Kieran Somers

From:	Kieran Somers
Sent:	08 August 2016 11:54
To:	'Gabriel Staunton'
Subject:	PA0033 meeting record
Attachments:	Scanned from a Xerox Multifunction Device.pdf

Hi Gabriel,

Further to my emails of last week, please find attached the written record of the meeting which took place between representatives from the Board and the NPWS which took place on the 28th June, 2016 in relation to the above-mentioned SID application.

Kind regards

Kieran Somers

-----Original Message-----
From: scans@pleanala.ie [mailto:scans@pleanala.ie]
Sent: 07 August 2016 11:05
To: Kieran Somers
Subject: Scanned from a Xerox Multifunction Device

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An Bord Pleanála

Record of Meeting

Galway Harbour Extension

Case Reference	61.PA0033		
Description	Galway Harbour Extension		
Case Type:	Section 37E Application		
Date:	28th June 2016	**Start Time:**	2.30 p.m.
Location:	Meeting Room 1	**End Time:**	4.00 p.m.
Chairperson:	Rachel Kenny	**Executive Officer:**	Kieran Doherty

Attendees:
Representing An Bord Pleanála
Rachel Kenny – Director of Planning
Philip Green – Assistant Director of Planning
Kieran Doherty – Executive Officer
Representing National Parks and Wildlife Service
John Fitzgerald – Principal Officer
Niall Redmond – Assistant Principal Officer
Cliona O'Brien – Head Of Ecological Assessment
Gabriel Staunton – Higher Executive Officer

Introduction:

The representatives of An Bord Pleanála welcomed the representatives of the National Parks and Wildlife Service and introductions were made.

Legal Status of Meeting:

The representatives of An Bord Pleanála stated that this meeting was being held in accordance with the provisions of 37F(1)(e) of the Planning and Development Act, 2000, as amended. An agreed record of the meeting will be held on file.

Current Status of the Planning Application:

The representatives of An Bord Pleanála stated that the issue of compensatory measures was being considered. The applicant has submitted preliminary proposals, upon which the NPWS's comments have been received. The representatives of An Bord Pleanála now wish to further consider, through this meeting, the NPWS views before giving feedback to the applicant. The representatives of An Bord Pleanála stated that the Board has not yet made a final decision on the proposed development, but has determined that the proposed development can only be considered under the provisions of Article 6(4) of the Habitats Directive. The applicant had indicated to the Board that they were satisfied to proceed on this basis.

The meeting acknowledged the further role that the NPWS would play later in the application process; however, any input at this stage would assist and better inform the process and was in accordance with guidance contained in the EC document 'Managing Natura 2000 Sites' which encourages tight coordination and cooperation between the Natura 2000 Authority (NPWS), the assessment authority (An Bord Pleanála) and the applicant in dealing with such matters. The representatives of An Bord Pleanála stated that the broad approach to, but not the fine details of the proposed compensatory measures, would be considered at this meeting and that a further tri-partite meeting with the applicant would be likely to expedite the process.

Clarification of NPWS Response:

Annex 1 Marine Habitats and Saltmarsh:

- The representatives of the NPWS stated that there is a lack of ecological and scientific detail to demonstrate the adequacy and quality of the proposed compensatory habitat and that further biological sampling is required of the

proposed locations. The methodology for this sampling should be known to the applicant, as methodologies are published on the NPWS website and it is likely it could be carried out in one summer. The NPWS offered to discuss the details of the methodology further.

- The representatives of the NPWS stated stony banks has not been adequately analysed or characterised by the applicant as, for example, the sub-type of the habitat has not been assessed. Scientific ecological information is required to categorise the area affected and the proposed compensatory areas. Furthermore, to recreate stony banks and remove hard coastal works already in place may itself require further consents, including planning permission.

- The NPWS noted that there were a number of publications on the NPWS website that had been available since before the application was submitted to the Board, such as the 15 year-old National Shingle Beach Survey, which contains information about other areas within the SAC where creation of new areas of compensatory habitat could and should be explored, as they may provide more feasible opportunities.

- The representatives of An Bord Pleanála queried whether it would be acceptable if the applicant removes the proposals for the Renmore lands were this of concern to the NPWS (as the applicant was not proposing them as a direct and equivalent compensatory measure). The representatives of the NPWS stated that further clarification is required on the area proposed and the ecological merits of the site at this point in time needed to be assessed, in view of their contribution to site integrity and the conservation objectives.

Harbour Seal:

The representatives of the NPWS referred to an extension of the existing Galway Bay SAC or the inclusion of the harbour seal as a qualifying interest of another SAC; however, the NPWS warned that there would be designation issues in notifying the appropriate parties. Furthermore, including a new qualifying interest into an existing SAC could affect existing licences. It there was an extension of a designated area, compensatory measures must be in place before any development work commences. It was also highlighted that impacts on the rights of third parties resulting from new designations or new qualifying interests added to existing designations may trigger a right to monetary compensation. NPWS outlined that there is a process of designation set out in law and the timeframe to complete a designation is not defined.

Inner Galway Bay SPA:

The representatives of An Bord Pleanála queried the survey requirements being suggested for this site. The representatives of the NPWS stated that it advises two surveys per month, over a two year period, to consider the impacts in the sub-tidal area for the Great Northern Diver. The surveys should indicate the level of compensatory measures required. However, it may be possible to have a shorter survey period (e.g. one summer) depending on the disturbance response and survey results; preliminary results could be examined by the NPWS. A shorter period would have to clearly show no risk of significant effects or, alternatively, it may quickly become obvious that there would be significant effects requiring associated compensatory measures. The NPWS stated that it would be happy to discuss the details of the methodology further.

Cumulative Impacts:

The representatives of the NPWS raised their concerns over the previous loss of habitat associated with the development of the Galway Enterprise Park which is calculated to be 14.51 hectares of the intertidal Annex 1 habitats. The representatives of the NPWS stated that it understood that the applicant would acknowledge the historic loss in its application (as it was) and was willing to compensate for this loss. The representatives of An Bord Pleanála stated that the historic loss is a separate issue to this application which cannot be used to remedy any faults in a previous decision. Should the applicant volunteer some form of compensation for the historic loss then it could be included with the compensatory measures package and potentially as a condition if permission is granted. Establishing any non-compliance with the original planning permission may prove difficult and may not be possible for the Board as it is not the enforcement authority. The NPWS noted that the cumulative loss had been identified by the Board's Ecological Advisor, Thomson Ecology, as an ecologically significant habitat loss. The NPWS also noted that this was not addressed in the Board's AA conclusion statement. The NPWS noted that cumulative effects needed to be analysed in an appropriate assessment, (i.e. resolved on a scientific basis) and is to inform the compensation needs.

Other Issues:

The representatives of the NPWS stated that the applicant's proposals did not provide clear ecological justification on the need for the additional compensatory measures suggested in relation to site integrity, or compensation required to maintain network coherence. Interactions with other qualifying interests would have to be considered and assessed should these further measures be proposed.

Procedural Matters:

The representatives of An Bord Pleanála queried whether it would be correct to view the creation of a new habitat as being of primary importance, with the actual designation being secondary and guaranteed by agreements made in perpetuity. It was noted that planning conditions put on third parties may not be enforceable. The representatives of An Bord Pleanála asked whether the NPWS would have to commit to a designation in writing. The representatives of the NPWS stated that a site or area must be designated to give it legal protection, including to ensure that assessments of future projects or other developments consider the (qualifying interest) habitat/species for which the site is designated during the assessment process. The designation of a new site by the NPWS has a defined process, which may take time to navigate depending on, amongst other things, the impact of the designation on third parties. The coherence of the Natura network is of paramount importance. The representatives of the NPWS referred to the Commission's Guidance on Article 6(4) of the Habitats Directive, which they had previously advised the applicant would assist them in developing their proposals. The representatives of the NPWS agreed to provide further details to the Board on the stages of the European site designation process.

Conclusion:

The representatives of An Bord Pleanála stated that An Bord Pleanála would write to the applicant and include the views of the NPWS, and other issues to consider. The applicant will be offered an opportunity to meet with representatives of An Bord Pleanála and the NPWS to clarify any issues. This meeting would be intended to provide the applicant with an understanding of how to proceed.

Rachel Kenny
Director of Planning

3rd August, 2016