

## For Approval

File Ref. FS006806

1. Mr David Carolan, H.E.O. *18/12/18*
2. Ms Dunne, Assistant Principal Officer *21/12/18*
3. Mr Harrington, Principal Officer *PP 08/01/19*
4. Runaí Aire *16/1/2019*

### Approval of an application for consent under Section 10 of the Foreshore Act

#### Ministerial Approval Sought

The approval of the Minister is sought to grant consent under Section 10 of the Foreshore Act, 1933 (as amended) to Dublin Port Company, Dublin Port.

If granted, the consent would permit Dublin Port Company (DPC) to provide a new pontoon system at Berth 50 to accommodate Dublin Port Company tug boats. The application is at **Tab 1**.

#### Nature and Location of Proposed Development

The proposal is located at Berth No 50, Dublin Port, as shown in Drawing Number 170157-2000-2 "Site Location Map", dated September 2017. The drawing is at **Tab 2**.

The proposed works include: the provision of a new pontoon system at Berth 50 to accommodate tug boats.

The current arrangement for access to and securing of the harbour tugs at the berth is an unconventional system with a number of health and safety concerns. The current system is not fit-for-purpose despite modifications to try and reduce the risk factors. DPC require a heavy duty pontoon system comprising a number of floating dock sections (pontoons) capable of safely mooring and accessing/egressing 2 x 24 meter harbour tugs (Beaufort and Shackleton). A new road, gate, car park, security fencing and lighting are also required.

- The total area of foreshore involved is some 0.39 Hectares. It is anticipated that the works will take six weeks to complete.

#### Section 10 consent applications

A Section 10 application seeks the Minister's approval for development on the foreshore not belonging to the state. The Minister can only refuse to grant such approval on the grounds that the development would cause or be likely to cause an obstruction to

navigation, or to fishing, or would have or likely to have significant adverse effects on the environment.

### **Title over the foreshore**

Dublin Port Company presented a statutory declaration as evidence of title and identity of the foreshore subject to this application. The Chief State Solicitor's Office has previously determined, that the evidence of title provided by the company, is sufficient to consider the application under section 10 of the Foreshore Act.

### **Planning Consent**

Planning permission was originally secured for this proposal on 16 February 2018.

### **Public Consultation**

A public notice concerning this application was published in the "*Southside People*", "*Northside People East*", "*Northside People West*", and the "*Irish Times*" on 23/05/2018. The relevant documents were on display at Store Street Garda Station and Irishtown Garda Station for a period of 21 days from the 23 May 2018.

No representations or observations were received.

### **Statutory Bodies Consultation**

Observations on the project were sought from the Department of Housing, Planning and Local Government (Water Services Advisor), Sea Fisheries Protection Authority, Marine Institute, Marine Survey Office, Inland Fisheries Ireland, Department of Culture, Heritage and the Gaeltacht, (Underwater Archaeology and Nature Conservation) and the Department of Agriculture, Food and the Marine (Aquaculture and Foreshore Management Division).

There were no objections to the development.

### **Screening for EIA**

Screening for EIA determined that the proposal is not of a class that requires the applicant to submit an Environmental Impact Statement.

As set out in more detail below, the MLVC carried out an environmental assessment and concluded that, the proposal is not likely to have any significant effect on the environment. EIA is at **Tab 3**.

### **Screening for Appropriate Assessment**

The screening for appropriate assessment of the potential impact on European sites carried out by the (Marine Institute) Marine Licence Vetting Committee determined that the proposal is not within any European site and there will be no direct or indirect impact upon the habitats or species contained within the [adjacent] designated sites. There will not be significant disturbance to key habitats or species, there will be no habitat or species fragmentation. As there is not likely to be any significant effect on any European site, the applicant is not required to submit a Natura Impact Statement and the Minister is not required to carry out an appropriate assessment in accordance with the Birds and Habitats Directives. The AA Report is at **Tab 4**.

## **Environmental Assessment by the Marine Licence Vetting Committee (MLVC)**

The following materials were considered by the MLVC:

- Foreshore Consent Application and accompanying supporting information document comprising
  - Description of works and methodology
  - An Environmental appraisal report
  - Information of storage and disposal of materials;
- Written submissions from DHPLG Engineering, Department of Culture, Heritage and the Gaeltacht (Nature Conservation, Underwater Archaeology), the Department of Agriculture, Food and the Marine (Aquaculture and Foreshore Management Division), Inland Fisheries Ireland, Sea Fisheries Protection Authority and the Marine Survey Office;
- Applicant's responses to issues raised in the submissions received from the prescribed bodies. (For completeness, these responses did not include any significant additional data that required further public consultation or specific submissions from any other person.)

There were no issues raised in the submissions.

Having assessed the potential environmental impacts of the proposal the MLVC concluded that, the proposed works would not have a significant negative impact on the marine environment, would not adversely impact on marine European sites, would not have a significant impact on other legitimate users of the foreshore in the vicinity and on balance the proposed works will not significantly impact on the passage of migratory fish, and therefore recommended that a foreshore consent be granted. The MLVC Report is at **Tab 5**.

### **Site Specific Conditions**

The site specific conditions recommended by the MLVC would be attached to the foreshore consent, if granted. The Site specific conditions are at **Tab 6**.

### **Financial Considerations**

As this proposal is located on privately owned foreshore, no fee or rent is charged.

### **Agreement of Applicant**

The applicant has indicated their acceptance of the site specific conditions which would be attached to the consent, if granted.

### **Recommendation**

Having regard to:

- (a) the application for a Foreshore consent together with accompanying materials;
- (b) the submissions received from prescribed bodies;
- (c) the screening for appropriate assessment of the proposed development under domestic and EU law, including the Birds Directive and the Habitats Directive, and its conclusions and recommendations in this regard;
- (d) the screening for environmental impact assessment of the proposed development by the Marine Institute under domestic and EU law, including the EIA Directive, and its conclusions and recommendations in this regard;

- (e) the environmental assessment of the proposed development by the Marine Licence Vetting Committee ("MLVC") under domestic and EU law, including the EIA, Birds and Habitats Directives, and its conclusions and recommendations in this regard;
- (f) the consent conditions to be attached to the Foreshore consent, if granted; and
- (g) the nature of the proposal and its objective of improving the port infrastructure

it is considered that:

1. the proposed development on the foreshore would not have a significant negative impact on the marine environment and would not adversely impact on marine European sites and
2. the proposal is in the public interest

and accordingly it is recommended that a foreshore consent be granted to Dublin Port Company subject to the conditions recommended by the MLVC.

### **Process**

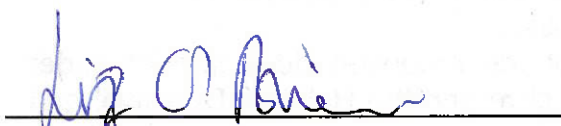
If approval is granted by the Minister, a letter of consent, including the appropriate conditions will be issued to Dublin Port Company.

### **Minister's Determination**

Upon the issuing of the letter of consent a notice of the Minister's determination in the form attached at Annex 8 and the MLVC Report (Annex 6) would be published on the Department's website, in addition to the various application materials already published.

The Notice of Determination would address:

1. the outcome of the Minister's determination of the application resulting in the grant of the consent;
2. the main reasons and considerations for the Minister's determination, including the considerations taken into account by the Minister in determining that the grant of the foreshore consent is in the public interest;
3. a statement that all relevant documentation on which the determination is based is available for inspection **both** on the website of the Department and at the Department's Wexford Office;
4. confirmation that a review procedure is available before the High Court whereby the substantive or procedural legality of the Minister's determination may be challenged, together with practical information on the review procedure.



Liz O'Brien  
Marine Environment & Foreshore

18 December 2018

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Seen and approved by the Minister

Signature:

*Damian English*

Date:

16/1/19

Damian English, T.D.,  
Minister for Housing and Urban Development

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