An Bille um Údarás Forbartha Dugthailte Bhaile Átha Cliath (Díscaoileadh), 2015
Dublin Docklands Development Authority (Dissolution) Bill 2015

Meabhrán Mínitheach
Explanatory Memorandum
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Introduction

This Bill provides for the dissolution of the Dublin Docklands Development Authority (“the Authority”) which was established by the Dublin Docklands Development Act 1997. The Dublin Docklands Development Authority was originally set up to secure the social and economic regeneration of the Dublin Docklands area on a sustainable basis and to secure improvements in its physical environment. The Authority was successful in fulfilling its remit and was self-financing, with resources generated through its property development activities being re-invested in the physical, social and economic renewal of the area. However, as a result of the economic downturn and the stressed state of the property market in recent years the Authority’s financial position has been under significant strain. The Government has decided that the further development of this area would be better addressed within the wider context of the development of the city as a whole. It has therefore decided to wind up the Authority and transfer its function to Dublin City Council who will guide the future development of the area.

The Bill also provides for the establishment of a consultative forum on a statutory basis to ensure that the views of all interested parties in the Docklands area are recognised in the future development of the area.

Provisions of the Bill

There are 5 parts in the Bill, comprising 44 sections, together with a schedule.

Part 1

General (Sections 1 — 4)

This Part contains standard legislative provisions in relation to such matters as collective citation, commencement, definitions, regulations and expenses of the Minister.

Part 2

Dissolution of the Authority (Sections 5-6)

Part 2 provides for the dissolution of the Authority
Sections 5—6 Dissolution day and Dissolution of the Authority

These sections allow for the dissolution of the Authority on a day to be appointed by the Minister and that the Authority stands dissolved on dissolution day.

Part 3

Provisions consequential on dissolution (Sections 7-13)

Part 3 provides for a range of matters that will apply consequential to the dissolution of the Authority and the transfer of responsibility of functions and associated matters to Dublin City Council.

Section 7 — Transfer of functions

This section provides for the transfer of functions from the Authority to Dublin City Council (“the Council”).

Section 8 — Transfer of land and other property

This section provides for the transfer of all lands and property on dissolution from the Authority to the Council and also provides for a transfer of the right to pursue any chose-in-action without the need to notify any person bound by the chose-in-action.

Section 9 — Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by Authority

Subsection (1) provides for the transfer of all contracts or commitments involving the Authority to the Council.

Subsection (2) provides for any powers conferred on the Authority as a result of the master plan as provided for under section 25(7)(c)(ii) of the Dublin Docklands Development Authority Act 1997 to transfer automatically to the Council.

Subsection (3) allows the Council or person whose right or liability is transferred to legally pursue any such right or liability.

Subsection (4) transfers all leases and permissions granted by the Authority to the Council.

Section 10 — Liability for loss occurring before dissolution day

Subsection (1) provides that any future claims against the Authority for loss before dissolution will transfer to the Council on dissolution.

Subsection (2) provides that any claims on-going against the Authority on dissolution will transfer and continue against the Council.

Subsection (3) provides that any claims against the Authority which have been settled or a judgement made against the Authority on dissolution date, but not discharged will transfer to be discharged by the Council.

Subsection (4) provides that any matter, on which the Authority could have sued, will transfer as a right to sue to the Council. Any matter which is on-going by the Authority will transfer to the Council as if they had initiated it.
Section 11 — Provisions consequent upon transfer of assets and liabilities to Council

Subsection (1) provides that anything commenced by the Authority but incomplete may be completed by the Council.

Subsection (2) provides that anything legally granted and any certificates issued by the Authority prior to dissolution will be regarded as having been granted or issued by the Council after dissolution.

Subsection (3) provides that any reference to the Authority or its functions in the Memorandum or Articles of Association of any company will be regarded as a reference to the Council after dissolution date.

Subsection (4) provides that the Council can, by request, have any money, stocks, shares or securities, transferred to it under section 8, assigned into its own name.

Subsection (5) provides that the Minster may certify that any asset or rights which might have transferred to the Council under this legislation has or has not so transferred, unless proven to the contrary.

Subsection (6) amends the Dublin Docklands Development Authority Act 1997 by the substitution of Dublin City Council for Authority where it first occurs.

Section 12 — Records held by Authority on dissolution day

This section provides for the Authority’s records to be transferred and held by the Council after dissolution.

Section 13 — Admissibility in evidence of documents

Subsection (1) provides that where records of the Authority are required to be kept under law, and could be receivable in evidence under law immediately before dissolution day that they remain receivable in law after dissolution day.

Subsection (2) provides for the chief executive or other officers of the Council to verify the veracity of any document or record transferred to it in accordance with subsection (1).

Section 14 — Superannuation

This section provides for the payment of pensions to former and serving members of staff of the Authority by the Council after dissolution day and provides for the administration of any pension scheme by the Council that had formerly been administered by the Authority.

Section 15 — Final accounts and final report of Authority

This section compels the Council to prepare final accounts of the Authority within 12 months of dissolution and that the Minister must submit these accounts to the Comptroller and Auditor General and subsequently lay the accounts and report of the C+AG before both Houses of the Oireachtas. The Minister may specify the period covering the final accounts. The final annual report of the Authority must be produced within a year of dissolution and must be laid before the Houses of the Oireachtas.
Part 4

Planning Arrangements (sections 16-31)

Part 4 deals with planning and development matters to bring certainty to the planning framework for the Docklands area and deals specifically with the legacy issues that have arisen. It provides for a “clean break” from the existing fast-track planning procedures under Section 25 of the DDDA Act 1997.

Section 16 — Status of master plan and docklands planning schemes

Subsections (1) and (2) provide that the master plan prepared under the DDDA Act 1997 and associated planning schemes shall cease to have effect on dissolution day.

Subsections (3) and (4) provide that the ceasing of the master plan and the planning schemes shall not affect the validity of anything done in accordance with the master plan or planning schemes before their cessation.

Section 17 — Application for certificates

This section provides that the Authority will not accept any application for certificates from enactment date.

Section 18 — Application for determination of substantial commencement

This section specifies how the Council shall publish a notice requesting applications to be made to it for a determination of substantial commencement under Section 20 and that any such applications must be made within 60 days of the date of publication of the notice. It also provides that an application must be in writing and provides specific details of what must be included.

Section 19 — Further information—application for determination of substantial commencement

This section provides that the Council may request further information or evidence to support an application for determination of substantial commencement and if the request is not complied with within 4 weeks that the application will be refused.

Section 20 — Determination of substantial commencement

Subsection (1) provides that the Council shall determine applications and any further information to support the application for determination of substantial commencement by reference to the extent of works already carried out and/or change of use and by reference to the certificate referred to in the application. The Council shall determine whether the development to which the application refers was or was not substantially complete on the dissolution day and shall notify the applicant of their determination within 21 days of making it.

Subsection (2) provides that the notice of determination shall contain reasons for the determination and subsection (3) provides that the Council shall enter the details of each development on which it makes a determination under subsection (1) in the register.

Section 21 — Cessation of effect of certificate

Subsection (1) provides that where the Council determines that a development is not substantially commenced then the certificate
covering such development ceases to have effect from the date of the serving of the notice.

Subsection (2) provides that where no application is received for a determination of substantial commencement in respect of a certificate then that certificate ceases to have effect after 65 working days following the publication of the notice requesting applications.

Subsection (3) provides that where a certificate ceases to have effect in accordance with this section the validity of anything done in accordance with the certificate, prior to it ceasing to have effect, shall not be affected.

Section 22 — Substantially commenced development

This section provides that where the Council makes a determination that a certificate is substantially commenced then that certificate will cease to have effect for the part of the development that is not completed following the end of the appropriate period. Where a certificate ceases to have effect under this section anything validly done prior to its cessation is not affected. The appropriate period is defined as 2 years commencing on the serving of the notice that the development is substantially commenced.

Section 23 — Application for extension of appropriate period

This section allows the Council to extend, on application, the appropriate period, of up to three years, enabling the development to be completed. To avail of this extension of time the Council must be satisfied that substantial works were carried out during the 2 year period following the determination of being substantially commenced, that there were valid reasons (commercial, economic or technical) that prevented the completion of the development within the appropriate period and that the development will be completed within a reasonable time. An application for an extension to the appropriate period must be in writing in the form specified by the Council and must include specific details and the application fee. There will be no further extensions of the appropriate period.

Section 24 — Further information — application to extend

This section provides that the Council may request further information or evidence to support an application for an extension to the appropriate period and the applicant must provide the requested information within 4 weeks or the application will be refused.

Section 25 — Conditions

Where a decision is made to extend the appropriate period the Council may attach conditions seeking adequate security to ensure completion of the development.

Section 26 — Register of applications

Details of all applications to extend the appropriate period and the subsequent decision of the Council shall be recorded on the relevant entry in the register.

Section 27 — Notification of decision on application to extend

This section provides that the Council shall notify an applicant of its decision in relation to the application to extend the appropriate period and sets out the matters which shall be specified in the notice.
Section 28 — Applications under section 34 of Act of 2000

This section provides that where a development was substantially commenced or at a more advanced stage on dissolution day, then it is open to the developer to apply for planning permission under section 34 of the Planning and Development Act 2000 for the part of the development that remains incomplete. Where such permission is granted then the certificate will cease and the permission will have effect for the part of the development that was not completed on dissolution day.

Section 29 — Consent for further development

This section provides that where a development has been completed under an existing section 25 certificate, any future application for alterations or amendments to that development must be made in accordance with existing statutory provisions under section 34 of the Planning and Development Act 2000. This facilitates applications in an SDZ area or a non-SDZ area.

Section 30 — Service of notices

This section provides for the manner in which a notice must be served on a person under this Part of the Act.

Section 31 — Enforcement under Act of 2000

This section amends the Planning and Development Act 2000 to include Dublin City Council as the planning authority for certificates issued by the Authority under the Dublin Docklands Development Act 1997 or by the Custom House Docks Development Authority under the Urban Renewal Act 1986.

Part 5

Docklands Consultative Forum (sections 32 — 44)

Part 5 provides for the establishment of a consultative forum on a statutory basis to allow for input from interested parties within the Docklands area into the future development of the area by Dublin City Council.

Section 32 — Establishment of Forum

This section provides for the establishment of the Docklands Consultative Forum which shall be independent in the performance of its functions. The provisions of the Schedule shall have effect in relation to the Forum.

Section 33 — Functions of Forum

This section provides that the Forum may, and if requested by the Council shall, consider and advise the Council and strategic policy committees in relation to the Council’s policy regarding the Dublin Docklands area as regards enterprise and employment; education; housing; planning; the environment and the interaction of communities. It may also advise regarding initiatives of the communities in the Dublin Docklands area which will benefit the communities and on communications of the Council to the public in relation to performance of the functions of the Council as they relate to the Docklands area.

Section 34 — Membership of Forum and related matters

Subsection (1) provides that the Forum shall consist of the Chairperson and 21 members.
Subsection (2) provides that the Minister, following consultation with the Council, shall appoint a person nominated by the Chief Executive to be Chairperson of the Forum and subsection (3) provides that the chairperson shall not be a member, officer or member of staff of an organisation prescribed in subsection (4).

Subsections (4) and (5) provide that the Minister, following consultation with the Council, prescribe organisations for the purposes of nominating members of the Forum. These include

(a) 5 organisations who are engaged in community development, the promotion of the social, economic or general interest of communities or representing residents of the area;
(b) 5 organisations that represent the business interests of the Dublin Docklands area;
(c) one organisation which represents the educational activities of the Dublin Docklands area; and
(d) 5 public authorities.

Each organisation shall select for appointment such number of candidates as the Minister shall specify when making the request.

Subsection (6) provides that the following ordinary members shall be appointed to the Forum by the Minister:

(a) the chief executive of the Council or an officer of the City Council nominated by the City Council;
(b) four members of the City Council;
(c) five members nominated by organisations prescribed under subsection 4(a);
(d) five persons nominated by organisations prescribed under subsection 4(b);
(e) one person nominated by organisations prescribed under subsection 4(c);
(f) five persons nominated by organisations prescribed under subsection 4(d);

Subsection (7) provides in the case of an appointment made under subsections 6(c), (d), (e) or (f), the Minister shall not appoint a person to be an ordinary member of the Forum unless the person was among those selected under subsection (5).

Subsection (8) provides that if the appropriate organisations refuse or fail to select any candidate, or if the Minister decides not to appoint any of the candidates selected by the organisations, then the Minister shall appoint as an ordinary member of the Forum a person who was selected for a previous request or shall make a further request for a candidate.

Subsection (9) provides that where an organisation fails or refuses to select the number of candidates specified in the request, it shall not preclude the appointment as an ordinary member of the Forum of a person who was selected in relation to that appointment by any of the organisations prescribed in subsection (4).

Subsection (10) provides that the Minister shall ensure that, in appointing members of the Forum, that they have the necessary knowledge and experience in relation to the functions of the Forum.

Subsection (11) and (12) provides that each member of the Forum shall hold office for a period not exceeding 3 years and that a member shall not be appointed for more than 2 consecutive terms.
Section 35 — Disqualification from membership of Forum

This section sets out the conditions whereby a person shall cease to be qualified to become a member of the Forum or shall cease to be a member of the Forum. It provides that a disqualification arising due to failure to comply with a final judgement for payment of money due to the Council shall come into effect on the seventh day after the last day for compliance and shall be for 5 years and a disqualification arising as a result of a conviction shall be for 5 years.

Section 36 — Member ceasing to be chief executive or an officer of the Council

This section provides for a person’s appointment to the Forum to be terminated if they cease to be chief executive or an officer of the Council.

Section 37 — Member ceasing to be a member of Council

This section provides for a person’s appointment to the Forum to be terminated if they cease to be an elected member of the Council in accordance with section 34(6)(a).

Section 38 — Resignation from membership

Subsection (1) and (2) provides that the Chairperson or ordinary members of the Forum may resign by notice in writing and that such a resignation shall take effect on the date specified in the notice or where no date is specified on the date the notice is received.

Subsection (3) provides that, subject to subsections (4) and (5), a person shall be taken to have resigned as a member of the Forum where they have been absent from more than 50% of the meetings in any year.

Subsection (4) provides that where the absence of a member is due to illness or other reason in good faith, the relevant period may be extended by 6 months.

Subsection (5) provides that the relevant period as extended under subsection (4) can be extended by a further 6 months where the absence of a member is due to illness or other reason in good faith.

Subsection (6) provides that a member is taken to have resigned on the next day after the end of the relevant period or at the end of the extended relevant period.

Subsection (7) provides that where a person resigns as a member of the Forum, he or she also ceases to be a member of any body to which he or she was elected, nominated or appointed by the Forum.

Section 39 — Removal from office

This section provides that the Minister, following consultation with the Council, may at any time remove from office a member of the Forum if he or she has become incapable of performing his or her functions through ill health, has committed stated misbehaviour or if the member’s removal from office is necessary for the Forum to perform its functions. It also provides that a member can be removed from office if he or she contravenes the Ethics in Public Office Act 1995 or does not comply with a code of conduct under section 10(3) of the Standards in Public Office Act 2001.
Section 40 — Casual vacancies

Subsection (1) provides that if a member of the Forum dies, resigns, ceases to be qualified for office and ceases to hold office, is removed from office or their appointment is terminated in accordance with section 36 or 37, the Minister may appoint a person to be a member of the Forum to fill the casual vacancy in the same manner as the member of the Forum who occasioned the casual vacancy was appointed.

Subsection (2) provides that a person who becomes a member of the Forum under subsection (1) shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy and shall not be ineligible for appointment or election as a member of the Forum at the end of that term of office where that person would otherwise be eligible.

Section 41 — Procedures

This section provides that the Minister may, following consultation with the Council, prescribe by regulation the procedures for presentation by the Forum to the Council of proposals and advices regarding policy relating to the functions of the Council as they relate to the Dublin Docklands area; the form and content of policy papers and other documents prepared by the Forum and the procedures to ensure that sufficient time is provided for input by the Forum.

Section 42 — Prohibition on disclosure of confidential information

Subsections (1) and (2) provide that a person shall not disclose confidential information obtained while performing functions as a member of, or an adviser or consultant to, the Forum unless authorised to do so by the Forum. The disclosure of such information is an offence and the person is liable to summary conviction to a Class C fine.

Subsection (3) provides that nothing in this section shall prevent the disclosure of information in a report made to the Forum, by or on behalf of the Forum to the Minister or Council, by a member of the Forum to the Minister or Council or by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995.

Subsection (4) defines confidential information.

Section 43 — Expenses of Forum

This section provides that any expenses incurred by the Forum in exercising its functions under this Act shall be paid by the Council.

Section 44 — Reporting

Subsection (1) provides that the Forum shall, not later than June in each year, prepare a report for submission to the Council in relation to the performance of its functions during the preceding year.

Subsection (2) provides that an annual report of the Council shall include information regarding the performance of the functions of the Forum.

Schedule 1

The Schedule sets out some standard operating procedures for the Consultative Forum covering such items as the minimum number of
meetings per year, numbers required for a quorum, procedure for dealing with material interest of members, procedures for calling meetings and appointment of chair in the absence of the sitting chair, issues determined by the votes of members, and the keeping of minutes.