

Environmental Impact Assessment Report

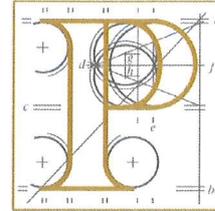
Appendix 3.1

Volume 3 Part 1



Our Case Number: ABP-310268-21

Your Reference: Dublin Port Company



An
Bord
Pleanála

RPS Group Limited
West Pier Business Campus
Dun Laoghaire
Co. Dublin
A96N6T7

Date: 03 May 2024

Re: Development of port lands on Poolbeg Peninsula, construction of a Southern Port Access Route comprising of a new bridge across the river Liffey Poolbeg Peninsula and River Liffey, Dublin City

Dear Sir / Madam,

Please be advised that following consultations under section 37B of the Planning and Development Act, 2000 as amended, the Board hereby serves notice under section 37B(4)(a) that it is of the opinion that the proposed development falls within the scope of paragraphs 37A(2)(a) and (b) of the Act. Accordingly, the Board has decided that the proposed development would be strategic infrastructure within the meaning of section 37A of the Planning and Development Act 2000, as amended. Any application for permission for the proposed development must therefore be made directly to An Bord Pleanála under section 37E of the Act.

Please also be informed that the Board considers that the pre-application consultation process in respect of this proposed development is now closed.

Attached is a list of prescribed bodies to be notified of the application for the proposed development:

Please be advised a document, separate to the Environmental Impact Assessment Report should be submitted with the planning application which outlines the mitigation measures in the interest of convenience and ease of reference.

Further notifications should also be made where deemed appropriate.

In accordance with section 146(5) of the Planning and Development Act, 2000 as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The following information relates to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act 2000, as amended.

Teil	Tel	(01) 858 8100
Glao Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(7) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

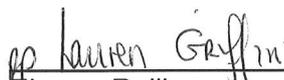
Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

If you have any queries in the meantime, please contact the undersigned officer of the Board or email sids@pleanala.ie quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

Yours faithfully,

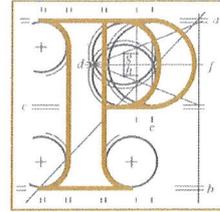

Eimear Reilly
Executive Officer
Direct Line: 01-8737184

PC09

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Our Case Number: ABP-310268-21



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The Board recommended the application documents should be forwarded the list of Prescribed Bodies below for their consultation and consideration for the purposes of Section 37E (3) (c) of the Act:

- Department of Housing, Local Government and Heritage
- Department of Environment and Climate & Communications
- Department of Transport
- Department of Agriculture, Food, and the Marine
- Dublin City Council
- Eastern and Midlands Regional Assembly
- Transport Infrastructure Ireland
- Environmental Protection Agency
- Maritime Area Regulatory Authority
- Marine Institute
- An Chomhairle Ealaíon (Arts Council)
- The Heritage Council
- Fáilte Ireland
- An Taisce
- Irish Water
- Inland Fisheries Ireland
- CIE
- Health and Safety Authority
- ESB

Further notifications should also be made where deemed appropriate.

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Recipient:	Planumy
Register no:	7
RPS 07 MAY 2024	
Project Ref:	
File Ref:	
PM:	

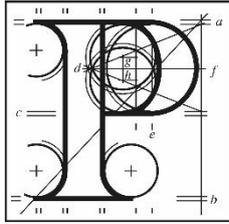
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Inspector's Report ABP 310268 - 21

Development	Development of port land on Poolbeg Peninsula and construction of a southern port access route comprising of a new bridge across the River Liffey
Location	Poolbeg Peninsula and River Liffey
Planning Authority	Dublin City Council
Prospective Applicant	Dublin Port Company
Type of Application	Pre-Application consultation under Section 37B of the Planning and Development Act, 2000, as amended
Inspector	Pauline Fitzpatrick

1.0 Site Location

- 1.1. The site of the proposed development is located within the Dublin Port Estate to the south of the River Liffey channel. The site runs along the north of the Poolbeg peninsula adjacent to the R131, to the north and south of Pigeon House Road and includes the portion of Great South Wall adjacent to ESB lands. It also includes a portion of land south of South Bank Road. The lands are in use for port and port related uses and by rowing, sailing and boat clubs.
- 1.2. The red line boundary as delineated on the plans that accompany the request to close the pre-application consultation also includes lands to the north River Liffey channel in which road upgrade works are proposed. Similarly, the licenced at sea dump site is included within the red line boundary.

2.0 Description of Proposal

- 2.1. The proposed development is to comprise:
 - New public road and bridge to be called the South Port Access Road (SPAR) to link north and south port areas and will include a new bridge over the River Liffey immediately east of Tom Clarke Bridge.
 - Lift-on Lift-off (Lo-Lo) container terminal with an annual throughput capacity of 5.34 million tonnes. The terminal will consist of two components. The 1st being a terminal located north of the ESB's generating station on the eastern end of Poolbeg Peninsula, and the 2nd being a transit container storage yard located on waterside land currently used for bulk cargo handling.
 - Replacement of the existing Lo-Lo container terminal with a Roll-on Roll-off (Ro-Ro) freight terminal with an annual throughput capacity of 8.69 million tonnes. The terminal will consist of two components. The 1st being a terminal located at existing Berths 42-45 and will include the provision of two berths. The 2nd is a terminal to be located on the southern side of the Poolbeg Peninsula.
 - Provision of a 325 m. diameter turning circle in the river channel north of Pigeon House Harbour.

- New Maritime Village at Pigeon House Road and Berth 41 to accommodate local rowing, sailing and boat clubs. It will also accommodate the relocation of Port Harbour Operations from the North Port.
- New public amenities and open space.

3.0 Planning History

- 3.1. **29N.PC0252** – In August 2018, the Board determined under Section 37B(4)(a) of the Planning and Development Act 2000, as amended, that development comprising a reconfigured ferry terminal, modifications, extensions and additions to berths and ancillary works including a new jetty on lands on the north side of the Port Estate was strategic infrastructure development. Permission was subsequently granted for the proposed development under ref. **ABP 304888-19** in July 2020

4.0 Pre-Application Consultation Meetings Held

- 4.1. The **prospective applicant** entered into consultations with the Board in **May 2021**. **8 no.** pre-application meetings were held between **13th July 2021** and **25th March 2024**. Issues discussed include:

- Policy context and framework for the proposed development.
- Proposed SPAR design, compliance with Dublin City Development Plan in terms of accessibility and future proofing for LUAS.
- Traffic management
- Rail connectivity
- Biodiversity
- Consultations held with statutory and state bodies in addition to public consultation.
- Consideration of cumulative impacts
- Dredging required
- Duration of permission being sought
- Interface with SDZ site to south
- Recreation, open space, and active travel provisions.

- General arrangement and scheduling of development.
 - Dumping at Sea Licence
 - Applicability of the Maritime Area Planning Act
 - Site boundary and what is to be included in the proposed development.
- 4.2. A meeting was held with **Dublin City Council** on **22nd July 2022**. The issues raised include
- Proposed SPAR
 - Access and traffic
 - Rail connectivity
 - Open space provision
 - Architectural and cultural heritage
- 4.3. A meeting was held with **Irish Rail** on **15th September 2022** with the issues raised related to rail connectivity.

5.0 Legislation

Planning and Development Act, 2000, as amended

- 5.1. **Section 37A.**—(1) Subject to Part XXI, an application for permission for any development specified in the Seventh Schedule (inserted by the Planning and Development (Strategic Infrastructure) Act 2006) shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority.
- 5.2. (2) That condition is that, following consultations under section 37B, the Board serves on the prospective applicant a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the following paragraphs, namely—
- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;
 - (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Planning Framework or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;

(c) the development would have significant effect on the area of more than one planning authority.

5.3. The **7th Schedule** of the Act sets out infrastructure developments for the purposes of Sections 37A and 37B.

5.4. Under Transport Infrastructure the following are noted:

- An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area.
- A harbour or port installation (which may include facilities in the form of loading or unloading areas, vehicle queuing and parking areas, ship repair areas, areas for berthing or dry docking of ships, areas for the weighing, handling or transport of goods or the movement or transport of passengers (including customs or passport control facilities), associated administrative offices or other similar facilities directly related to and forming an integral part of the installation) –
 - (a) Where the area or additional area of water enclosed would be 20ha or more, or
 - (b) Which would involve the reclamation of 5ha or more of land, or
 - (c) Which would involve the construction of one or more quays which or each of which would exceed 100m in length, or
 - (d) Which would enable a vessel of over 1350 tonnes to enter within it.

6.0 **Assessment**

6.1. At the outset I note that the provisions of Part XXI of the Planning and Development Act 2000, as amended, pertaining to Maritime Development do not apply to strategic infrastructure development where the prospective applicant has, or before 1st October 2022, entered into consultations with the Board under section 37B and where an application for permission for such development is made to the Board before 1st October 2024 under Section 37E. As noted above the prospective applicant entered into consultations with the Board in May 2021. It is now seeking closure of the pre-application process and intends to make an application to the Board prior to the 1st October 2024. Therefore, the provisions of Part XXI are not applicable to the proposed development.

- 6.2. I refer to the 7th Schedule which details infrastructure developments for the purposes of Sections 37A and 37B. In terms of transportation, I consider that *development comprising an intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area* is applicable to the subject development. An intermodal transshipment facility allows for cargo containers and trailers to be transferred between different transport modes to allow transport to another destination.
- 6.3. The proposed development will entail both a Lift On - Lift Off (Lo-Lo) container terminal and Roll-on Roll-off (Ro-Ro) freight terminal with the intermodal transfer being between ship to truck and vice versa. 2 no. areas are proposed for the Lo-Lo terminal, both quay side, with a combined area in excess of 5 hectares. The annual throughput capacity will be 5.34 million tonnes. 2 no. areas are also proposed for the Ro-Ro terminal. The 1st is quay side at existing berths 42-45 with the 2nd to be located on the southern side of the peninsula. The combined area would also exceed 5 hectares. The annual throughput capacity will be 8.69 million tonnes. I therefore consider that the proposal meets the parameters of the above referenced infrastructure development.
- 6.4. I also have regard to the provisions for a port installation in the 7th Schedule. I note that the Board previously determined that the proposal to reconfigure the ferry terminal and works to berths in addition to the provision of a new jetty on the eastern side of the port was strategic infrastructure (file ref. 29N.PC0252). In that instance the Inspector considered that the proposed development comprised a 7th Schedule development as it met the threshold requirements (c) and (d) attached to a port installation as it would comprise the construction of a jetty in excess of 100m and it would enable a vessel of over 1350 tonnes to enter within it.
- 6.5. The proposed development comprises the provision of a replacement ESB jetty and associated dolphin jetty structure which is excess of 100 metres in length which would enable a vessel of over 1350 tonnes to enter within it. I consider that the proposed development meets the threshold requirements (c) and (d) attached to the development type as set out in section 5.4 above.
- 6.6. In terms of the provisions of Section 37A(2) of the Planning and Development Act, 2000 Act, as amended, I consider that the proposed development meets the requirements of subsection (a) as it would be of strategic economic importance to

the state and region due to its scale, location and the contribution it would make to connecting the eastern region to national, European and international markets. Dublin Port has been identified as a core port of international significance in the Trans European Network (TEN-T) Guidelines and it forms part of the European Union's Core Transportation Network. It is also designated as a Tier 1 Port of national importance in the National Ports Policy 2013. The said policy is currently subject of a review.

- 6.7. National policy as set out in the National Planning Framework seeks to ensure that Ireland remains linked to international markets with high quality international connectivity. National Strategic Outcome (NSO) 6 seeks to facilitate the growth of Dublin Port through greater efficiency, limited expansion into Dublin Harbour and improved road access, particularly to/from the southern port area. The Regional Spatial and Economic Strategy for the Eastern and Midlands Region recognises Dublin Port as a critical national facility and a key economic driver for the region and the nation. Regional Policy Objective 8.21 reiterates the above referenced NSO in supporting the role of Dublin Port as a Port of National Significance (Tier 1 Port), its continued commercial development, including limited expansion and improved road access, including the Southern Port Access Route.
- 6.8. In my view the proposed development is of a scale that would substantially contribute to the fulfilment of NPF objectives and the spatial, economic and transportation objectives for the region and therefore meets the requirements of Section 37(A)(2)(b).
- 6.9. Whilst the proposed development, which would serve the economies that extend beyond the Greater Dublin Area, it would not have a significant effect on more than one planning authority. I therefore do not consider that Section 37(A) (2) (c) of the above Act to be applicable.

7.0 Recommendation

I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 37(B)(4) Planning and Development Act 2000, as amended, stating that it is

of the opinion that the proposed development constitutes a strategic infrastructure development for the following reason:

The proposed development consisting of development of port land on Poolbeg Peninsula and construction of a southern port access route comprising a new bridge across the River Liffey, constitutes development that falls within the definition of transport infrastructure in the Seventh Schedule and is considered to be of strategic importance by reference to the requirements of Section 37A (2) (a) & (b) of the Act. An application for permission for the proposed development must, therefore, be made directly to An Bord Pleanála under Section 37E of the Act.

Pauline Fitzpatrick

Senior Planning Inspector

April, 2024

Appendix – Prescribed bodies

The following is a schedule of prescribed bodies considered relevant for the purposes of Section 37E (3)(c) of the Principal Act.

- Department of Housing, Local Government and Heritage
- Department of Environment and Climate & Communications
- Department of Transport
- Department of Agriculture, Food, and the Marine
- Dublin City Council
- Eastern and Midlands Regional Assembly
- Transport Infrastructure Ireland
- Environmental Protection Agency
- Maritime Area Regulatory Authority
- Marine Institute
- An Chomhairle Ealaíon (Arts Council)
- The Heritage Council
- Fáilte Ireland
- An Taisce
- Irish Water
- Inland Fisheries Ireland
- CIE
- Health and Safety Authority
- ESB

Further notifications should also be made where deemed appropriate.

Note: The prospective applicant should be advised to submit a separate document (to the EIAR) with the planning application which outlines the mitigation measures, in the interest of convenience and ease of reference.