was introduced last year that the foreshore act would become redundant over time. However there is no clear sun set clause for the act. Bit of it dealing with aquaculture could be with us for years. Even if the Foreshore Act was only around for another year, art 19 is an embarrassment on our statute books.

So rather than agreeing to more powers to the minister under the **PLANNING AND DEVELOPMENT AND FORESHORE (AMENDMENT) Bill 2022**, we are asking you to do bring the minister s powers in line with our planning law.

Coastwatch would like to propose three points for consideration by the Committee:

1. to amend the Foreshore Act definition of **foreshore** to that of **'land'** within the meaning of the Land and Conveyancing Law Reform Act 2009.

Reason: The Land and Conveyancing Law Reform Act is here to stay and already overlaps with the Foreshore Act as it clearly states in Section 3: that 'land' includes 'land covered by water' – see screenshot below. It also mentions 'airspace'.

2. to clarify the airspace powers, by adding a new section to the bill to include an amendment to the Land and Conveyancing Law Reform Act 2009 definition of land in Section 3(e) to explicitly add **'or water'**.

The Land and Conveyancing Law Reform Act section 3 definition of land would thus change from:

(e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,

To

(e) the airspace above the surface of land **or water** or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,

"land" includes—

- (a) any estate or interest in or over land, whether corporeal or incorporeal,
- (b) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land,
- (c) land covered by water,
- (d) buildings or structures of any kind on land and any part of them, whether the division is made horizontally, vertically or in any other way,
- (e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,
- (f) any part of land;

3. Other sections of the Foreshore act are in urgent need of change and are an ongoing concern to coastal communities. The most fundamental of these is article 19:

At present it reads:

19.—Whenever the Minister proposes to make an order under this Act or an application is made to the Minister for the making of a lease or an order or the granting of a licence under this Act, the Minister may, if he so thinks fit, cause notice of such proposal or application to be published at such times and in such manner as he thinks proper, and may by such notice give to all persons interested an opportunity of making to the Minister objections and representations in respect of such order, lease, or licence (as the case may be) and may include in such notice directions as to the time, manner, and place in and at which such objections and representations may be made.

The new wording should be akin to planning law giving guaranteed clear access to the information, time to comment and object and have these comments published on line in a timely manner.

A separate article should introduce an appeal of decisions to ABP to introduce access to justice where most needed – on our last great commons.

19.—Whenever the Minister proposes to make an order under this Act or an application is made to the Minister for the making of a lease or an order or the granting of a licence under this Act, the Minister shall cause notice of such proposal or application to be published at least 28 days before making a decision
- in a national newspaper
and on the minister's website
and notified to the relevant local authority or authorities and bodies
to give to all persons interested an opportunity of making to the Minister objections and representations in respect of such order, lease, or licence (as the case may be).
The notice shall include directions as to the end date and time, manner, and place in and at which such objections and representations may be made.

Thank you very much. This note was prepared with input from Coastwatch lawyers.

Contact Karin Dubsky

Coastwatch Coordinator

kdubsky@coastwatch.org and 086 8111 684