

For the Attention of: Mr Garret Doocey.

Department of Transport (Marine Transport Division)

Leeson Lane,

Dublin 2 8 September 2009

Re: NOTICE(S) published by the Drogheda Port Company in the Drogheda Independent newspaper on 29 July 2009 and on 19 August 2009 inviting, within a period of 21 days, comments on its Application to the Minister for Transport to extend its Harbour Limits.

Dear Sirs,

As you are aware, An Taisce – The National Trust for Ireland is a voluntary NGO with the Objective of securing Environmental Protection to the level required by law, in particular EU/EC law. For that purpose An Taisce is afforded legal rights in respect of consultation, access to information and judicial review procedures in relation to proposed projects, plans or programmes likely to significantly effect the environment, arising from EU/EC law, in particular, EU/EC Directive 2003/35.

With reference to the above proposal(s) (henceforth "the proposal") contained in the application by Drogheda Port Company to your Department (presumably for approval), An Taisce – The National Trust for Ireland hereby makes the following submission and observations in respect of same. For the sake of clarity this submission is organised hierarchically in a logical sequence of observations/points.

Point 1

An Taisce notes that the proposal is undoubtedly one likely to have significant effects on the environment in a number of respects (some of which are specified in the enclosures – attachments herewith and listed below herein) and therefore must be subjected by the designated decision-making authority to full compliance

with the requirements of all applicable EU/EC Directives. To be clear, An Taisce expressly requests that all said enclosures – attachments herewith be considered part of this submission.

Point 2

An Taisce notes that the proposal forms part of a plan or programme which involves a framework for future development consent in respect of future harbour development and strategy nationally, as is admitted by the reference to newly passed legislation – viz. the Harbours (Amendment) Act 2009 (No. 26/2009) the provisions of which are designed to facilitate same.

In this regard, An Taisce notes the following chronological sequence of events in respect of the proposal advertised as seeking approval from your Department –

(i) the passing of the Harbours (Amendment) Act 2009 (No. 26/2009) the said enactment bearing the date 21 July 2009;

(ii) the first Notice by the Drogheda Port Company appearing in a local paper dated 29 July 2009 and the omission from that Notice of any reference to environmental assessment of the proposal and consultation thereon, in particular in accordance with the requirements of Directive 2001/42/EC, the Strategic Environmental Assessment Directive ("SEA Directive");

(iii) a Press Release appeared on the Department of Transport website, dated 7th August 2009, in which the Minister for Transport Noel Dempsey T.D. acknowledged the existence of a plan or programme involving Drogheda Port Company and the strategic significance of same, with reference to the publication of a Report commissioned by his Department, but failed to mention the fact that this Report explicitly drew attention to, inter alia, the requirement to comply with EU/EC environmental protection law in respect of this plan or programme (which the Press Release expressly acknowledges involves both

Dublin and Drogheda ports); in these circumstances An Taisce is obliged to point out that, instead of referring to the Report's critical environmental protection point, Minister Dempsey preferred to state that "that nothing should be done at a policy level to hinder either [port proposal]."

(iv) the second Notice by the Drogheda Port Company appearing in a local paper dated 19 August 2009 and the omission from that Notice of any reference to environmental assessment of the proposal and consultation thereon, in particular in accordance with the requirements of Directive 2001/42/EC, the Strategic Environmental Assessment Directive ("SEA Directive");

(v) the news report in the Drogheda Independent newspaper on 19th August 2009 –

[Headline:] "Port Business down by 50%"

[Text:] "Business at the Drogheda Port Company (DPC) has fallen by half, according to one weekend newspaper, with the number of containers passing through falling from a peak of 1.4 m. a year to 660,000 last year.

Turnover has dropped by 25% to 2.4 million euros, while DPC has made a loss of E.190,000 last year, compared with a profit of more than E.300,000 in 2007.

Meanwhile it has been reported that the DPC chairman Patrick Traynor has described the process of securing a foreshore licence for the company's proposed development at Bremore as 'unacceptable'."

[End of news item]

Point 3

In view of the foregoing An Taisce submits that any attempt by the Department of Transport to approve the proposal the subject of this submission, while failing to take the measures necessary to ensure full compliance

with the requirements of EU/EC environmental protection law, in particular with the assessment and public consultation requirements of Directive 2001/42/EC (the S.E.A. Directive) *prior to making a decision on the proposal*, such failure on the part of the Department will result in an invalid and illegal decision by virtue of such failure to so comply, which failure will legally render all subsequent decisions / purported authorisations in respect of the proposal also illegal null and void under EU/EC law – and with no hope of a "retention" process or retrospective "validation" in the circumstances, since the European Court of Justice has already found against Ireland on such point of failure last year.

Point 4

An Taisce therefore submits and respectfully recommends that the Department must reject and return the present application for the proposal of the applicant on the ground that an application that complies with the environmental protection requirements of the law, in particular, the S.E.A. Directive is what is required in the making of such applications, notwithstanding that the recent legislation No. 26/2009 is silent and thus deficient on the critical issue of environmental protection compliance. The Department should be aware that domestic legislation that fails to ensure the application and delivery of the relevant objectives of applicable EU/EC law is defective and invalid to the extent of that failure. The Department of the Environment has recently learned this lesson in respect of certain "retention" development consent provisions in relation to the Planning and Development Act 2000 as amended. In this context it is noted that the recent Harbours (Amendment) Act 2009 purported to provide for certain amendments to the said Planning and Development Act and C.P.O. measures while failing to ensure against any environmental likely to be precipitated as a result of such provisions.

By way of assistance in the informing of the required environmental assessment and as part of this submission An Taisce encloses/references the following documentation:

[1] An Taisce Report re Natural Heritage likely to be

affected by the proposal;

[2] An Taisce Report re Cultural Heritage likely to be affected by the proposal;

[3] Text of Documentation referred to in Point 2 (ii) to (v) above herein (2 page doc.);

[4] Dublin Port National Development Plan Study Report prepared for The Department of Transport By Indecon in association with MDS, Jones Lang LaSalle and Adams Hendry Consultants, dated 24 July 2009 (We refer the Minister / Department to Chapter 6, in particular, which document is already in your possession. Although it does not identify the applicability of S.E.A. specifically it nevertheless identifies the likelihood of significant environmental effects resulting from both the Dublin and Bremore/Drogheda proposals and that should have prompted the Minister / Department to consider/seek advice on same. We have been legally advised on this matter and are now sharing this benefit. Please give us Departmental evidence that these points in this Report have been considered.

Finally, in the context of this submission and our legal rights as an NGO arising from Directive 2003/35, An Taisce requests the following information from the Department of Transport in respect of the proposal –

[1] Why is there no reference in the recent Act No. 26/2009 to environmental protection requirements?

[2] Did the Department of Transport liaise / seek consultation with the Department of Environment in respect of environmental protection requirements relevant to (a) the aforesaid legislation (b) the proposal?

[3] Why is the public consultation in respect of the proposal offered for a shorter period than that applicable to, say, a planning application, or a development plan?

[4] Why were 2 different Notices in respect of the

proposal published?

[5] Why was the first Notice replaced?

[6] Was an official withdrawal of the first Notice issued and published?

[7] Was there publication of the Notice(s) in any newspaper with national circulation?

[8] Why was a Garda Station specified as the venue for public consultation?

[9] Did the Department of Transport, when it received the application for the proposal, inform the applicant that Directive 2001/42/EC applied in respect of its proposal? If the Department of Transport did not so inform the applicant, please give reasons why it did not do so.

[10] Was the issue of applicability of the said Directive considered by the Department?

Please note that An Taisce seeks answers to the above questions in compliance with our legal rights under Directive 2003/35 (Access to Environmental Information) and within the timeframe of 28 days stipulated therein.

We look forward to hearing further from you

Yours faithfully

[SIGNED:

Dr. Mark Clinton

Chair, Monuments & Antiquities Comm.;

Council Member, An Taisce.]