Our Ref: 61.PA0033
P.A.Reg.Ref:

Your Ref:

An Bord Pleanála

John Fitzgerald
Department of Arts, Heritage, Regional,
Rural and Gaeltacht Affairs
Legislation and Guidance Unit
National Parks and Wildlife Service
7 Ely Place, Dublin D02 TW98

28th October 2016

Re: Galway Harbour Extension
Renmore and Townparks Townlands, Galway

Dear Sir,

An Bord Pleanála has received your email dated 24th October 2016 in relation to the above mentioned case.

In respect of the queries outlined in your email, An Bord Pleanála would advise the NPWS as follows:

In accepting An Bord Pleanála's invitation to submit preliminary compensatory measures and in continuing to seek a meeting with An Bord Pleanála and the NPWS to advance same, the developer has confirmed their intention to progress this proposal and for it to be considered pursuant to Article 6(4) of the Habitats Directive, and that no further correspondence or clarification is required.

As outlined previously to the NPWS, the Inspector's report will not be made available until after the decision is taken by An Bord Pleanála. This is standard and normal practice for An Bord Pleanála; as no decision has been taken the Inspector's report is, at this stage, part of the deliberation process.

The NPWS have been provided with the conclusions of An Bord Pleanála's EIA, and that at this stage no further information is publically available.

An Bord Pleanála confirms that prior to requesting the applicant to submit preliminary compensatory measures it did satisfy itself that article 6(4) applied, and that there is no alternative solution, and consent could be given for the proposed development for imperative reasons of overriding public interest, subject to the adequacy and acceptability of compensatory measures sought.

An Bord Pleanála confirms that this process (under section 177AA of the Planning and Development Act 2000 which transposes Article 6(4) of the Habitats Directive) has been completed and, therefore, requests that the NPWS assist and participate in the examination of preliminary and, thereafter, proposed compensatory measures. An Bord Pleanála is the competent authority in relation to the determination of the application and carrying out of an EIA, and has done so and will continue to do so, in accordance with the statutory provisions.

As provided for under the Irish Legislation relating to IROPI, the NPWS will have a formal role in relation to accessing and advising the Minister, in accordance with section 177AB and section 177AC of the 2000 Act, as amended.

We trust that this is of some assistance in clarifying matters to date.

With regard to the first tripartite meeting, I understand that the 10th November 2016 is not now suitable for the Harbour Company. I have been asked to inform you that representatives of An Bord Pleanála are available for a meeting on any day between Friday, 18th November 2016 and Thursday, 24th November 2016, inclusive. Would your colleagues be available on one of these days?

Thank you for your assistance in this matter. If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Yours faithfully,

Kieran Doherty
Executive Officer
Direct Line:01-8737246

ADHOC/PA0033/58

Kieran Doherty

From: John Fitzgerald <John.Fitzgerald@ahg.gov.ie>
Sent: Monday 24 October 2016 16:43
To: Kieran Doherty
Subject: RE: Galway Harbour
Attachments: ABPGalwayPortMeeting.odt

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon Kieran

Please see attached about a possible meeting date

Kind Regards

John Fitzgerald

From: Kieran Doherty [mailto:K.Doherty@pleanala.ie]
Sent: 20 October 2016 12:27
To: John Fitzgerald
Subject: Galway Harbour

Hello John,

I have been informed by the Galway Harbour Company that you are meeting in Ely Place tomorrow. I would assume that this meeting will involve detailed discussions on the compensatory measures that have been proposed.

I had suggested to your colleague Gabriel Staunton that , if convenient for any of your colleagues, the first tripartite meeting would then take place on Monday 24th or the afternoon of Tuesday 25th to possibly discuss other issues, such as the process and how we proceed.

My colleagues are still on stand-by for such a meeting.

I note that Gabriel is out of the office today, do you know when you might have an idea on NPWS attendance, or does it depend on how the meeting with the Harbour Company goes?

Thank you,
Kieran

Kieran Doherty
Executive Officer
Laps-Sids Section
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA
TIME _____ BY _____
24 OCT 2016
LTR DATED _____ FROM _____
PL _____

24 October, 2016

Hello Kieran

As indicated at our last meeting with the Board we would be happy to attend a meeting with yourselves and the applicant to clarify any issues.

We agreed to meet with Aquafact last Friday, at their request, to discuss the issue of compensatory measures in respect of their proposed application for development.

The Board's letter dated the 29th September 2015 to Tobin Consulting Engineers confirms that the Board has completed the appropriate assessment in accordance with Article 6(3) of the Habitats Directive for the proposed Harbour Extension. The letter further confirms that the Board has concluded that that the proposed development cannot be considered under Article 6(3) given the significant adverse impacts on the integrity of Galway Bay SAC that will occur on foot of the development; namely the loss of the two habitats referred to therein.

In respect of the foregoing and in advance of the next meeting on this matter, please can you arrange for the following documentation to be sent to me:

1) Letter from the Developer confirming that they want to progress this proposal to be considered pursuant to Article 6(4) of the Habitats Directive.

2) The Inspector's Report in this case,

3) The Board's EIA.

As you know section 177 AA of the Planning and Development Act 2000 which transposes Article 6(4) of the Habitats Directive, suggests that prior to considering the required compensatory measures, that in the first instance, it must be established that there are no alternative solutions to the proposed application and that the development *must* be carried out for imperative reasons of overriding public interest.

As you are also aware, under section 177 AA (2) the Board will have to include in the Statement of Case these imperative reasons and the reasons for forming the view that there is no alterative solution that will have to be sent to the Minister for Housing, Planning, Community and Local Government as provided for in section 177 AA (1) and (2).

Accordingly, in light of the foregoing the Department would be obliged if the Board would confirm that is now of the view that:

- there is no alternative solution, and
- consent should nevertheless be given for the proposed development for imperative reasons of overriding public interest,

It would be important from our perspective to understand that this element of the process has been completed so that any time and effort we may invest in considering and advising on compensatory measures will ultimately be relevant (this would of course not be relevant if the Board does not determine that the two said conditions do in fact exist).

In that regard, I would also be obliged, *again in advance of our proposed meeting,* if the Board would provide the Department with confirmation in respect of these issues *together with* any relevant facts, reasoning and documentation to support such a determination.

I look forward to hearing from you in early course in relation to the foregoing. I understand that at Friday's meeting a provisional date of 10 November was suggested for our next meeting. I would be grateful if you would indicate if this date is suitable to yourselves and if not, if you would propose some alternative dates. Given pressure on some of us to attend other meetings that day, we would hope that the meeting would take place in our offices here.

Kind Regards

John Fitzgerald