



An
Bord
Pleanála

Memorandum 06D.PA0042

To: Board
From: Rachel Kenny, Director of Planning
Re: Construction of Cruise Berth facility at DunLaoghaire Harbour.
(06D.PA0042)
Date: 9th September, 2016

Further to considerations and assessments to date in respect of this case, I have considered the File (06D.PA0042) and Inspector's Report in full. To this end, it is considered appropriate, that a number of fundamental and procedural issues be brought to the Board's attention. No judgement on the merits of the case have been made in this memo, which is of course a matter for the inspector.

Key fundamental and Procedural Issues, being brought to the Board's attention, are noted as follows:

- **Port Policy status:** Section 5.3.1 (page 25) of the report refers to Dun Laoghaire as a "tier 2 Port of Regional Importance". In the National Ports policy it is of course a Tier 3 port and this Tier 3 status is correctly referred to elsewhere in the report. The further wording of section 5.3.1 correctly however refers to its status as a Tier 3 Port of Regional Significance.
- **Development Plan:** The Board should be specifically referred to the changed Development Plan status. Submissions were based on a previous Development Plan no longer in force. This is referred to in particular in the Inspector's assessment section 10.2.3 (p 156). The Board will need to consider the implications of any changed policy background in determining the case and should consider any potential need for further consultation and seeking further submissions on such changes prior to issuing a decision on the case.
- **Appropriate Assessment** The Board's attention should be brought to section 9.4 (p 129/130) of the Inspector's report. The Board will be aware that section 177V (2) sets out

the matters to be taken into account by the competent authority in carrying out appropriate assessment.

- (a) the Natura impact report or Natura impact statement, as appropriate;
- (b) any supplemental information furnished in relation to any such report or statement;
- (c) if appropriate, any additional information sought by the authority and furnished by the applicant in relation to a Natura impact statement;
- (d) any additional information furnished to the competent authority at its request in relation to a Natura impact report;
- (e) any information or advice obtained by the competent authority;
- (f) if appropriate, any written submissions or observations made to the competent authority in relation to the application for consent for proposed development;
- (g) any other relevant information.

- Whilst s 9.4 states that the assessment is 'based on the submitted NIS' it would appear to me that in carrying out the appropriate assessment the Inspector did have regard to other relevant matters raised in submissions on the file and at the Hearing in accordance with s. 177V(2).
- There would appear to be a discrepancy in the European Sites referred to in section 9.7.5 (p 132/133) for purposes of moving to stage 2 appropriate assessment. The wording appears a little unclear in regard to standard practice relating to wording for completing screening and moving to stage 2 appropriate assessment particularly when reading the conclusions of the preceding section 9.7.4. The Inspector also appears to have included two screening conclusions in paragraphs s. 9.7.4 and 9.7.16. Paragraph 9.7.16 concludes and identifies on the nine sites to be considered for Stage 2 appropriate assessment.
- Section 9.7.1 initially identifies 17 European sites considered for screening purposes. It is concluded in section 9.7.4 that six sites can be screened out. In section 9.7.5 the Inspector appears however to have incorrectly numbered and identified the sites 'screened in' (the Inspector refers to this as a further detailed screening assessment) It would appear that in the list of sites referred to in section 9.7.5 Wicklow Mountains SPA should be excluded as having already been screened out in section 9.7.4. In addition 2 sites referred to in the original list of sites set out in section 9.7.1 namely Ireland Eye SAC and Wicklow Mountains SAC are not referred to in section 9.7.4 as being screened out notwithstanding that the applicants screening report suggests that they can be omitted from a stage 2 appropriate assessment on the basis of no source pathway receptor and direct impact due to distance and absence of hydrological connection. It would appear and I have assumed that the Inspector concurred with this having regard to the sites that were subsequently considered for stage 2 appropriate assessment.
- In section 11.3 (p 161) the inspector refers to issues of IROPI. It is a matter for the Board itself, should it concur with the view that the proposed development might

adversely affect the integrity of a European site, to consider whether, in the absence of alternatives, IROPI apply in this case.

- **Need for further Information may arise:** If the Board are minded to grant permission it may wish to consider the implications of the Inspector's suggestion to limit night time dredging operations by way of condition. The Board would need to satisfy itself should it be minded to grant permission and attach such a condition that it has sufficient information and data to complete an EIA and AA in light of these changed circumstances and any revised construction timelines.
- **Need for further Information may arise:** Should the Board be minded to accept the Inspector's recommendation in regard to the perceived shortcomings in the navigation analysis and seek additional information on this issue it may then be necessary to advise the applicant to consider how any such additional information impacts on the conclusions reached in regard to the EIS and NIS lodged.



Rachel Kenny
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