



The submissions on this file and the Inspector's report were considered at a Board meetings held on 23rd January 2018, 21st February 2018 and again on the 26th June 2018. At this final meeting, the Board considered the responses received to the Board's notice dated 12th May 2018 on the subject of appropriate assessment. In particular, the submission of the Department of Culture, Heritage and the Gaeltacht dated 24th May 2018.

The Board decided to refuse permission for the following reasons and considerations.

Whereas further consultation between the applicant and Department of Culture, Heritage and the Gaeltacht might prove beneficial in relation to advancing this project, the Board considered it appropriate to decide the case on the basis of the documentation before it and that further cross circulation was not necessary or beneficial at this stage.

Reasons and Considerations

Notwithstanding the demonstrated need to improve the safety and accessibility of Baltimore Harbour and the acceptability in principle of the breakwater as applied for, the construction of the proposed breakwater would result in the permanent loss of 1.57 hectares of the marine community type *shallow sand/mud community complex*, a subset of large shallow inlet and bay habitat, one of the qualifying interest of the Roaringwater Bay and Islands Special Area of Conservation (side code 000101). The Conservation Objectives set by NPWS (Version 1.0 of 19th July 2011) for large

shallow inlet and bay is that the permanent habitat area is stable or increasing, subject to natural processes. The Board could not be satisfied, given the submissions by NPWS, that the proposed development would not result in the direct loss of this habitat and would therefore adversely affect the integrity of the European Site in view of the site's conservation objectives. In such circumstances the Board is precluded from granting approval.

Note: The Board did not include the other reasons for refusal recommended by the Inspector. In this regard :-

- (i) The Board did not share the Inspector's concerns that the need for the proposed development was not justified and considered that the need for a breakwater development at this location, as a means of improving the safety and accessibility of the harbour, was established and would be generally beneficial for the community. The Board noted the various alternatives explored by the applicant and was satisfied in this regard. The Board also considered that the proposed development would facilitate the process of separation of the various marine uses within the harbour in a satisfactory manner.
- (ii) The Board considered that there was sufficient information on the file to undertake an environmental impact assessment of the direct and indirect effects of the proposed breakwater and navigation channel on the environment. The Board did not share the inspector's concerns in relation to effects on the landscape and views, risks to navigation, testing and characterisation of the seabed, potential effects on designated shellfish waters or on the Cove.
 - In relation to visual and landscape impact, while accepting that the proposed development would have some negative impacts, these were considered acceptable given the important role of the breakwater.
 - The Board concluded that, if the navigation measures proposed to alleviate and manage potential congestion issues at the head of the proposed breakwater were implemented, navigation could be managed in an acceptable manner.

- With regard to the representativeness of the samples taken in the area to be dredged, the Board noted that the biological and physicochemical testing and the results of the trial hole examination and was satisfied that the number and distribution of samples taken was sufficient to characterise the sediments for the purpose of assessing the impact of sediment resuspension from the proposed dredging and dumping operations.
- The Board noted that the Baltimore Harbour Sherkin Shellfish Area and the Roaringwater Bay Shellfish Area are north of the proposed development and do not overlap with the modelled dispersion of sediment from the proposed dredging operations. In addition, current licenced aquaculture sites are also outside this dispersion area. In light of this the Board was satisfied that there would not be significant impact on aquaculture activities within the bay.
- In terms of coastal processes, the Board was satisfied that the likely significant effects on the area generally, including the Cove, had been adequately considered in the application documentation. The Board concluded that impacts of the proposed development would be generally acceptable and would not constitute a reason for refusal of permission.

Appropriate Assessment

In completing the Appropriate Assessment, the Board did not agree with all aspects of the Inspector's report. The following sets out the Board's conclusion with respect to the Appropriate Assessment.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the information on the file was adequate in order to issue a screening determination and that the Roaringwater Bay and Islands SAC (side code 000101) and the Lough Hyne Nature Reserve and Environs SAC (site code 000097), are the only European sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement, the inspector's report and all other relevant submissions, including submissions received on foot of a notice issued by the Board to the parties dated 12th April 2018.

The Board carried out an Appropriate Assessment of the implications of the proposed development on Roaringwater Bay and Islands SAC (side code 000101) and the Lough Hyne Nature Reserve and Environs SAC (site code 000097) in view of these 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 assessment the Board considered, in particular, the:-

- (i) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically aquaculture and fisheries activities in Roaringwater Bay,
- (ii) mitigation measures which are included as part of the current proposal,
- (iii) Conservation Objectives for Roaringwater Bay and Islands SAC (side code 000101) and the Lough Hyne Nature Reserve and Environs SAC (site code 000097),
- (iv) Submissions from the Department of Culture, Heritage and the Gaeltacht,
- (v) Roaringwater Bay and Islands SAC (site code:000101). Conservation objectives supporting document – marine habitats Version 1. NPWS, April 2011.
- (vi) The Interpretation Manual of European Union Habitats - EUR28. European Commission, April 2013.
- (vii) Article 6 Assessment of Aquaculture and Fisheries in Roaringwater Bay. Marine Institute, June 27th 2013.

The Board noted the effects and potential effects identified by the inspector in the appropriate assessment section of her report. These are:-

- The footprint of the breakwater leading to the permanent loss of 1.57 hectares (0.012%) of large shallow inlet and bay, which is a qualifying interest of Roaringwater Bay and Island SAC.
- The dredging of the navigation channel and the area under the proposed breakwater and the subsequent dumping of the spoil at sea leading to:
 - the disturbance of 3.01 hectares of large shallow inlet and bay (a qualifying interest) within the Roaringwater Bay and Islands SAC,
 - the representativeness of the sediment samples taken for characterisation of, and the determination of the level of contaminants in, the sediments to be dredged
 - impacts on water quality including the spreading of contaminants within Roaringwater Bay and Islands SAC,
 - potential sedimentation of reefs (a qualifying interest) within Roaringwater Bay and Islands SAC from both the dredging and dumping activities,
 - the potential for material dumped at the identified dumping at sea site to be transported to Lough Hyne Nature Reserve and Environs SAC (site code 000097).

In completing the Appropriate Assessment, the Board concluded that on the basis of the information provided with the application, including the Natura Impact Statement, and in light of the reasons and considerations set out above, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Roaringwater Bay and Islands SAC (site code:000101), in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval.

The Board did not accept the Inspector's Appropriate Assessment in relation to the effects of the proposed dredging and subsequent dumping of the spoil at the proposed dumpsite. In particular:-

- In respect of the disturbance from the dredging of 3.01 hectares of large shallow inlet and bay within the Roaringwater Bay and Islands SAC the Board noted that the area to be dredged, and the surrounding 50.5 hectares

within which the NIS models predict will be subjected to deposition of suspended material, is classified as *shallow sand/mud community complex*, a marine community type of large shallow inlet and bay. The Board agreed with the opinion of the NPWS (submission 24th May 2018) that the natural processes to allow a return to a pre-existing faunal diversity will continue to exist after the works have been completed. The Board concluded that this is a temporary loss of amenity and the site will recover within a short period of time and would not therefore result in an adverse effect on the integrity of the Roaringwater Bay and Islands SAC.

- With regard to the representativeness of the samples taken in the area to be dredged, the Board noted that the biological and physicochemical parameters measured show the characteristics of the samples to be very similar, indicating a relatively homogeneous seabed type. This is reflected in the single marine community habitat type across the area to be dredged and throughout Baltimore Harbour generally. In addition, the conditions found in the six trial holes excavated up to depths 5 metres at the location of the proposed breakwater were found to be similar with the surface sediments consisting of un-compacted silt over silt or silty clay with shells. Based on the above sampling and testing the Board was satisfied that the number and distribution of samples taken was sufficient to characterise the sediments for the purpose of assessing the impact of sediment resuspension from the proposed dredging and dumping operations.

- Impacts on water quality, including the spreading of contaminants within Roaringwater Bay and Islands SAC, was considered by the Board and, based on the levels of contaminants measured in the sediment samples collected from the area proposed to be dredged, together with the rural nature and general absence of industrial activity at this location, the Board was satisfied that sediments proposed to be dredged do not contain contaminants that would give rise to ecotoxicological effects and that any release of nutrients would not result in eutrophication impacts.

- The Board also considered the potential impacts of the deposition of sediments resulting from the proposed dumping operations on the Roaringwater Bay and Islands SAC and the Lough Hyne Nature Reserve and Environs SAC. The NIS and EIS presents sediment dispersion models resulting from the dredging and dumping activities. These models indicate that there is very limited spatial overlap (where it does occur only it is at very low levels of settlement) with the Roaringwater Bay and Island SAC as a result of the dumping at sea operations. In addition, the models show no interaction of the dumping at sea operation with the Lough Hyne Nature Reserve and Environs SAC.

The Board noted that the proposed development would be subject to an assessment and permitting process by the EPA in accordance with the Dumping at Sea Act 1996 (as amended).

The Board was satisfied that there was sufficient information on file to assess the impact of the proposal on the Roaringwater Bay and Islands SAC (side code 000101) and the Lough Hyne Nature Reserve and Environs SAC (site code 000097).

The Board was satisfied that the dredging and dumping activities of the proposed development would not adversely affect the integrity Roaringwater Bay and Islands SAC (side code 000101) or the Lough Hyne Nature Reserve and Environs SAC (site code 000097) in view of the sites' conservation objectives.

Please circulate copy of Direction with the Order.

Board Member

Date: 26th July 2018

Eugene Nixon

