

1. Ms. Joan Murphy, Assistant Principal *Joan Murphy 4/2/15*
2. Ms. Lorraine O'Donoghue, Principal *ROD 4/2/2015*
3. Mr. David Walsh, Assistant Secretary *DW 4/2/15*
4. Rúnaí Aire Stáil *AP 4/2/15*
seen + approved by MGS CORAS 10/2/15

@ 10/2/15.

Minister,
 This application is recommended for your approval.
Lorraine O'Donoghue 4/2/15

Foreshore Lease application by Dún Laoghaire Rathdown County Council

Ref: FS005832

Application:

The approval of the Minister is sought to grant a foreshore lease for a term of 99 years to Dún Laoghaire Rathdown County Council to facilitate the refurbishment of the dilapidated baths site at Dún Laoghaire and to rationalise existing titles held by the Council over a wider area of foreshore.

This scheme proposes works at the Dún Laoghaire Baths site to provide for the retention and securing of the existing Baths Pavilion for use as artist workspaces, a gallery café and for the provision of public toilet facilities. It also proposes the removal of dilapidated structures to the rear of the Pavilion to permit the creation of a new route and landscaping that will connect the walkway at Newtownsmith to both the East Pier and the People's Park.

The proposed works on the foreshore involve the infilling of the existing saltwater pools and the development of enhanced facilities for swimming and greater access to the water's edge by including an extension to an existing jetty and an area for changing. This extended jetty will be linked by new steps to the 'café terrace' at the Baths Pavilion and to the pedestrian crossing point leading to the People's Park. The jetty will also be linked to the upgraded paths which will provide access to the East Pier. The proposed extended jetty (approx. 15m) allows greater access for swimmers to deep water which is clear of rocks at all stages of the tide.

It was also intended to extend an existing storm water outlet pipe, constructed as part of the Glasthule Area Interim Flood Relief Scheme, by 50m out to sea and buried along its route on the foreshore. However, since 1st Jan 2014 all Local Authority applications relating to foul water were deemed to have been made by Irish Water. Confirmation from Irish Water is awaited on whether the outfall is to be developed. As a result, this element of the application has not been considered at this time.

1. Background

Kingstown Urban District Council (now Dún Laoghaire Rathdown County Council) was granted a fee farm grant¹ by the Crown and the Board of Trade for the baths area in 1909

¹ A fee farm grant is an antiquated conveyance mechanism, essentially a freehold with conditions imposed by the grantee. New fee farm grants were prohibited by the Land and Conveyancing Act 2009.

and was also granted a yearly tenancy lease² of foreshore in 1910 encompassing 3 areas of foreshore at Dún Laoghaire. Both conveyances contain conditions and provisions no longer suitable to present circumstances.

The works, the subject of the application, are proposed on areas held under the 1910 lease, the fee farm grant area and also an additional 245 m² of state owned foreshore.

Maps and an overview of the proposed works are attached at **Tab 1**.

- Drawing No. PL-14-424 details the proposed leasehold area comprising the 3 X 1910 lease areas, the 1909 fee farm grant area and the new area of foreshore.
- Drawing No. PL-13-114 details the 1909 fee farm grant area and the required additional plot of foreshore at the baths in the context of the 1910 lease.
- Drawing No.1719/FA/100/01 details the proposed works.

The existing consents created a number of technical legal issues and a variety of conveyance mechanisms were explored with the Council. It was ultimately agreed with the Council that the most appropriate conveyance mechanism is:

- the surrender of the 1910 lease;
- the re-conveyance of the 1909 fee farm grant to the State;
- the grant of a single new foreshore lease with modern provisions encompassing the existing title areas and the new area of foreshore required.

The CSSO has advised that one deed can encompass the three transactions. As the 1909 and 1910 conveyances were granted jointly by the Crown and the Board of Trade the surrender and re-conveyance must be formally accepted by both the Minister for the Environment, Community and Local Government (MECLG) and the Minister for Public Expenditure and Reform (MPER) by way of attaching respective seals to the new deed. The new lease will be granted solely by MECLG.

MPER has provided sanction for the 99 year term, attached at **Tab 2** and has undertaken to execute the surrender and re-conveyance elements of the proposed deed.

2. Companion Consents:

The Council intends to secure planning permission for the works by way of Part 8 of the Planning and Development Act if this foreshore consent application is approved.

3. Public Consultation:

A public notice concerning the application was published in The Irish Times on October 9th 2013 and The Dún Laoghaire Gazette on the 10th October 2013. The documents were

² A yearly tenancy lease is a lease with an annual rent and no expiry date.

available for inspection at Dún Laoghaire Garda Station for the required period of 21 working days.

4 submissions were received during the public consultation phase. The comments / observations made in the submissions relevant to the proposed works on the foreshore included:

- that there would be no impact on foreshore, any delay to this project should be avoided and foreshore consent granted as swiftly as possible;
- that a full assessment of the impact on bird species listed as special conservation interests of the surrounding SPAs is required and that appropriate measures are put in place to avoid or mitigate any potential impacts on these species;
- that rock armour be provided at the proposed new lowered wall to the south of the baths;
- a request that interactive water fountain at the infill pool location be considered; and
- concerns were expressed that there would be adequate protection on the outreach shelter walls to withstand the force of the sea in rough weather.

4. Prescribed Bodies Consultation:

Written submissions on the proposed development were received from this Department's Engineering Inspectorate, Department of Agriculture, Food and the Marine, Marine Survey Office, Inland Fisheries Ireland, Department of Arts, Heritage and the Gaeltacht, (Underwater Archaeology and the National Parks and Wildlife Service) and the Sea Fisheries Protection Authority.

There were no objections in principle to the proposed development.

5. Environmental Assessment:

EIA Screening: The proposed works are not of a class that requires a mandatory EIS under the EIA Directive **Tab 3**.

Appropriate Assessment: The project was screened for Appropriate Assessment (AA). A Finding of No significant Effects Report **Tab 4** has determined that there will be no significant adverse effects as a result of the proposed works on the Conservation Objectives of any of the Natura 2000 sites within 15km of the proposed works.


- South Dublin Bay SAC (Site Code 000210)
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024)
- Dalkey Islands SPA (Site Code 004172)
- Rockabill to Dalkey Island SAC (Site Code 003000)

- Baldoyle Bay SAC (Site Code 000199)
- Howth Head SAC (Site Code 000202)
- Ireland's Eye SAC (Site Code 002193)
- North Dublin Bay SAC (Site Code 000206)
- Bray Head SAC (Site Code 000714)
- Wicklow Mountains SAC (Site Code 002122)
- Knocksink Wood SAC (Site Code 000725)
- Ballyman Glen SAC (Site Code 000713)
- Baldoyle Bay SPA (Site Code 004016)
- Howth Head Coast SPA (Site Code 004113)
- Ireland's Eye SPA (Site Code 004117)
- North Bull Island SPA (Site Code 004006)
- Wicklow Mountains SPA (Site Code 004040)

Marine Licence Vetting Committee (MLVC) assessment and report:

Considering the nature, scale and location of the proposed work the MLVC concludes that, subject to compliance with a number of site specific conditions (attached at **Tab 5**), the proposed works would not have a significant negative impact on the marine environment, would not adversely impact on any Natura 2000 site and therefore, is agreeable to the grant of the lease to facilitate the proposed development. See report attached at **Tab 6**.

6. Financial Considerations:

The 1909 fee farm grant is subject of a fee of €1.27 p.a. if demanded. The 1910 lease is subject to a rent of €1.27 p.a.. In recognition of the existing favourable terms under which the foreshore is currently held by the Council it is proposed that nominal financial consideration of a peppercorn rent of  per annum, if demanded, will apply to the new lease. If required, nominal values will attach to any other conveyances necessary to conclude the transaction.

While the Council has not indicated any such plans, conditions will be included in the new lease to provide for review of the financial considerations should the amenity be commercialised in future. Any further works in the wider leasehold area will require a further consent application.

7. Agreement of applicant

Dún Laoghaire Rathdown County Council has agreed to the specific conditions which would be attached to the lease, if granted.

8. Recommendation:

Having regard to:

- the application for a Foreshore Lease together with accompanying documents;
- the submissions received from prescribed bodies;
- the public consultation undertaken;
- the AA screening performed;
- the EIA screening performed;
- the assessment of the proposed development by the Marine Licence Vetting Committee, and its conclusions and recommendations in this regard; and
- the consent conditions to be attached to the Foreshore Lease, if granted

it is considered that:

- the proposed development on the foreshore would not have a significant negative impact on the marine environment and would not adversely affect the integrity of the Natura 2000 sites; and
- the proposed works are in the public interest.

It is recommended that a foreshore lease be granted subject to the conditions recommended by the MLVC and the rent set out in (6) above.

9. Notification of Minister's Determination:

If approval is granted by the Minister, Dún Laoghaire Rathdown County Council will be informed accordingly, appropriate conveyance documents will issue for execution and a Notice of Determination regarding the decision (including the reasons) will be published on the Department's website.

The Notice of Determination will address:

- the outcome of the Minister's determination of the application;
- the main reasons and considerations for the Minister's determination;

- 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; and
- 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.

Submitted, please.



Bernard Nolan

Marine Planning – Foreshore Section

26 January 2015

Seen and approved by the Minister of State

Signature:



Date:

10/2/15

Paudie Coffey, T.D., Minister of State at the Department of the Environment,
Community and Local Government
