



## Board Direction

**Ref: 06D.PA0042**

A further SID Board meeting was held on October 25<sup>th</sup>, 2016 to consider this application.

Having considered the applicant's submissions, the submissions from other parties, the planning inspector's report dated March 23<sup>rd</sup>, 2016 and all other submissions on file the Board decided by a 4:1 majority to grant permission for the proposed development subject to conditions including a restriction on the size of vessels allowable from 340 metres down to a maximum of 250 metres length over all (LOA).

### REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard, inter alia, to:

- the long established use of Dun Laoghaire Harbour as a port serving a wide, and evolving, range of commercial and recreational activities;
- the National Ports Policy 2013, as issued by the Department of Transport, Tourism and Sport, in which Dun Laoghaire is identified as a Tier 3 Port of Regional Importance and the long term future of Dun Laoghaire Harbour is seen as being "in terms of marine leisure, maritime tourism, cultural amenity and urban redevelopment";
- the Regional Planning Guidelines for the Greater Dublin Area 2010 - 2022 which, inter alia, recognises that Dun Laoghaire has "a role to play in port capacity at a smaller scale and in relation to specialist needs";
- the provisions of the Dun Laoghaire County Development Plan 2016-2022 including all relevant Special Local Objectives and the Dun Laoghaire Urban Framework Plan;

- the Dun Laoghaire Harbour Master Plan 2011-2030 including, in particular, the specific objective to “Accommodate cruise liner facilities, having regard to the needs of other harbour users, potential environmental impacts and the feasibility of providing such facilities”;
- the nature and the extent of the berth proposed in the application documentation and the proposed maximum ship length in the context of the needs of other harbour users and the amenities of the area;
- all documentation on file including the EIS, NIS and the submissions and observations made in respect of the application including at the oral hearing;
- the planning history of the site;
- the requirement on the applicant to secure a Dumping at Sea Permit from the Environmental Protection Agency (EPA); and
- the report and recommendation of the Inspector dated March 23<sup>rd</sup>, 2016; and
- the memorandum from the Director of Planning dated September 9<sup>th</sup>, 2016.

### **Environmental Impact Assessment**

In carrying out an environmental impact assessment of the proposed development, the Board took the following into account:

- the nature, scale, extent and location of the proposed development;
- the environmental impact statement submitted with the application;
- the applicant’s oral hearing submissions;
- the submissions from the planning authority and from the observers in the course of the application and the submissions made to the oral hearing; and
- the Inspector’s report and recommendation dated March 23<sup>rd</sup>, 2016.

The Board considered that the environmental impact statement and the above listed documentation identify and describe adequately the direct and indirect effects of the proposed development on the environment. The Board completed an environmental impact assessment in relation to the subject development, by itself and in combination with other development in the vicinity.

The Board concurred with, and adopted, the report of the Inspector except in respect of the following matters:

#### Navigation

The Board was satisfied that for the purposes of carrying out an Environmental Impact Assessment that the channel and turning circle proposal, as set out in the planning application, EIS and at oral hearing, was generally an acceptable approach. The Board was also of the view that more detailed simulations and modelling is a normal next step prior to construction and operation. The Board also considered that any navigation concerns in respect of very large ships of up to 340 metres would not arise as a result of the condition restricting ships to a maximum length of 250 metres. In view of the restrictions on the overall length allowed the Board did not consider that any modifications to the turning circle or approach channel would be necessary but in the unlikely event of such a requirement the Board considered that any such changes might be considered by means of an application for an amendment of the permission under S.146B of the Act.

#### Visual Impacts

The Board considered that the number and location of photomontages were adequate to carry out an environmental impact assessment. The Board considered that the reduction in the scale of the berth, as required by planning condition, would result in a nature and extent of development that would have an acceptable visual impact on the environment.

#### Impact on Roundheads (Protected Structures at Harbour entrance).

Having considered the submissions from the applicant and the observers the Board considered that the stability of the roundheads was unlikely to be affected by scour or erosion arising from cruise ships and generally accepted the submissions of the applicant's consultants (Waterman Moylan) at the oral hearing. In any event, a programme of monitoring of erosion or scour at foundations can be required by condition to ensure that any negative trends can be identified and addressed at an early stage.

#### Other Impacts

Having regard to concerns expressed by the Inspector the Board was satisfied that there was adequate information on file in respect of the

potential impacts arising from construction noise, wind shadow, bus parking, shadow analysis, for the purposes of carrying out an Environmental Impact Assessment. The Board considered that each of these impacts would be either intermittent or temporary in duration and was of the view that the impacts would be acceptable and the need for further information on any of these matters did not arise.

#### EIA Conclusion

The Board concluded that the impacts arising from the proposed development, as submitted, which seeks to accommodate cruise ships of up to c.340 metres (LOA) would result in an excessive scale of development with effects on Dun Laoghaire Harbour that would be unacceptable in terms of impacts on: the visual amenities of the area, the historic character of the area, and the recreational amenities enjoyed by sailors and other users of the harbour generally. To address these concerns the Board decided that it would be appropriate to reduce the scale of the development, by planning condition, so that the berth length would only accommodate cruise ships (or other vessels) with a maximum length of 250 metres (LOA). As well as significantly reducing the scale of vessels coming into the harbour this creates significantly less intrusion into current open areas of water between the end of the new berth and the roundheads to the benefit of recreational users of the harbour.

The Board assessed the environmental impacts of the proposed change brought about by the planning condition drafted to reduce the nature and extent of the development and was satisfied that the impacts arising from the changes would relate, principally, to the character of the area and the amenities of the area. In both regards the Board considered that the changes required by condition would have a positive impact and considered that the amendments to the configuration of the berth would not otherwise have any implications in terms of EIA and, in particular, the extent of dredging and piling would not increase. Overall, the Board considered that the environmental impacts arising from the amended scheme, which come entirely within the footprint of the originally submitted development, would be the same in terms of the nature of the effects and the same, or slightly less, in terms of the scale of the impacts. Furthermore, the Board considered that the amended development would not give rise to any new significant impacts on the environment. In granting permission for a berth of reduced length the Board considered that it had adequate information on which to carry out an environmental impact assessment.

The Board concluded that, subject to the planning conditions attached and subject to the implementation of the mitigation measures proposed, the effects on the environment of the proposed development would be acceptable.

### **Stage 1 Appropriate Assessment Screening**

The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site.

The Board had regard to:

- the NIS submitted with the planning application and the documentation on file;
- the submissions from the planning authority and from the observers in the course of the application;
- the submissions made to the oral hearing;
- the Inspector's report and recommendation dated March 23<sup>rd</sup>, 2016; and
- the memorandum from the Director of Planning dated September 9<sup>th</sup>, 2016,

and completed a screening for Appropriate Assessment. The Board, as per the Inspector, was satisfied that no source-pathway-receptor issues arise for any European Site in excess of 15 km from the site of the proposed development.

The Board accepted and adopted the screening assessment carried out by the applicant's consultant ecologists (Scott Cawley) in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the following 8 number European Sites:

- Howth Head SAC [Site code: 000202]
- Irelands Eye SAC [Site code: 002193]
- Baldoyle Bay SAC [Site Code: 000199]

- Bray Head SAC [Site code: 000714]
- Ballyman Glen SAC [Site code: 000713]
- Knocksink Wood SAC [Site code: 000725]
- Wicklow Mountains SAC [Site Code: 002122] and
- Wicklow Mountains SPA [Site code: 004040].

The Board further accepted and agreed with the screening assessment carried out by Scott Cawley in which it was concluded that there are nine European sites (3 number SACs and 6 number SPAs) for which there is a possibility of significant effects:

- Rockabill to Dalkey Island cSAC (Site code: 003000)
- South Dublin Bay cSAC (Site code: 000210)
- North Dublin Bay cSAC (Site code: 000206)
- Dalkey Islands SPA (Site code: 004172)
- South Dublin Bay and Tolka Estuary SPA (Site code: 004024)
- North Bull Island SPA (Site code: 004006)
- Howth Head Coast SPA (Site code: 004113)
- Baldoyle SPA (Site code: 004016) and
- Ireland's Eye SPA (Site code: 004117).

## **Stage II Appropriate Assessment**

The Board considered the Natura Impact Statement, the report of the Inspector and all submissions including those made at the oral hearing and

carried out an appropriate assessment of the implications of the proposed development for the nine 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. Having regard to the nature, scale and design of the proposed development, the Natura impact statement submitted with the application, the submissions on file and the Inspector's assessment, the Board completed an appropriate assessment of the impacts of the proposed development on the following 8 number European sites:

- South Dublin Bay cSAC (Site code: 000210)
- North Dublin Bay cSAC (Site code: 000206)
- Dalkey Islands SPA (Site code: 004172)
- South Dublin Bay and Tolka Estuary SPA (Site code: 004024)
- North Bull Island SPA (Site code: 004006)
- Howth Head Coast SPA (Site code: 004113)
- Baldoyle SPA (Site code: 004016) and
- Ireland's Eye SPA (Site code: 004117).

The Board concluded that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the above European sites in view of the sites' conservation objectives. In doing so, the Board adopted the applicant's ecologist's stage 2 appropriate assessment in respect of these sites.

The remaining site for consideration is the Rockabill to Dalkey Island cSAC (Site code: 003000). In deciding not to accept the Inspector's recommended refusal reason number 1 which effectively addressed concerns regarding the effects that waste water and dredging might have on the Harbour Porpoise in the Rockabill to Dalkey Island cSAC the Board came to the following conclusions.

The Board noted that the proposed cruise berth is designed to function as a port of call only and that it is not proposed to have waste water reception facilities within Dun Laoghaire Harbour. The Board also noted that the discharge of waste water from ships is governed by the Marpol Convention and further noted, as set out on page 63 of the applicant's NIS, that it is proposed to discharge all waste water outside territorial waters. The Board was, therefore, satisfied that risk of ship waste water discharging into the Rockabill to Dalkey Island cSAC and affecting the Harbour Porpoise does not arise and did not consider it necessary, or appropriate, to address this matter by planning condition.

In respect of the Marine Mammal Observer and the inspector's concerns regarding dredging and piling being carried out on a 24 hour basis the Board noted that the DAHG guidance document (Guidance to Manage Risk to Marine Mammals from Man-made Sound Sources in Irish Waters, DAHG, 2014) will be implemented in full for the protection of marine mammals from potential injury due to the noise generated during piling operations. In respect of the dredging programme, the Board had regard to the submissions received including from the NPWS, the submissions made at oral hearing stage and had particular regard to the extent of the deviations from the DAHG Guidance set out in the applicant's expert ecologist's report (Ref. page 61, Natura impact statement). The Board concurred with the applicant's ecologist that the shorter dredging programme (which includes night time dredging) appropriately balances the very low risk of injury or disturbance to marine mammals of commencing some dredging cycles outside daylight hours with minimising the overall duration of the disturbance. The Board concurred with the conclusion regarding the merits of a shorter dredging programme set out on page 61 of the NIS.

Overall, in respect of the Inspector's recommended refusal reason number 1 the Board concurred with and adopted the stage 2 appropriate assessment carried out by the applicant's ecologist and was satisfied that the proposed development would not adversely affect the integrity of the Rockabill to Dalkey Island cSAC (Site code: 003000) in view of the site's Conservation Objectives.

### **Conclusion on Proper Planning & Sustainable Development**

It is considered that, subject to compliance with the mitigation measures set out in the environmental impact statement and the Natura impact statement and subject to compliance with the conditions set out below, the proposed development of a cruise berth facilitating acceptance of cruise ships up to a maximum of 250 metres LOA:



- would be in accordance with the National Ports Policy and in accordance with national, regional and local planning policy;
- would enable the development of an appropriate level of commercial cruise tourism within the harbour;
- would support the regional role of the port and be beneficial in re-establishing tourism and commercial linkage between the harbour and Dun Laoghaire Town Centre as envisaged in local planning policy;
- would strike an acceptable balance between commercial development of the harbour and protecting the amenities of recreational users and would be acceptable in terms of navigation, marine safety and convenience for all harbour users;
- would be acceptable in terms of traffic safety and convenience;
- would not seriously injure the amenities of the area or of property in the vicinity;
- would adequately protect the harbour's heritage assets and protected structures; and
- would not be prejudicial to public health or safety.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the recommendation of the Inspector to refuse planning permission the Board concluded as follows:

### **Reasons 1 & 2**

The reasons for not accepting the Inspector's reasons number 1 and 2 are set out, respectively, under the Appropriate Assessment and Environmental Impact Assessment sections above.

### **Reason 3**

The Board considered that the National Ports Policy (NPP) principally addresses commercial freight and noted that Dun Laoghaire Harbour was

specifically identified as a Tier 3 Port of Regional Importance in the National Ports Policy document. In addition, the Board noted that in the NPP the long term future of Dun Laoghaire Harbour is seen as being “in terms of marine leisure, maritime tourism, cultural amenity and urban redevelopment”. The Board did not accept the Inspector’s recommendation to refuse permission on the grounds that the proposed development would conflict with the vision set out in the NPP; rather the Board considered that the proposed development would be in accordance with the NPP and further considered that the amended scheme would fully align with current regional and local planning policies.

## CONDITIONS

1. a) Plans Particulars.  
b) All environmental mitigation measures set out in the Environmental Impact Statement, Natura impact Statement, and associated documentation submitted by the applicant with the application and oral hearing shall be implemented in full, except as may otherwise be required in order to comply with the Conditions of this order.

**Reason:** In the interest of clarity and environmental protection.

2. The proposed development shall be amended as follows:
  - a) The berth shall be reduced in scale to accommodate vessels with a maximum length of 250 metres (LOA).
  - b) The length of the new berth structure shall be reduced from 435 metres to 320 metres when measured from the land side.
  - c) No individual element of the berth (causeway, quay or access walkway) shall increase in dimensions over that proposed in the application. The amended configuration shall continue to make provision for a boating underpass in the causeway.

Revised plan, section and elevational drawings showing these amendments shall be submitted to and agreed with the planning authority prior to the commencement of development. The agreed amended scheme shall be made available for public record.

**Reason:** To curtail the scale and extent of the development in the interests of the amenities of recreational harbour users.

3. Permission shall be for a period of eight years from the date of this order.

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

4. A monitoring plan shall be submitted to and agreed with the planning authority in respect of monitoring the structural stability of the roundheads (protected structures) at the entrance to the harbour.

**Reason:** To ensure the long term structural integrity of the protected structures.

5. Details in respect of the following shall be submitted to be agreed in writing with the PA prior to the commencement of development:

- a) the palette of all proposed finishes; and
- b) proposals for public access to the facility when the berth is not in use.

**Reason:** To ensure that a high quality of public realm is created and is publicly accessible at appropriate times in the interests of the amenities of the area.

6. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall include specific provisions for the following:

- A Construction Traffic Management Strategy,
- Proposals for maintaining public roadways free from debris arising from the proposed development, and
- A management system for invasive alien species which shall be used for the duration of the proposed works;

The plan shall include a comprehensive monitoring schedule to include inter alia noise, vibration, and dust monitoring with quarterly reporting to the planning authority. A record of daily checks that the works are being undertaken in accordance with the Construction

Management Plan shall also be kept for inspection by the planning authority.

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

7. (a) The construction noise levels arising from the proposed development shall not exceed the predicted noise levels presented in Chapter 5.6 of Volume 1 of the EIS.
- (b) A program of construction noise monitoring shall form part of the Construction Management Plan and detailed proposals in this regard shall be submitted to and agreed with the Planning Authority prior to the 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 interests of residential amenity.

8. In relation to marine mammals 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.

**Reason:** In the interest of wildlife protection.

9. 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 statement. In this regard, the developer shall –
  - (a) 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.
  - (b) Employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works.

- (c) 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.

10. No overflow bus parking shall take place along the rail siding in the vicinity of the Old Quay (Accommodation Walk).

**Reason:** To ensure the development will not interfere with potential sustainable transportation initiatives.

#### DETERMINATION OF COSTS

The Board noted the details of costs arising on the case for An Bord Pleanála and considered the claims made by the following observers:

Name	Amount awarded	Reasons and Considerations
An Bord Pleanála	€52,096	In accordance with schedule of costs incurred.
Raphael G. Heron	Nil	See below
Dún Laoghaire Combined Clubs	Nil	See below
Brian L. Bond	Nil	See below
Thomas M. Clear	Nil	See below
An Taisce	Nil	See below

The Board decided not to award costs to the observers in the case for the following Reasons and Considerations:

Having regard to:

- the submissions made on the case by the observers in writing;
- the detailed and reasoned reports of the Board's inspector, and
- the Board's decision in the case,

it is considered that the Strategic Infrastructure Development application process has enabled full participation by the observers in the case both in writing and at the oral hearing and there are no particular circumstances arising that would justify the developer having to make a contribution towards the costs of the observers in this case.

Note: The Board noted the memorandum from the Director of Planning dated September 9<sup>th</sup>, 2016 in respect of a number of procedural matters and would comment as follows.

In considering the application, the Board was satisfied that it was fully aware of Dun Laoghaire Harbours Tier 3 status in the National Ports Policy.

The Board was aware that a new Development Plan became active during the lifetime of the application. The Board considered that all relevant issues associated with the proposed development including the appropriateness of the scale of the berth, the maximum vessel size proposed and policy considerations in relation to development of the harbour had been thoroughly aired in written submissions and at the oral hearing. It was not considered necessary to re-open the case for further submissions on this matter.

The Board noted the manner in which Appropriate Assessment Screening and Stage II Assessment had been carried out in the Inspector's report. The Board was satisfied that having regard to all documentation on file, including the detailed report of the Inspector, it had adequate information before it to meet its appropriate assessment obligations.

Overall, the Board was satisfied that there was no need to re-open an oral hearing or to seek any further documentation or submissions.

Board Member: \_\_\_\_\_  
Nicholas Mulcahy

Date: October 27<sup>th</sup>, 2016

*Please issue a copy of Board Direction with the Order and advise the applicant regard the provisions of S.34(13) of the Planning and Development Act when issuing the order.*

Decision Quashed