

23rd January 2014

Mr. Garret Doocey  
Maritime Transport Division  
Department of Transport, Tourism and Sport  
Kildare Street  
Dublin 2.

Dear Garret

I refer to Draft Heads of the proposed Harbours Amendment Act relating to the proposed changes to the Harbours Acts 1996-2009 required on foot of the new National Ports Policy launched in 2013.

While the primary focus of the Draft Heads is to facilitate the transfer of control of the five Ports of Regional Significance to local authority control (as identified in the National Ports Policy), it is also opportune to put forward other amendments which may be worthy of consideration for inclusion in any proposed legislation.

In this regard, in our submission dated 20<sup>th</sup> September 2013 we set out a number of suggested amendments in relation to the following

- Transfer of Ports of Regional Significance to Local Authorities
- Transfer of certain Harbours to Local Authorities
- Amendment to the Limits of the Harbour of Dublin Port Company
- Pilotage

#### **Transfer of Ports of Regional Significance to Local Authorities**

The primary focus of the proposed legislation is to provide the legislative basis and framework for the transfer of control of Ports of Regional significance to the relevant local authorities. The Ports of Regional Significance are listed as

- Drogheda Port Company
- Dún Laoghaire Harbour Company
- Galway Harbour Company
- New Ross Port Company
- Wicklow Port Company

Under the *Harbours Acts 1996 to 2009 ( Transfer of functions of Dundalk Port Company ) Order 2011, S.I. No. 361 of 2011*, the assets, liabilities, rights and obligations of Dundalk Port Company were transferred to Dublin Port Company on 12<sup>th</sup> July 2011.

In the absence of this transfer order Dundalk Port would most likely have been included as a Port of Regional Significance. We suggested in our September 2013 submission that the scope of the proposed legislation should be extended to cater for the transfer of ports of regional significance which fall within the remit of a Port Company of National Significance, to the relevant local authority, following consultation between the relevant Port Company and the Minister.

Head 11 provides for the insertion of a new section 88(6A) which provides for the possible future transfer of Dundalk Harbour from the control of Dublin Port Company to Louth County Council.

### **Transfer of certain Harbours to Local Authorities**

Section 88(5) of the Harbours Act 1996 provides for the transfer of Bulloch and Sandycove Harbours from Dublin Port Company to Dún Laoghaire – Rathdown County Council in the following terms

- *(5) On the commencement of this subsection there shall stand transferred to Dún Laoghaire- Rathdown County Council from the Dublin Port and Docks Board, or, if the relevant vesting day is prior to such commencement, from Dublin Port Company, the following harbours, namely, Bulloch Harbour and Sandycove Harbour together with all the property, rights and liabilities of the said Board or company, as the case may be, connected with each of the said harbours.*

Section 1(2)(c) of the Act further provides that an order made by the Minister under Section 88(5) of the Act shall only be made with the consent of the Minister for the Environment.

Section 88(4) of the Act made similar provision for the transfer of Skerries and Balbriggan Harbours to Fingal County Council. This transfer was effected under the *Harbours Act 1996 (section 88(4))(Commencement) Order 2004* which came into operation on 30<sup>th</sup> June 2004.

It is clear that the intention under the Harbours Act 1996 is to provide for the transfer of these amenity / fishery harbours, which have no commercial contribution to make to Dublin Port Company, to the relevant Local Authority.

In our September 2013 submission we suggested that the proposed legislation should now provide for the definitive transfer of Bulloch Harbour and Sandycove Harbour to Dún Laoghaire County Council.

The draft heads do not appear to amend the existing legislation in any way. In the absence of legislating for the definitive transfer of these Harbours we would urge that action be taken to give effect to Section 88(5) as originally intended.

### **Amendment to the Limits of the Harbour of Dublin Port Company**

The limits of the Harbour of Dublin Port Company as set out in the Third Schedule to the Harbours Act 1996 were amended under the Harbours Act, 1996 ( Limits of Harbour of Dublin Port Company ) ( Alteration ) Order, 1997 – S.I No. 98 of 1997 as follows

- 3. The limits of the Harbour of Dublin Port Company, as set out in paragraph 4 of the Third Schedule to the Harbours Act, 1996 ( No. 11 of 1996 ), are hereby altered by the substitution for those limits of the following –

“Limits consisting of and including –

- (a) (i) the River Liffey and the quays and walls bounding the same,
- (ii) the walls called the North Wall, the South Wall and the East Wall, respectively,
- (iii) the piers, jetties, tidal basins and other works constructed by or belonging to the Dublin Port and Docks Board before the relevant vesting day,
- (iv) the Harbour of Dublin and the strands, bays, creeks and harbours thereof and all waters inside that area,

commencing from and including the Rory O’More Bridge at Heuston Station in the City of Dublin, and extending to an imaginary straight line drawn from the Baily Lighthouse on the north in the County of Dublin and extending through the North Burford Bank Buoy and thence through the South Burford Bank Buoy and thence to Sorrento Point on the south, including the harbours of Bulloch and

Sandycove, but excepting the limits of the harbour of Dún Laoghaire Harbour Company and excepting also the harbours of Coliemore and Sutton, and

(b) the harbours of Balbriggan and Skerries”

In our September 2013 submission we proposed that the jurisdiction of Dublin Port Company should cease at Matt Talbot Memorial Bridge as port traffic cannot navigate the river beyond this bridge. Therefore the limits of the Harbour of Dublin Port Company should be amended to the limits as originally set out in the Third Schedule to the principal Act which limited jurisdiction on the river Liffey westward - up to but not including the Matt Talbot Memorial Bridge.

I note that Dublin City Council has written to the Department expressing concern that a change in the limits will have potentially serious financial implications for the City Council as it would have to take over responsibility for maintenance of the quay walls from Memorial bridge to Rory O'More bridge.

I believe that the practical reality is that Dublin city council has had this financial responsibility since at least 1929. My understanding of the history in relation to the Quay Walls and Bridges is that up to and including 1993, the then Dublin Port and Docks Board undertook repairs and maintenance, but recovered any expenditure under a Bridge Rate Account from Dublin Corporation and Dublin County Council. This Bridge Rate Account was operated under the provisions of the Dublin Port and Docks (Bridges) Act 1929.

Following enactment of the Local Government (Dublin) Act 1993 the Bridge Rate Account mechanism ceased. Under Section 36 of the Act, Dublin Corporation became responsible for the maintenance of the bridges and quay walls. The relevant section was given effect under SI 400/1993 Local Government (Dublin) Act 1993 Commencement Order, 1993.

In relation to the point made by the council in respect of commercial activity west of Memorial Bridge , we are aware of only one such commercial undertaking which is owned by the Dublin Docklands Development Authority and operated under licence. Dublin Port Company receives no commercial benefit from this activity.

We resubmit that the limits of the Harbour of Dublin Port Company should be amended to the limits as originally set out in the Third Schedule to the principal Act which limited jurisdiction on the river Liffey westward - up to but not including the Matt Talbot Memorial Bridge.

### **Pilotage**

In the September 2013 submission we set out the following points

*A large section of the current Act deals with pilotage and, without going into very specific detail, we believe that there should be scope to simplify and thereby clarify requirements in respect of pilotage. Two areas immediately spring to mind:*

- Clarification that a port such as Dublin can have a blend of employed and licensed pilots rather than having to opt for one option rather than the other.*
- Review of who a port can issue a PEC to to ensure that the legislation is not unnecessarily restrictive.*

*Beyond these, we believe that a comprehensive review of the existing pilotage provisions could be beneficial in informing the drafting of new legislation.*

*In relation to the issuance of Pilot Exemption Certificates, the amendment of Section 72 of the 1996 Harbours Act by Section 15 of the Harbours (Amendment) Act 2009 leaves out the word “or” between Subsection (b) and (c). The intention of the amendment has therefore been frustrated. This also creates a conflict with Marine Notice No 6 of 2011 in relation to Norway and Iceland.*

I understand from our recent conversation it is intended to amend Section 56 of the Act in order to allow for greater flexibility in the manner in which pilotage services are provided so that a company can obtain pilotage services through a combination of employment, licensing or tendering for defined periods of time in line with our recommendation above and that submitted by the Irish Ports Association.

I also note that Head 10 implements the amendment suggested above in relation to Section 72.

Yours Sincerely

Michael Sheary  
Company Secretary / Chief Financial Officer