



An
Bord
Pleanála

Memorandum GHE IROPI Procedures

To: Board
From: Rachel Kenny, Director of Planning Operations
Re: GHE – IROPI Procedures
Date: 8th October, 2020

1.0 Background

1.1 Proposed Development:

Planning permission was sought by Galway Harbour Company for an extension of Galway Harbour at Renmore and Townparks Townlands, and on lands to be reclaimed from the foreshore and the sea in Galway Bay, to the south of the existing Galway Harbour Enterprise Park. The works will include re-development of some of the lands at Galway Harbour Enterprise Park. Access to the development will be via the existing access at the junction of Lough Atalia Road and Bóthar na Long. The proposed development will include the relocation of the majority of the existing harbour related activities and businesses from the existing dock area to the new deep-water berths, quays, jetties and yards to be located at the harbour extension. The proposed development is largely in an area of Galway Bay which is designated as a candidate Special Area of Conservation (cSAC) and a Special Protection Area (SPA) and includes works on Lough Atalia Road Rail Bridge (a protected structure). The main elements of the development proposed include:-

- quay walls, breakwaters and wave walls to create commercial quays and a deep-water docking facility, extending southwards into Galway Bay,
- dredging to create a new approach channel to the commercial quays and the deep-water docking facility berths,
- reclamation of approximately 27 hectares from the foreshore and seabed,
- development of the reclaimed lands and redevelopment of part of the adjacent Galway Harbour Enterprise Park lands for harbour related business,
- marina on the western side of the proposed main harbour,
- fishing quays, slipway for a lifeboat station and a nautical centre on the eastern side on the main harbour facility,
- a twin track freight rail link from the existing Galway to Dublin rail line to the commercial quays, including embankments, rail overbridge to existing service road and noise abatement screening,
- the construction of oil and bitumen transfer pipelines to the existing oil and bitumen tank farms on the Galway Harbour Enterprise Park and the provision of fire water storage facilities. This falls within the remit of EU Directive (96/82/EC) on the control of major-accident hazards, (known as the Seveso II Directive),
- harbour related buildings, including Port Operations Office (four storeys); Harbour Management Warehouse (single storey); Marina Office (single storey); Passenger Terminal (single storey); and ancillary car parking and site services, including three number ESB sub-stations, demolition of one number ESB sub-station, three Control Offices and Oil Terminal Water Pumphouse and a helicopter pad for search and rescue purposes,
- the construction / improvement of access roads including the horizontal and vertical realignment of the road under Lough Atalia Road Rail Bridge (a protected structure) and realignment and improvements including traffic lights at Dock Road / Bóthar na Long / Galway Harbour Enterprise Park Access Road junction (adjacent to Harbour Hotel),
- the provision of landscaping and amenity areas, including replacement of the previously permitted amenity strip from the southern seaward boundary of the Galway Harbour Enterprise Park to form an amenity link from the marina to the nautical centre,

- the proposal includes all associated temporary and permanent site development (including service roads/realignment of roads and underground works), landscape works (including public lighting and services) and activities to facilitate the construction of the development.

The planning application was lodged on the 10th January 2014 and was accompanied by:

- A Planning Report.
- An Environmental Impact Statement (including Appendices and Non-Technical Summary) – (two revisions/errata/addendums were submitted to the EIS during the course of the application. One as a result of the additional information request and a second addendum at the oral hearing). And assessment of the EIA under the provisions of the most recent EIA Directive is set out under Section 8 of this supplementary report).
- A Natura Impact Statement - (two revisions/errata/addendums were submitted to the NIS during the course of the application. One as a result of the additional information request and a second addendum at the oral hearing).
- Accompanying drawings.

An Oral Hearing was held between January 13th and January 23rd 2015. An Inspectors report and recommendation was prepared and submitted to the Board on 27th of February 2015.

1.2. Board Direction

The original report was prepared by the Senior Planning Inspector, together with reports prepared by external consultants and submitted to the Board in February 2015. On the basis of this assessment the Senior Planning Inspector recommended a refusal of planning permission for the following reason, which is stated in full below:

It is considered that the proposed development would result in the permanent and irreversible loss of c.5.93 hectares of intertidal area comprising of mudflats and sandflats not covered by sea water at low tide. This is an Annex 1 habitat

and qualifying interest associated with the Galway Bay complex candidate Special Area of Conservation (site code 000268). One of the conservation objectives of the candidate Special Area of Conservation is to maintain the favourable conservation of the above qualifying interest. It is considered that the proposed development, by permanently removing this habitat will result in this conservation objective for the Natura 2000 site not being met and this will have a negative effect on the integrity of this Natura 2000 site. The proposed development will also result in the stabilisation of the shingle habitat adjacent to Renmore Lough, which is also a qualifying interest of the Galway Bay complex candidate Special Area of Conservation (side code 000268) and this will permanently alter its nature and plant species composition thereby adversely affecting the nature of this qualifying interest. Finally it is considered that the impact of disturbance due to increased shipping traffic during the operational phase on sensitive receptors at the site, namely, marine birds has not been fully or adequately assessed. The proposed development site is located within the Inner Galway Bay SPA (site code 004031) and therefore adverse impacts on birds which are qualifying interests of the SPA cannot be ruled out. It is considered therefore On the basis of the information provided with the application, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites (site codes 000268 and 004031), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval. As such and as currently proposed and on the basis of the information provided the Board considers that the development does not meet the requirements for approval under the provisions of Article 6(3) of the Habitats Directive and this therefore contrary to the proper planning and sustainable development of the area.

Furthermore as it is considered that adverse impacts on the qualifying interests of a Natura 2000 Site(s) cannot be ruled out, it is considered that the proposal would materially contravene Policy 4.4 of the Galway City Development Plan 2011 - 2017 which seeks to conserve and promote the enhancement of Internationally (EU) designated sites including Galway Bay Complex cSAC and

Galway Bay SPA. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

In considering the proposal under the provisions of Article 6(4) of the Directive, the Board is of the opinion that it has not been adequately demonstrated the development put forward for approval in this instance is the least damaging on the integrity on conservation objectives on Natura 2000 sites and that other alternative solutions including alternative ports may exist which would have lesser impacts on the integrity of Natura 2000 sites and the coherence of the Natura 2000 network while fulfilling the role and policy objectives set out in the National Port Policy for Ireland (2013).

Furthermore it was noted that Galway Port, being designated as a Tier 3, Regional Port in the National Ports Policy (2013) which currently handles c. 1% of the national maritime trade of Ireland, undermines the case for consideration as a project where consent could be considered under the provisions of Article 6(4) for imperative reasons of overriding public interest, having particular regard to EC Guidance on this issue.

The Board held meetings on 25th of June, 2nd of July, 13th August and 3rd September of that year deliberating on the proposed development. In the final meeting the Board focussed its deliberations on the Appropriate Assessment required under 6(3) of the Habitats Directive, and on the possible application of Article 6(4) of the Directive (IROPI) to the case. The Board decided that consent could not be granted under the provisions of Article (6(3) of the Directive and decided to invoke Article 6(4) (IROPI) for further consideration of the proposal.

The Board issued a Direction on September 25th on the basis of a meeting held on September 21st which agreed the wording on the following aspects of the case:

- Board Article 6(3) Statement of 'Appropriate Assessment' in which it accepted and adopted the Appropriate Assessment carried out in the report of

the specialist ecological consultant appointed by the Board in respect of the potential effects of the proposed development on the potentially affected European Sites, having regard to the sites' Conservation Objectives. Namely that the integrity of the Galway Bay Complex SAC European site will be affected by the direct and permanent loss of fucoid-dominated reef habitat [1140] and mud and sand flat habitat [1140] and the loss of perennial vegetation of stony banks [1220]. It was also concluded that a significant adverse effect on the integrity of the Inner Galway Bay SPA or the Lough Corrib SAC will not arise in view of the site's conservation objectives. It was also concluded that the proposal will not lead to any negative impacts on the priority habitats associated with the Galway Bay SAC at Lough Atalia and Renmore Lough.

- In relation to alternatives, the Board took a step by step approach to this question as advised in the relevant guidance from the EU Commission. In relation to (a) the do-nothing scenario, the failing to address the existing constraints would make the port unviable and ultimately lead to the demise of the port in the medium to long term and would fail to address the existing Seveso constraints, would impede tourism and the potential to develop a new urban quarter. In relation to (b) alternative locations within Galway Bay, the Board generally agreed with the Inspector that alternative proposals for a harbour extension within the Bay was not feasible and would result in greater impacts on the conservation objectives of the Galway Bay SAC and Inner Galway Bay SPA. (c) Alternative locations outside Galway Bay. While it is acknowledged that there are several other Irish ports, including Shannon-Foynes which are capable of handling the existing and planned future commercial freight tonnage at Galway Port. However shifting commercial shipping activities away from Galway to Shannon-Foynes would seriously impair the Port of Galway's ability to fulfil its historical role as tier 3 regional port as envisaged in the national ports policy. It may also undermine Galway's development as a Gateway City and designated in the NSS and would inhibit marine /leisure tourism – related expansion within Galway City. (d) Alternative configurations the Board concluded that there was no alternative design available that would deliver on project aims but result in less interference with

the sensitive ecology of the area. The Board therefore concluded that there were no feasible alternatives.

- The Board's position in relation to Imperative Reason of Overriding Public Interest was again guided by the EU Commission's Guidance. The Board concluded that the proposal presents an integrated development that enhances the social, economic and recreation benefits of the port for the wider benefit of the population of Galway and its regional hinterlands. The enhancement of port facilities also aligns with the European transportation policy's promoting 'short sea shipping' as a cost effective and environmentally sustainable alternative to road transport. The enhancement of the port serving the region will therefore align with European, national and regional policies in favour of balanced spatial and economic development. The port and the tradition of maritime trade is fundamental not just to the economy of Galway but also to its culture and identity. Reference is also made to the existing constraints affecting the existing operations of Galway Port. Failure to address these deficiencies would signal the demise of commercial shipping in the medium to long term. The social and economic benefits of the project are also set out with specific reference to tourism, marine research and development including offshore renewable energy, urban regeneration and marine leisure opportunities.
- The loss of the qualifying interests of the Galway Bay SAC has been weighed against the imperative reasons for the proposed development which are primarily social and economic in nature. And it is on this basis that the Board decided to explore the possibility of compensatory measures as provided for in Article 6(4) of the Directive.
- The Board therefore, by way of a further information, invited the applicant to submit proposals for compensatory measures to address the adverse impacts on the integrity of the Galway Bay Complex SAC.

THE CORRESPONDENCE BETWEEN THE BOARD AND THE APPLICANT

1.3. Board Letter of the 29th of September 2015

The Board, by way of a letter dated 29th of Sept. 2015, invited Galway Harbour Company (GHC) to confirm that it wished the project to be considered for approval under Article 6(4) of the Directive. The Board indicated to the applicant that the compensatory measures should offset the negative effects of the project such that the overall coherence of the Natura 2000 network is maintained.

The Board proposed that the development of proposed compensation measures should be addressed in two phases:

- Phase 1 - Proposals for compensatory measures should be set out by Galway Harbour Company for initial consideration. The applicant is advised to liaise with the NPWS in this regard. It is envisaged that once proposals are received, the Board will seek the views of the NPWS with respect to the acceptability in principle of the emerging proposals. The Board will advise in due course whether the compensation measures should be developed in more detail or otherwise.
- Phase 2 - Pending the outcome of phase one, the applicant will be afforded further time to develop the compensatory measures in more detail leading to the submission of the completed proposal for consideration by the Board.

1.4. Applicants Response

GHC confirmed it wished to proceed, on the premise that the Galway Harbour Extension (GHE) development proposed is:

- The least damaging design alternative
- No other feasible alternative exists that would not adversely affect the integrity of a designated site
- There are Imperative Reasons of Overriding Public Interest including those of a social and economic nature which required the development to proceed.

On that basis GHC commenced the preparation of proposals for compensatory measures so as to adequately address and compensate for the impacts on the integrity of the Galway Bay Complex SAC. The loss/change of habitat that was identified as a result of the proposed GHE was

- 5.93 ha of furoid-dominated reef complex habitat and mudflat and sandflat intertidal habitat.
- 0.35 of perennial vegetation of stony banks habitat to the east of the GHE at Renmore.
- Legacy impacts arising from the already developed Galway Harbour Enterprise Park (GHEP)

1.5 DEVELOPMENT OF PROPOSALS FOR COMPENSATORY MEASURES

The Board proposed that the development of proposed compensation measures should be addressed in two phases:

- Phase 1 - Proposals for compensatory measures should be set out by Galway Harbour Company for initial consideration. The applicant is advised to liaise with the NPWS in this regard. It is envisaged that once proposals are received, the Board will seek the views of the NPWS with respect to the acceptability in principle of the emerging proposals. The Board will advise in due course whether the compensation measures should be developed in more detail or otherwise.
- Phase 2 - Pending the outcome of phase one, the applicant will be afforded further time to develop the compensatory measures in more detail leading to the submission of the completed proposal for consideration by the Board.

Over the intervening years, as requested by the Board, a series of tri-partite meetings took place to assist in the development of proposed compensatory measures, which were submitted in August 2019. The proposals were formally forwarded to DAU for comment and on foot of comments and recommendation of the Board's consultant ecologist further information was sought. Again, following receipt of same, the proposals were forward to DAU for comment.

The Inspector and Board ecologist considered there to be sufficient information thereafter for a report to be prepared and issued to the Board for its consideration (October 2020).

2.0 Chronology of Events/Key Points in Process

Date	Document	Author
10 th January 2014	planning application lodged with ABP (includes NIS and EIS)	GHC (applicant)
January 13 th - January 23 rd 2015	An Oral Hearing was held between.	ABP (Inspector)
27 th of February 2015	Inspectors report and recommendation was prepared and submitted to the Board	ABP (Inspector)
25 th of June, 2 nd of July, 13 th August, 3 rd Sept. 21 st Sept. 2015	Board Meetings	ABP (Board)
25 th Sept, 2015	Board Direction – recommendation to consider application under article 6(4)	ABP (Board)
29 th Sept. 2015	ABP invite Galway Harbour Company (GHC) to confirm that it wished the project to be considered for approval under Article 6(4) of the Directive.	ABP (Board)
28 th June 2016; 21 st Oct. 2016, 3 rd April 2017, 27 th July 2017, 11 th Dec. 2017.	Bilateral and Tri-partite meetings	NPWS, ABP (Inspectorate Management/Board ecologist) and applicant (GHC)

9 th August 2017	A report entitled 'Proposed Compensatory Measures (Version 2.3B) was submitted to the Board	GHC (applicant)
October 13 th 2017	Invitation to the applicant to proceed to Phase 2 of the 'compensatory measures' proposal	ABP (Board)
26 th April 2019	Proposed Compensatory Measures submitted	GHC (applicant)
27 August 2019	Response from DAU – archaeologists and ecologists	DAU
11 th September 2019	Mr. Daniel Basterri, Consultant Ecologist Report on the compensatory measures being proposed.	ABP (Consultant ecologist)
October 7 th 2019	the Board requested clarification of additional information	ABP (Inspector)
19 th of December 2019.	further information request was received on behalf of GHC	GHC (applicant)
April 8 th 2020	Response from Archaeologists and NPWS re FI from applicant	DAU
September 2020	Addendum Report from Mr. Daniel Basterri	ABP (consultant ecologist)
6 th October 2020	Addendum Report from Inspector	ABP (Inspector)

3.0 Next Steps

- 3.1. It is understood, that as is evidenced/documentated in the Board Direction of September 2015, the consideration of the proposed development under SID legislation (ie under s.37a) has been completed, in so far as the Board has concluded that proposed development will adversely affect a European site, and in the absence of alternative solutions, the Board considers that consent should nevertheless be given for the proposed development for imperative reasons of overriding public interest, subject to satisfaction and acceptance of the proposed compensatory measures.
- 3.2. The next stage of the process occurs under s.177AA of the Planning & Development Act, 2000 as amended, with the Minister following s.177AB and thereafter subject to the decision of the Minister, the Board will proceed as advised.
- 3.3. In summary, the Board is now required to:
- a) determine if there are imperative reasons of overriding public interest that necessitate the giving of consent for the proposed development,
 - b) propose the compensatory measures that are necessary to ensure that the overall coherence of the Natura 2000 network is protected,
 - c) prepare a statement of case that imperative reasons of overriding public interest exist and of the compensatory measures that are required,
 - d) forward the said statement to the Minister together with a copy of the planning application and Natura impact statement
- 3.4. To this end, in respect of:
- item (a), as is documented in the Board Direction, dated September 2015, it is understood that as was applicable at that time, the Board determined that there were imperative reasons of overriding public interest that would justify the further consideration of the proposed development, and would warrant the giving of consent for the proposed development, subject to all other statutory requirements being met.
 - item (b) as requested by the Board, the applicant has proposed compensatory measures which have been subject of assessment and consideration by the NPWS, the Board's external consultant for marine ecology, Director of

Planning and the Reporting Inspector. The Reporting Inspector has prepared and submitted an addendum report to the Board in respect of the proposed compensatory measures, and the submissions of the NPWS and addendum report from our consultant ecologist are also included with the case file.

3.5. Next Steps:

Having regard to the legislative provisions, and practice already established in respect of the IROPI process (eg. Sligo County Council Wastewater Treatment Plant at Lough Talt), it is considered that the Board is now required to undertake the following tasks:

1. Consider and assess the proposed compensatory measures, and where the Board deem these to be acceptable and are satisfied that it can propose these measures to the Minister, the Board should move to the next step (below)
2. Prepare a statement of case that imperative reasons of overriding public interest exist and of the compensatory measures that are required,
3. Forward the said statement to the Minister together with a copy of the planning application and Natura impact statement.

3.6. It is noted that the Board in September 2015, determined that there were imperative reasons of overriding public interest that justified the further consideration of the proposed development and that these are documented in the Board Direction dated 29th September 2015. Given the lapse in time, it is recommended that the Board consider the imperative reasons of overriding public interest afresh, and that the Statement of Case is prepared and finalised.

3.7. In preparing a Statement of Case, the Board is required to specify the following:

- (a) the considerations that led to the assessment by the competent authority that the proposed development would adversely affect the integrity of a European site,

- (b) the reasons for the forming of the view by the competent authority that there are no alternative solutions (including the option of not giving consent for the proposed development),
- (c) the reasons for the forming of the view by the competent authority that imperative reasons of overriding public interest apply to the proposed development (which may include those of a social or economic nature, as the European site(s) in question do not host a priority natural habitat type or priority species),
- (d) compensatory measures that are being proposed as necessary to ensure the overall coherence of Natura 2000 including, if appropriate, the provision of compensatory habitat and the conditions to which any consent for proposed development shall be subject requiring that the compensatory measures are carried out.

3.8. Following the preparation of the Statement of Case the Board must make the statement of case available for inspection, as soon as may be after it is prepared and forwarded to the Minister as appropriate. Members of the public may inspect the statement of case and all documentation supporting this (ie the Case File) during office hours and may also make the statement available in electronic form including by placing the documents on the Board's website.

3.9. Having regard to the provisions or spirit of Aarhus, it is recommended that -

- having regard to Covid restrictions, that the Board would digitise the complete file (in particular applicant submissions (and/or link to the applicant's website for this SID project), NPWS correspondence, the Reporting Inspector's reports and those of the Board's external consultants) and place these documents on public display to allow for access to documents remotely. There is no legal requirement/provision to do this and through the dept the matter has gone to the AG's office for their legal opinion.
- A minimum period of five weeks (35 days) public display period be provided, during which time public submissions would be accepted. Public submissions could be received in person, by post or by email. No charge/fee would apply.

There is no legal requirement/provision to do this and through the dept the matter has gone to the AG's office for their legal opinion.

- Submissions would be forwarded to the Department for their consideration. There is no legal requirement/provision to do this and through the dept the matter has gone to the AG's office for their legal opinion.
- To assist and in order to demonstrate engagement with submissions, the Board Inspector would summarise submissions received/issues raised and how these may be taken on board by the Dept/Minister/Board in their determination of the case. There is no legal requirement/provision to do this and through the dept the matter has gone to the AG's office for their legal opinion.
- It is anticipated that the advice/legal opinion of the AG would be available to the Board before engaging in the above public consultation, and the matter is being followed up by Eamonn Kelly, in the Dept of Housing, Local Government and Heritage.

3.10. No priority habitats or species are impacted upon, therefore there is no requirement for the Minister to consult with the EU.

3.11. Following receipt of the Board's statement of case, public submissions (optional) and views of the NPWS (on behalf of the relevant Minister (tbd)), the Minister will advise the Board if his consent is given to the granting of permission in respect of the specific IROPI case. The Minister(s) and NPWS will only be considering the IROPI element of the proposed development.

3.12. Thereafter the Board shall take on board the views of the Minister, including any recommended conditions (where permission may be granted), and determine/decide on the application as a whole.