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

Our Ref: SID-2014-GE-02

An Bord Pleanála

Gabriel Staunton
Department of Arts, Heritage, Regional,
Rural and Gaeltacht Affairs
Legislation and Guidance Unit
National Parks and Wildlife Services
7 Ely Place,
Dublin D02 TW98

9th December 2016

Re: Galway Harbour Extension
Renmore and Townparks Townlands, Galway

Dear Sir,

An Bord Pleanála has received your letter dated 6th December, 2016 in relation to the above mentioned case and your comments are noted.

With regard to the IROPI process, please note that An Bord Pleanála is satisfied that Article 6(4) of the Habitats Directive applies in this case; however, at this time, no further documentation is publically available.

The representatives of An Bord Pleanála look forward to meeting the representatives of the Department on 13th December, 2016 to discuss the IROPI process further.

If you have any queries in relation to the matter please contact the undersigned officer of the Board. Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Kieran Doherty
Executive Officer
Direct Line:01-8737246

ADHOC/PA33/061

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An Roinn Ealaíon, Oidhreachta,
Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

Mr. Kieran Doherty
Executive Officer
Strategic Infrastructure Development
& Local Authority Projects Section
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA
TIME _____ BY _____
- 7 DEC 2016
LTR-DATED _____ FROM _____
PL _____

6th December 2016

Dear Mr. Doherty,

I refer to your letter of the 28th October and in relation to the upcoming meetings in relation to the Galway Harbour IROPI application.

The Department notes the Board's view in relation to the developer's confirmation of its intention to progress this proposal by way of application under Article 6(4) IROPI process. The Board's view that no further clarification is required in relation to this matter is also noted. However, the Department is of the view that an examination of any proposed compensatory measures, either at the preliminary stage or at formal proposal stage later in the process must be done in a fully informed manner and in order to do so it is essential that damage to the Natura network is precisely identified.

For example, the CJEU summarises the importance of identifying, as a prerequisite to the IROPI process the implications of the proposal on the Natura network via the Article 6(3) process:

> *The Kingdom of Spain, which has invoked the importance of mining activities for the local economy, needs to be reminded that, whilst that consideration is capable of constituting an imperative reason of overriding public interest within the meaning of Article 6(4) of the Habitats Directive,* ***that provision can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4)*** *since, in the absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration.* ***In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified*** *(Commission v Italy, paragraph 83).* [1][My emphasis]

In that regard, the Department notes with confusion the statement outlined in your letter of the 28th October that the Board has yet to make a decision in relation to this case. In the absence of

[1] C-404-09 Spain v Commission, paragraph 109

a clear Article 6(3) determination along with the complete and precise findings in relation the implications for the Natura network it is difficult to see how an IROPI proposal can be examined in a fully informed manner. The Department is happy to discuss this matter in more detail at the upcoming pre-meeting with the Board wherein it is hoped that this matter can be fully clarified. It may be beneficial for all parties concerned if the Board was in a position to provide clarity in advance of the meetings, and where applicable, provide the Department with all relevant documentation upon which the Board has based its Article 6(3) determination, if such a determination has been made. This will support all parties in having a fully informed discussion on the matter.

Notwithstanding the foregoing the Department remains ready to accede to the Board's request for assistance in relation to the process, as it has done to date, including recently meeting with the developer to discuss their initial proposals for compensatory measures.

Kind Regards

AN BORD PLEANÁLA
TIME _____ BY _____
- 7 DEC 2016
LTR-DATED _____ FROM _____
PL _____

Gabriel Staunton
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