

Submission HLG 00626-22: FS006970 Cork County Council Dredging at Glengarriff Pier, Co Cork

TO: Minister of State Burke
STATUS: Completed
PURPOSE: For Decision

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DIVISION: Foreshore
DECISION BY: 16/12/2022

Final comment

Approved by minister, 15/12/2022

Action required

Ministerial approval is sought to grant a Foreshore Licence to Cork County Council under section 3 of the Foreshore Act 1933, as amended, to carry out dredging works at Glengarriff Pier, Co Cork.

Executive summary

The approval of the Minister is sought to grant a Foreshore Licence to Cork County Council under Section 3 of the Foreshore Act 1933, as amended for a term of 5 years, to conduct dredging at Glengarriff Pier, Co. Cork.

Detailed information

Cork County Council have applied for a Foreshore Licence under Section 3 of the 1933 Foreshore Act as amended, for the duration of 5 years, for dredging at Glengarriff Pier and for the temporary removal of the floating jetty/pontoon/gangway to enable dredging at Glengarriff Pier, Monteensudder, Co. Cork.

Glengarriff pontoon is located adjacent to Glengarriff Pier. It is used by leisure and commercial users including passenger ferries to Garinish Island. The pontoon itself is connected via a walkway to Glengarriff Pier. The pontoon grounds and twists at low tide. Proposed dredging works aim to stop the current grounding and twisting and increase the amenity value of the pontoon. Proposed works include:

- The removal and replacement of the pontoon.
- Disconnection and reconnection of power and water supplies to the pontoon.
- Dredging of the channel and immediately around the pontoon to a depth of -5m ODM max (proposed dredge footprint is 815m²).
- Disposal of dredged to an off-site licenced waste facility.

Brief Description of the proposed works

Initial works will require the removal and storage on-site of the existing pontoon. This will be done using a crane or excavator. Dredging works will be carried out by a long reach excavator operating from a barge or from land as necessary. Spoil will be loaded onto trucks and will then be taken off-site to a licenced waste facility. Once dredging works are complete, the barge (if required)

and excavator will leave the site. The pontoon, removed at the project commencement, will be returned/reinstalled in its original location.

The equipment and resources required for the works will include:

- Crane for removing and reinstating pontoon;
- Barge to facilitate dredging;
- Safety boat;
- A long-reach excavator;
- On-site personnel;
- Trucks: These vehicles would be used to bring construction materials to site and to remove any dredge spoil from site. These vehicles will also be used to relocate the pontoon.

Proposed works should take a total of 1 to 2 weeks, including site setup and demobilization. Likely start date will be dependent on seasonal constraints.

The proposed area of foreshore associated with the works is 815m²

For further details of the proposed works are outlined in the application form and associated documents submitted by Cork County Council and can be found at the following link: <https://www.gov.ie/en/foreshore-notice/9c5d8-cork-county-council-dredging-at-glengarriff-pier-cork>.

The application form submitted by Cork County Council is attached at **Tab 01**.

The Foreshore Licence map is attached at **Tab 02**.

Companion Consents

Dredge spoil will be disposed off-site to a licensed facility, therefore a Dumping at Sea permit is not being required or sought from the Environmental Protection Agency (EPA).

Planning Permission under the Planning and Development Act 2000, as amended, is not required for this activity.

Consultations

Public Consultation under Section 19 of the Foreshore Act 1933 (as amended):

Public Notice of the application was published on the 17th July 2020 in the Irish Examiner and 18th July 2020 in the Southern Star newspapers. The public consultation period ran from **20th of July 2020 to the 19th of August 2020**.

The application documents were available on the Department's website and at the following location for 30 days.

- **Skibbereen Garda Station**, High Street, Skibbereen, Cork, P81 VP22

During the Public Consultation period there was no submissions made by members of the public.

Public Consultation under Reg. 42 of S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011:

Following the determination that an Appropriate Assessment was required, a further Public Consultation was initiated and a Public Notice was issued that invited public submissions for the purpose of conducting the Appropriate Assessment, in accordance with Section 42 (1) of S.I. No. 477 of 2011, the European Communities (Birds and Natural Habitats) Regulations 2011, as amended.

Public Notice of the Appropriate Assessment was published on the 10th September 2022 in the Irish Examiner and Southern Star newspapers.

The consultation period ran from **12th September 2022 to the 11th October 2022**.

The Screening for Appropriate Assessment documents and application documents were available on the Department's website and at and at the following locations for 30 days.

- **Skibbereen Garda Station** High Street, Skibbereen, Cork, P81 VP22.

- **Skibbereen Library** 10 North Street, Marsh, Skibbereen, County Cork, P81 DH60.

During this Public Consultation period there were no submissions made by members of the public.

Prescribed Bodies Consultation on Foreshore Licence Application (2020):

Foreshore Regulations 2011 (S.I. No. 353 of 2011) provides under Regulation 3 that when considering a foreshore application, as set out under section 18A (1) of the Act of 1933, the Minister may seek observations from a number of prescribed bodies. For this application, observations were requested from:

- Department of Housing, Planning and Local Government (MA Engineering)
- Department of Housing, Planning and Local Government (Natural Parks and Wildlife Services)
- Department of Housing, Planning and Local Government (Underwater Archaeology)
- Department of Agriculture Food and Marine.
- Marine Survey Office
- Marine Institute
- Inland Fisheries Ireland
- Sea Fisheries Protection Authority

Prescribed Bodies Consultation (2022):

Request for PBC observations on Appropriate Assessment were requested on 9th September 2022 from the following:

- Department of Housing, Planning and Local Government (MA Engineering)
- Department of Housing, Local Government and Heritage Heritage (MA Environment)
- Department of Housing, Planning and Local Government (NPWS)
- Department of Housing, Planning and Local Government (UAU)
- Department of Agriculture Food and Marine
- Marine Survey Office
- Marine Institute
- Inland Fisheries Ireland
- Environmental Protection Agency
- Sea Fisheries Protection Authority

There were no objections in principle to the proposed works. A number of the submissions from the Prescribed Bodies raised particular observations and put forward suggested conditions to be included in any licence that may be issued. **(TAB 08 PBC 2020 Obs) (TAB 09 PBC 2022 Obs)**

Detailed responses to the Prescribed Bodies submissions were received from the applicant and these have to be considered as part of the overall assessment of the proposed application by the MLVC. The applicant's responses to the Prescribed Bodies observations are attached at **(TAB 10 2020) (TAB 11 2022)**

There were no objections to the Appropriate Assessment. This is noted.

Environmental Assessments

Independent Environmental Consultant (IEC):

In addition to the Department's in-house Marine Advisor (environment), the Department engaged **Roughan & O'Donovan (ROD)** as IEC to provide assistance with regard to the statutory and non-statutory environmental assessments of this Foreshore Licence application. The IEC conducted independent assessments of the information provided by the Applicant, having regard to the Habitats Directive, the Birds and Natural Habitats Regulations and the public and prescribed bodies consultations. This work has informed the consideration of the proposed development and conclusions of the Department with respect to its responsibilities under the various environmental obligations applying.

The following reports have been submitted by the IEC:

- Screening for Appropriate Assessment Report dated July 2022 **Tab 12**
- Risk Assessment of effects to Annex IV Species Report dated October 2022 **Tab 04**
- Appropriate Assessment Stage 2 Report dated Oct 2022 **Tab 13**

Screening for Appropriate Assessment:

In accordance with Article 6(3) of the EU Habitats Directive (Directive 92/43/EEC) and Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended ('The Regulations'), the Department of Housing, Local Government and Heritage has undertaken Screening for Appropriate Assessment (AA) to assess, in view of best scientific knowledge and the conservation objectives of relevant European sites, if the proposed project for the dredging at the pier at Glengarriff, individually or in combination with other plans or projects, would be likely to have a significant effect (s) on a European site(s).

The Independent Environment Consultants (IEC) Roughan & O'Donovan ("ROD") completed their Screening for AA Report March 2022, which concluded that **an Appropriate Assessment is required** as the project individually or in combination with other plans or projects is likely to have a significant effect on any European sites. The risk of likely significant effects on European sites cannot be excluded on the basis of objective evidence.

In agreement with this conclusion, the Minister determined that an Appropriate Assessment was required on **24th June 2022**. A number of application documentation submitted by Cork County Council informed the Screening for Appropriate Assessment report, details can be found in related submissions below: [HLG 00289-22: FS006970 Cork County Council - Screening for Appropriate Assessment Determination](#)

An amended submission was made on **8th August 2022** as it was noted by the Department's MA that the Screening for AA Report, submitted by the IEC Roughan & O'Donovan (ROD), contained some discrepancies. The IEC was requested to address these discrepancies, which resulted in an updated report containing two (2) corrections, details can be found here: [HLG 00364-22 \(cloud.gov.ie\)](#)

Risk Assessment of Annex IV Species

The MA (Environment) concluded the following in their Environmental Report (**Tab 03**):

Following a review the Risk Assessment for Annex IV species provided by the applicant the IEC concluded that it is very unlikely that any Annex IV species will be disturbed, injured or killed as a result of the proposed works. Having considered the application and the IEC's Risk Assessment of Annex IV species report (**Tab 04**) The MA_Env agreed with this report and its conclusions.

This assessment concludes that the proposed project will not give rise to significant impacts on species listed under Annex II or IV of the Habitats Directive. The MLVC accepts and adopts this report and its conclusion, attached at (**Tab 06**).

Appropriate Assessment Determination:

Environmental Consultant Roughan & O'Donovan (ROD) in October 2022 adopted the comments from the Public Consultation and the Prescribed Bodies Consultation on Appropriate Assessment. The IEC concludes that:

*The information contained in the NIS provides clear, concise, and definitive findings, capable of removing all scientific doubt as to the effects of the proposed development on the Glengarriff Harbour and Woodland SAC. Therefore, the competent authority may determine that the proposed development, either individually or in combination with other plans or projects, will not lead to adverse effects on the integrity of the Glengarriff Harbour and Woodland SAC, or any other European site (**Tab 13**).*

In accordance with Regulation 42(6) of the European Communities (Birds and Natural Habitats) Regulations 2011 SI 477 as amended, the Department of Housing, Local Government and Heritage made a determination following screening that an Appropriate Assessment was required as the project, individually or in combination with other plans or projects, is likely to have a significant effect the integrity of European sites, in view of the said sites' conservation objectives.

Measures to mitigate against the likely significant effect are identified in the Natura Impact Statement (December 2020). The adherence to these measures is considered appropriate mitigation to avoid significant effects on conservation objectives of any European site.

It is therefore determined that the proposed project, either alone or in-combination with other projects, will not adversely affect the integrity of any European Site.

Upon a review of all materials of the application, Minister of State Burke concurred with the IEC and Recommending Officer **accepted and adopted** the Appropriate Assessment Determination and its conclusions. The AA Submission was signed by the Minister on 08/12/2022 [HLG 00599-22](#)

Environmental Impact Assessment EIA Regulations:

The IEC determined that the proposed project does not fall within the classes defined under Annex I or Annex II of the EIA Directive. The MA (Environment), having considered the application by Cork County Council, agrees with and accept the IEC's determination that the project does not require an EIA. The Examination for EIA is attached at **Tab 05**. This examination is required to be carried

out by the Consent Authority (DHLGH) as part of their obligations under the EIA Directive.

Estate Management

All foreshore is presumed state owned unless proven otherwise. In this case there are no known established claims of private ownership of the foreshore at this location and no claims of private ownership were raised during the application and public consultation process therefore, the foreshore the subject of this application is state owned.

National Marine Planning Framework (NMPF)

Section 74 of the Planning and Development (Amendment) Act 2018 sets out that "A public body shall adopt such measures as (a) are consistent with its functions, and (b) necessary to secure the objectives of the National Marine Planning Framework". In this context, "functions" includes the giving of any consent or approval, or the grant or issue of licences, certificates or other like documents, under any enactment for the purposes of any such development or activity, or any such proposed development or activity as well as the regulation of any such development or activity. The [National Marine Planning Framework \(NMPF\)](#) is a national plan for Ireland's marine area including the Foreshore. It sets out, over a 20-year horizon, how we want to use, protect and enjoy our marine area. The NMPF sits at the top of the hierarchy of plans and sectoral policies for the marine area and provides a coherent framework in which those sectoral policies and objectives can be realised. All decisions on individual applications determined under the Foreshore Act, must secure and be consistent with the objectives of the plan, similar to the way that terrestrial plans form part of the decision-making tool-kit in the on-land planning process. NMPF objectives are supported by specific policies that articulate factors that can form part of objective consideration.

Having reviewed and assessed this application against the objectives of the NMPF, it is considered that the proposed works do not act significantly against any objective within the NMPF or wider Government Policy including climate change legislation. Furthermore, the project is aligned and secures key sectoral/activity objectives set out in under the ports, harbours and shipping section of the NMPF.

Public Interest

Section 2 and 3 of the 1933 Foreshore Act (as amended), states that a lease or licence of state foreshore may be granted "If, in the opinion of the Minister, it is in the public interest". As foreshore is a finite and valuable national resource and public amenity, it is important that each plan and project is fully assessed to ensure, that if consented to, it is a sustainable and proper use of that finite and valuable resource. The submitted documentation, reports and assessments have been considered. The proposed development is limited in scale and extent. As such it is considered to be appropriate and needed for maritime use and enjoyment. In view of this it is recommended that a lease for the proposed development is in the public interest.

Marine Licence Vetting Committee (MLVC) Conclusions and Recommendation

The Marine Licence Vetting Committee Report is attached at **(Tab 06)**. The application and supporting documents, Independent Environmental Consultants reports and the Department's Marine Advisor reports were all considered and assessed.

The proposed activity is both necessary and appropriate for the ongoing safe marine use and navigation in and around Glengarriff harbour. The application has been assessed from an environmental point of view and subject to mitigation measures that were arrived at following an appropriate assessment procedure the proposed activity does not give rise to detrimental environmental effects. The submitted Prescribed Bodies reports have been considered and are noted. There is no objection in principle to the proposed activity being authorised.

The proposed activity aligns with Government marine policy and is necessary for public safety and continued safe navigation.

I recommend that a licence be approved under the foreshore Act for the activity proposed by this application.

Agreement of the Applicant

Cork County Council have agreed to the recommended site specific conditions attached at **(Tab 07)**, which will be attached to the licence, if granted)

Financial Considerations

Cork County Council have agreed to pa 

Basis for Recommendation

Having regard to:

- The application, together with accompanying documentation;

- The submissions received from prescribed bodies (statutory consultees);
- The public consultations undertaken;
- The Screening for Appropriate Assessment Report
- Appropriate Assessment Screening – Determination
- The Appropriate Assessment Determination
- Non-Statutory Environmental Analysis
- The assessment of the proposed development by the MLVC, its conclusions and recommendations in this regard; and
- The consent conditions to be attached to the foreshore licence, if granted.

It is considered that the proposed works would not adversely affect Fishing, Navigation or the Environment and is in the Public Interest.

It is recommended that a foreshore licence be granted to Cork County Council subject to the conditions recommended by the MLVC, and the financial considerations set out above.

Notification of Ministerial Determination

If approval is granted by the Minister, Cork County Council will be informed accordingly, an appropriate licence 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 on the website of this Department and at the Department's Wexford office.
- 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 for approval.

Related submissions

HLG 00599-22: Appropriate Assessment Determination on Foreshore Application FS006970 from Cork County Council for Dredging at Glengarriff Pier, County Cork.

HLG 00289-22: FS006970 Cork County Council - Screening for Appropriate Assessment Determination

HLG 00364-22: Amendment to FS006970 Cork County Council – Screening for Appropriate Assessment Determination (eSubmission HLG 00289-22)

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