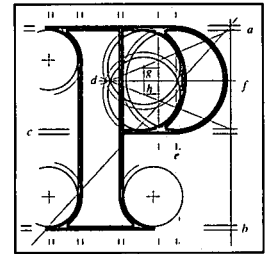


Our Ref: MT 04.MT0001  
P.A.Reg.Ref:  
Your Ref: W0289-01

W0289-01

An Bord Pleanála



Brian Meaney  
Environmental Protection Agency  
Climate, Licencing & Resource Use  
P.O. Box 3000  
Johnstown Castle Estate  
Wexford

Environmental Protection  
Agency

06 MAY 2014

02 MAY 2014

**Approval** Re: East Tip Remediation Project,  
Haulbowline Island, Co. Cork.

Dear Sir,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act, 2000 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. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website ([www.pleanala.ie](http://www.pleanala.ie)). 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 attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

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: 01-8737248

EL16.LTR

## Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, 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(6) 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.

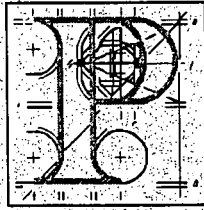
Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice 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](http://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.

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# An Bord Pleanála



## PLANNING AND DEVELOPMENT ACTS 2000 TO 2013

An Bord Pleanála Reference Number: 04.MT0001

### Cork County Council

**APPLICATION** by the Minister for Food, Agriculture and the Marine, care of Cork County Council, County Hall, Cork, for approval under section 181(3) of the Planning and Development Act 2000, as amended by the European Union (Environmental Impact Assessment and Habitats) (Section 181 of the Planning and Development Act 2000) Regulations 2013, in accordance with plans and particulars, including an environmental impact statement and a Natura impact statement, lodged with An Bord Pleanála on the 30<sup>th</sup> day of October, 2013.

**PROPOSED DEVELOPMENT:** Remediation of the East Tip, Haulbowline Island, Ringaskiddy, County Cork. The proposed development consists of:

- (i) Demolition and clearance of existing structures (including three number buildings) on site and other site preparatory works;
- (ii) Re-profiling of the site;
- (iii) Construction of a perimeter engineered structure and an engineered capping system with surface water drainage system;
- (iv) Provision of a public park (including grassland, wetland, paths, car park for 54 number cars, bicycle parking area, future overflow parking area, entrance feature, boundary and other fencing, bird viewing areas, bird roosting ledge, and all associated landscaping works);
- (v) Provision of a playing pitch to replace the existing Irish Naval Services facility;



- (vi) Two number two-lane access roadways (along the approximate route of the existing access road) to provide segregated access from Haulbowline Bridge to each of the proposed public park and the naval dockyard and associated revised security arrangements;
- (vii) Provision of new footpaths and upgrading of existing footpaths and road resurfacing as necessary on the private access road between Haulbowline Island and the L2545 local road at Ringaskiddy; and
- (viii) All associated ancillary site development works, structures and services.
- (ix) The proposed development will involve works on the foreshore.

The development site comprises an area of 13.2 hectares; the site also includes the associated private access roads to the East Tip from the L2545 local road at Ringaskiddy townland, via Rocky Island, County Cork.

### DECISION

**APPROVE, subject to conditions, the proposed development based on the reasons and considerations set out under.**

### MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

### REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard to the following:

- (a) the Judgement of the Court of Justice of the European Communities in Case C 494/01 and the statutory requirements associated with this decision;
- (b) the nature of the site, specifically its location in a prominent and vulnerable site within the Inner Harbour of Cork Harbour;

- (c) the nature and extent of the proposed development outlined in the environmental impact statement and plans and particulars submitted to the Board on the 30<sup>th</sup> day of October 2013, subsequently supplemented in correspondence and at the oral hearing on the 19<sup>th</sup> day of March 2014;
- (d) the mitigation measures set out in the documentation submitted with the application;
- (e) the submissions made in relation to the environmental impact statement and at the oral hearing;
- (f) the provisions of the EU Habitats Directive (92/43/EEC);
- (g) the European Communities (Birds and Natural Habitats) Regulations 2011;
- (h) the document entitled *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*, issued by the Department of the Environment, Community and Local Government in 2013;
- (i) the document entitled *Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities*, issued by the Department of the Environment, Heritage and Local Government in 2009, revised 2010;
- (j) the provisions of the draft Cork County Development Plan 2013; and
- (k) the report of the Inspector.

Having regard to the nature, scale and extent of the proposed development, the environmental impact statement and supporting documentation submitted with the application, the further information submitted to the Board, the submissions on file, the fact that the proposed development will be subject to a licence issued by the Environmental Protection Agency and the Inspector's assessment of environmental impacts, which is noted, the Board completed an environmental impact assessment and concluded that, subject to compliance with the conditions set out below, the proposed development would not be likely to have significant adverse effects on the environment.

Having regard to the nature, scale and extent of the proposed development, the Natura impact statement submitted with the application, and the mitigation measures contained therein, the further information submitted to the Board, the submissions on file and the Inspector's assessment, the Board completed

an appropriate assessment of the impacts of the proposed development on the Natura 2000 sites, Great Island Channel candidate Special Area of Conservation (site code 001058) and Cork Harbour Special Protection Area (site code 004030). Subject to the implementation of the identified mitigation measures the Board concluded that, on the basis of the information available, the proposed development, either individually or in combination with other plans or projects, would not have significant effects on the integrity of any European site, having regard to the conservation objectives of those sites.

It is considered that, subject to compliance with the conditions set out below, the proposed development would protect the environment and amenities of Cork Harbour, would enhance the qualities of the environment and amenities of the area, and would result in the stabilisation of a waste site for which remediation is required. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including mitigation measures specified in the environmental impact statement and Natura impact statement, lodged with An Bord Pleanála on the 30<sup>th</sup> day of October, 2013, as amended and supplemented by the plans and particulars, including revised mitigation measures lodged on the 3<sup>rd</sup> day of December, 2013 and on the 14<sup>th</sup> day of February, 2014, and at the oral hearing on the 19<sup>th</sup> day of March, 2014, except as may otherwise be required in order to comply with the conditions set out below.

**Reason:** In the interest of clarity.

2. The construction of the proposed development shall be appropriately supervised by suitably qualified and experienced environmental personnel, to ensure that all environmental mitigation and monitoring measures are implemented in full.

**Reason:** In the interest of clarity and of environmental protection.

3. The planting and establishment works for the final park shall be subject to a full 5-year maintenance and establishment contract starting from the first year in which the topsoil spreading and tree/grass planting takes place, with the full replacement of any failed vegetation at the end of this period.

**Reason:** In the interest of protecting the visual amenities of the area.

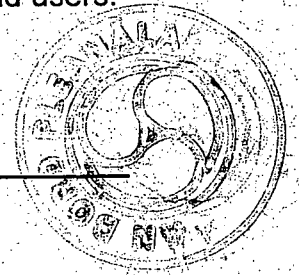
4. A qualified and experienced marine mammal observer (MMO) will be appointed by the applicant during piling operations, with appropriate optical equipment to monitor for marine mammals, to inform the relevant sound-producing operations and to log all relevant events using standardized data forms (Appendix 6 of the National Parks and Wildlife Service "Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters", January 2014).

Marine mammals will not be harassed or chased from the area, but allowed to leave of their own accord. Acoustic deterrent devices will not be used as a method to prevent animals from entering or remaining within the 1000 metre-radius Monitored Zone or any other nearby area.

**Reason:** In the interest of protecting vulnerable species within the harbour area.

5. A Stage 3 Road Safety Assessment shall be carried out on the access roadway including junction design, signage and road markings. The recommendations of the Road Safety Audit shall be implemented prior to the opening of the site to the public.

**Reason:** In the interest of traffic safety and convenience of road users.



**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

Dated this 1<sup>st</sup> day of MAY 2014.

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