



An  
Bord  
Pleanála

**Board Direction**  
**BD-006007-20**  
**ABP-304888-19**

The submissions on this file and the Inspector's report were considered a Board meetings held on 24/06/20 and 25/06/2020.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

In coming to its decision, the Board had regard to the following:

#### **European legislation**, including of particular relevance:

- Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- Trans-European Transport Network (TEN-T) Regulations, 2013 and 2019 which address the development of a trans-European transport network within the European Union.

#### **National and regional planning and related policy**, including:

- The National Development Plan – Ireland 2040, which identifies major national infrastructure projects including investment at Ports including Dublin Port to create high quality international connectivity.
- The National Planning Framework – Ireland 2040, which states that the role of Tier 1 ports (Dublin Port Company) will be considered in tandem with long-term infrastructural requirements as part of the Regional Spatial and Economic Strategy and Metropolitan Area Strategic Plan processes through National Policy Objective 40.
- National Port Policy, 2013 which states that the Government endorses the core principles of the Dublin Port Masterplan and the continued commercial development of Dublin Port Company is a key strategic objective of national Ports Policy.
- The Regional Spatial and Economic Strategy for the Eastern and Midlands Regional Assembly (RSES) 2019-2031 which supports the role of Dublin Port as a Port of National Significance (Tier 1 Port) and its continued commercial development, including limited expansion and improved road access, including the Southern Port Access Route.
- The Greater Dublin Area Transport Strategy 2016-2035 which states that the safeguarding of landside access to the national gateways at Dublin Port and Dublin Airport should be considered as a priority strategic objective for all relevant agencies.

**The local planning policy** including:

- The provisions of the Dublin City Development Plan 2016-2022, which supports and recognises the important national and regional role of Dublin Port in the economic life of the city and region and seeks to facilitate port activities and development, having regard to the Dublin Port Masterplan 2012 - 2040.

**The following matters:**

- (a) The evidence provided that additional and longer berths and capital dredging to facilitate same is required in Dublin Port in order to meet the projected growth within the Region, facilitate the berthing of larger ships and future proof the use of infrastructure within the Port estate.

- (b) The nature, scale and design of the proposed development including proposed Berth 53.
- (c) The range of proposed mitigation measures set out in the submitted in the documentation lodged including the Environmental Impact Assessment Report, and Natura Impact Statement incorporating appropriate assessment screening.
- (d) The submissions made in relation to the application including those submitted at the Oral Hearing; and
- (e) The report and recommendation of the Inspector.

### **Appropriate Assessment: Stage 1**

The Board agreed with and adopted the screening assessment and conclusions carried out in the Inspector's report that the only European sites in respect of which the proposed development has the potential to have a significant effect are South Dublin Bay and River Tolka Estuary SPA (004024), North Bull Island SPA (004006), North Dublin Bay SAC (000206), South Dublin Bay SAC (000210), Rockabill to Dalkey Island SAC (003000) and Lambay Island SAC (000204).

### **Appropriate Assessment: Stage 2:**

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, the oral hearing submissions and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development as part of the overall proposed upgrade project for the aforementioned European sites in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the development of the proposed development, both individually, when taken together and in combination with other plans or projects,
- (b) the mitigation measures, which are included as part of the current proposal, and
- (c) the conservation objectives for the European sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

### **Environmental Impact Assessment:**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development.
- (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application.
- (c) The submissions from the planning authority, the observers and prescribed bodies in the course of the application and the submissions of the applicant and observers during the oral hearing,
- (d) The Inspector's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the EIA, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant and the submissions made in the course of the application as set out in the Inspector's report. The Board was satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

### **Reasoned Conclusions on the Significant Effects:**

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into

account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. A Construction Environmental Management Plan (CEMP) is the overarching general mitigation relevant to the project design and delivery for the construction stage. The Draft CEMP includes all mitigation measures arising from the EIAR and is proposed to include any conditions specified by the Foreshore or Dumping at Sea permits. In addition, this Draft Plan is accompanied by a suite of draft plans including a Construction Traffic Management Plan, Invasive Alien species Management Plan, Construction Waste Management Plan, Dust and Odour Management Plan, Noise Management Plan, Marine Mammals Management Plan, Birds and Marine Ecology Management Plan, Archaeology and Cultural Heritage Management Plan, Water Quality Management Plan, Dredging Management Plan and Pollution Incident Response Plan.

The main significant effects, both positive and negative are:

- Significant positive long-term impacts on **population and human health** including increased employment, additional growth facilitated by greater imports and exports facilitated by the increased berth lengths for longer vessels, additional tax and increased tourism opportunities and the redevelopment of brownfield lands.
- Significant negative permanent impact on **cultural heritage** from the demolition of the Pier Head of the Eastern Breakwater to facilitate the construction of Berth 50A which it is anticipated will expose elements of the 19<sup>th</sup> century breakwater currently buried. While it is not proposed to mitigate the actual loss, it is proposed to develop a 3D record of the existing structure, archaeological monitoring is proposed of all ground disturbances with the proviso to resolve fully any archaeological material and it is also proposed to create a public realm visitor experience at the new eastern limit at the end of the proposed Greenway that includes the re-use of the granite blocks and related elements of the Eastern Breakwater Pier Head and the Breakwater Lighthouse and the former location of the pier head will be marked with

inscribed commemorative text, to ensure that there is a permanent *in situ* record of its former presence.

- Direct and permanent impacts on **cultural heritage** from the proposed dredging of the previously un-dredged area to the south side of the channel which is considered an area of high archaeological potential and the recovery of shipping debris and/or shipwreck can be anticipated. Subject to mitigation including archaeological monitoring of all seabed disturbances, the potential to uncover and expose previously unrecorded archaeological material, and principally shipwreck, exists, and protocols are proposed to ensure that any new discoveries will be fully and properly resolved.
- Significant and permanent negative impacts on **Avian biodiversity** in respect of the removal of several Black Guillemot nest sites in the quay walls and ro-ro ramps within OB3, OB4, Berths 50A & 52/53 directly affecting c.9 birds. This impact will be mitigated by way of the timing of the removal and the provision a number of custom made nest boxes within adjacent areas for displaced birds with this species having readily nested in such structures to date.
- Potential significant impacts on **biodiversity/coastal processes** from ship movements in the area of Berth 53 and the potential for scour of the neighbouring South Dublin Bay & River Tolka Estuary SPA impacting the long term stability of the dredged side slope at Berth 53 and potential effect on the bed levels and modifications of the position of the lowest astronomical tide across the winter foraging areas within the Tolka Estuary. With the provision of a wash protection structure to reduce scouring associated with manoeuvring vessels within the Berth 53 area, effectively reducing propeller and thruster jet velocities caused by manoeuvring ships, the predicted residual impact will be imperceptible.
- Significant negative temporary impacts on **avian biodiversity** during the construction and operations phases from disturbance to foraging on sand in shallow water to north of proposed Berth 53. Ceasing construction of this berth during low tide events during the construction stage and controlling access to this area of the greenway and heritage zone when operational

during low tide to avoid disturbance within this area by way of the provision of a controlled gate will ensure that there are no residual impacts.

- Moderate impacts on **marine biodiversity** arising from noise associated with piling, dredging and dumping during the construction phase with the implementation of mitigation measures and implementation of the NPWS Guidelines including the provision of a Marine Mammal Observer for works including piling, dredging and disposal, will not result in significant residual impacts.
- Permanent and slight negative effects on **Benthic biodiversity/Land** from the proposal to reclaim 2.18 ha of benthic soft sediment with the infilling of Oil Berth 4 which comprises habitat common to the Port with a permanent, slight positive impact to biodiversity from the removal of the Pier Head at the Eastern Breakwater resulting in a gain of 0.28 ha of subtidal soft benthos. A permanent, slight positive impact will arise from the proposal to place concrete mats on the sloping edges across a limited area of dredge areas to prevent slumping of sediment, which while resulting in the permanent loss of 1.9 ha of soft sediment benthos, will introduce an equivalent area of hard-benthos associated with the placement of the concrete mattresses. Negative, temporary to short-term, slight impacts from the dredging of 10.33 ha of soft sediment subtidal benthos with the habitat either plentiful within the area or rapidly recovering.
- Potential for short term negative impacts on **water quality** during the construction phase from increased suspended sediment levels due to the accidental release of sediment to the water column during demolition works, berth and associated construction works and capital dredging and sediment disposal operations. With mitigation measures to be employed during capital dredging and disposal operations including in particular the timing of such works the potential impact to receiving water environment will not have a significant residual impact.

The Board completed an environmental impact assessment in relation to the proposed development forming part of the overall proposed project and concluded that, subject to the implementation of the mitigation measures referred to above, including proposed monitoring as appropriate, and subject to compliance with the

conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report.

### **Overall Conclusion**

The proposed development in the operational phase will give rise to impacts which are positive. It will facilitate the completion of a single unified Ro-Ro terminal and enhanced Lo-Lo facilities facilitating the removal of capacity constraints within Dublin Port, thereby enabling projected economic growth through increased capacity and improved Port infrastructure to facilitate larger vessels. Environmental impact assessment and appropriate assessment have been considered as set out in the sections above. It can therefore be concluded that the proposed development is in accordance with the proper planning and sustainable development of the area.

### **Proper Planning and Sustainable Development**

(1) The Board considered that, subject to compliance with the conditions set out below, the proposed development would assist in meeting the economic growth projected for Dublin Port within the Dublin Port Masterplan 2040, which is supported by National and Local planning policy, by consolidating and improving the existing Port lands facilitating the berthing of larger ships and future proofing the use of infrastructure within the Port estate enabling Dublin Port. The proposed development complies with EU Directives, national and local policy and would be acceptable in terms of biodiversity, noise, landscape, cultural heritage and traffic. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

- (1) The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the information



contained in the Environmental Impact Assessment Report and the Natura Impact Statement and the further details submitted at the oral hearing, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the relevant planning authority, the developer shall agree such details in writing with the relevant planning authority prior to commencement of development. In default of agreement, the matter shall be referred to An Bord Pleanála for determination and the proposed development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

(2) The period during which the proposed development hereby permitted may be carried out shall be fifteen years from the date of this order.

**Reason:** Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

(3) (a) All mitigation, environmental commitments and monitoring measures identified in the Environmental Impact Assessment Report (Chapter 19) shall be implemented in full as part of the proposed development, except as may be otherwise required to comply with the following conditions.

(b) All mitigation and environmental commitments identified in the Natura Impact Statement (Section 5.7) shall be implemented in full as part of the proposed development, except as may be otherwise required to comply with the following conditions.

**Reason:** In the interest of development control, public information and clarity.

(4) (a) Prior to commencement of development, the developer shall submit for the written agreement of the planning authority a comprehensive document containing all mitigation and monitoring measures set out in the Environmental Impact Assessment Report, the Natura Impact Statement and other plans, and including the commitments given at the oral hearing. The document shall incorporate the monitoring and implementation proposals, as appropriate.

(b) Prior to the commencement of development a contract specific Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authorities in respect of the proposed development. The CEMP shall detail and ensure Best Construction Practice and compliance with statutory obligations. This shall include a copy of the completed documents presented in Volume 3, Part 4 of the Environmental Impact Assessment Report as drafts (Appendix 19-1 to 19-12) and within the draft Construction Environmental Management Plan.

**Reason:** In the interest of development control, public information and clarity.

(5) (a) All works shall be undertaken under the supervision of a suitably-qualified Ecological Clerk of Works.

(b) Prior to the commencement of development details of the location, design and operation of the proposed bird gates on the Greenway and in the vicinity of the Heritage Zone, shall be submitted to and agreed in writing with, the planning authority.

(c) The developer shall make available a schedule of extreme low tides, timings of works in the vicinity of the proposed Unified Freight Terminal and Berths 52 and 53.

(d) Controls be put in place in advance of demolition of structures to prevent disturbance or injury to birds

**Reason:** In the interest of the amenities of the area and the protection and restoration of biodiversity.

(6) (a) Prior to commencement of development the developer shall prepare a Construction Traffic Management Strategy for the Dublin Tunnel for the duration of the works which shall be submitted to an agreed with the Planning Authority in consultation with Transport Infrastructure Ireland and the operators of Dublin Tunnel.

(b) Proposals for maintaining public roadways free from debris arising from the proposed development.

(c) The developer shall provide details of the timing of the closures of the accesses and traffic management measures from East Wall Road to the Planning Authority prior to any implementation of new measures within the area.

(d) Prior to the commencement of development all works proposed on the public road, shall be subject to written agreement and approval from the Environment and Transportation Department. Any alterations to the public roads including footpaths, public lighting and all materials shall be agreed in writing with the Roads Maintenance Division of Dublin City Council prior to commencement of development. Any works to the existing public road and the public realm shall be carried out at the applicant's expense at no cost to Dublin City Council and to the detailed requirements of the Environment and Transportation Department.

(e) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

**Reason:** In the interest of traffic safety, to ensure the continued efficient operation of the port, and to protect the environment and the amenities of the area.

(7) The proposed development shall be operated and managed in accordance with a comprehensive Environmental Management System (EMS), a proposal for which shall be submitted by the developer to, and agreed in writing with, the planning

authority prior to commencement of development. The annual audit report for the EMS shall be made publicly available in accordance with the requirements of the planning authority.

**Reason:** In order to safeguard local amenities and protect the environment.

(8) The developer shall ensure that over-spilling at the surface of the dredger is avoided for all dredging activities within the inner Liffey channel.

**Reason:** To minimise the levels of suspended sediment in the River Liffey from the dredging operation.

(9) (a) The construction noise levels arising from the proposed development shall not exceed the worst case predicted noise levels presented in Chapter 11 of Volume 2 (Part 2) of the environmental impact assessment report.

(b) A program of construction noise monitoring shall form part of the Construction and Environmental Management Plan and detailed proposals in this regard shall be submitted to and agreed with the planning authority prior to commencement of development

(c) All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, "Assessment of Noise with Respect to Community Response" as amended by ISO Recommendations R 1996/1, 2 and 3, "Description and Measurement of Environmental Noise", as appropriate.

**Reason:** In the interest of residential amenity.

(10) (a) All of the measures contained in the Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters as published by the Department of Arts, Heritage and the Gaeltacht shall be fully implemented

including a 1,000 metre exclusion zone for piling and a 500 metre exclusion zone for dredging.

(b) Monitoring shall be carried out through the construction and dredging phases and for a period of two years post completion of all works associated with the proposed development. The monitoring methodology, including proposals to maintain a public record, shall be agreed in writing with the planning authority prior to commencement of development.

(c) The developer shall make provisions to ensure proposals for an adequate number of suitably qualified marine mammal observers for the duration of piling and dredging in order to ensure satisfactory monitoring.

(d) The developer shall deploy a minimum of four hydrophones in Dublin Bay to assist in the detection of marine mammals within the 1,000 metre and 500 metre exclusion zones for piling and dredging, which shall be used in combination with all of the measures referred to in (a) to (c) above:

(e) A minimum of two real time passive acoustic monitoring system (PAMs) shall be deployed in Dublin Bay at the approaches to Dublin Port to provide information on the presence of marine mammals.

(f) A minimum of two static acoustic monitoring systems (SAMs) shall be deployed at the dump site to the west of the Burford Bank and within Dublin Bay to provide information on the presence of marine mammals.

**Reason:** In the interest of wildlife protection and to broaden scientific knowledge in relation to ecology in Dublin Bay.

(11) The developer shall undertake monthly monitoring of seal haul out sites at the North Bull Island and adjacent areas before, during and after construction for a minimum of two years in line with international best practice. The proposed monitoring methodology, including proposals to maintain a public record, shall be

agreed in writing with the planning authority prior to commencement of development. Monitoring for harbour and grey seals shall be further extended to include a survey of Dublin Bay within the zones of influence as defined in the environmental impact assessment report.

**Reason:** In the interest of wildlife protection and to broaden scientific knowledge in relation to ecology in Dublin Bay

(12) The developer shall institute a programme to monitor the movement of winter wetland birds in the adjacent European Sites at the South Dublin Bay and River Tolka Estuary Special Protection Area. This monitoring programme shall continue throughout the construction phase and for a period of two years after the completion of such works, with monthly surveys from October to March. The results of this monitoring programme shall be submitted to the planning authority at 12-monthly intervals to maintain a public record.

**Reason:** In the interest of wildlife protection and to broaden scientific knowledge in relation to ecology.

(13) The developer shall institute a programme to monitor the movement of Black Guillemots in the Liffey Channel. This monitoring programme shall continue throughout the construction phase and for a period of two years after the completion of such works. The results of this monitoring programme shall be submitted to the planning authority at 12-monthly intervals to maintain a public record.

**Reason:** In the interest of wildlife protection and to broaden scientific knowledge in relation to ecology

(14) The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. The areas requiring testing are outlined in the environmental impact assessment report. In this regard, the developer shall –

(a) Undertake a dive survey in relation to geophysical anomalies documented in the Archaeo-geophysical Report included in the Environmental Impact Assessment Report (Appendix 14). The dive survey shall be carried out by a suitably qualified archaeologist and licensed under the National Monuments Acts 1930-2004.

(b) Notify the planning authority in writing at least four weeks prior to the commencement of any site operations, including hydrological and geotechnical investigations relating to the proposed development.

(c) Employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works.

(d) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the planning authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the underwater archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

(15) The developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

(16) The applicant shall implement the community gain proposal set out in the Planning Report (Section 7.7 and Appendix C) prepared by RPS which was submitted with the application, including the financial commitments set out therein, which are considered a community gain in accordance with section 37 (G)(7)(d) of the Planning and Development Act 2000, as amended. The applicant shall provide the planning authority with a site location map identifying the proposed site(s) for the Community Gain proposals. In default of agreement on any of these commitments, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** To offset the impacts on the local community in the construction phase and to maximise the long-term benefits of the proposed facilities to local residents.

(17) The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



## Schedule of Costs

In accordance with Section 37H(2)(c) of the Planning and Development Act, as amended, the amount due to be paid by the applicant to the Board is **€2,345**.

**A breakdown of the Board's costs is set out in the Attached Appendix 1.**

**Board Member**

**Date:** 25/06/2020

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Chris McGarry