

Submission HLG 00102-23: FS007037 Cork County Council maintenance dredging at Ballycotton Harbour Co. Cork

TO: Minister
STATUS: Completed
PURPOSE: For Decision and Signature

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DIVISION: Foreshore
DECISION BY: 06/03/2023

Final comment

Minister approved submission - approval given to grant Foreshore Licence 1 March 2023.

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 for maintenance dredging at Ballycotton Harbour 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 carry out maintenance dredging at Ballycotton Harbour Co. Cork.

Detailed information

Cork County Council have applied for a 5 year Foreshore Licence under Section (3) of the Foreshore Act 1933, as amended, for the purposes of carrying out maintenance dredging at Ballycotton Harbour Co. Cork and disposal of suitable dredged material at the previously used dumping site to the south of Power Head, 16km southwest of Ballycotton and disposal of contaminated dredged material to a licenced landfill facility.

The proposed area of foreshore associated with the works is: Dredge area 1.13ha, Dump site 377.8ha

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/80533-fs007037-ballycotton-harbour-dredging/>

The Application form submitted by Cork County Council is attached at **(Tab 01)**

The Foreshore Licence Map is attached at **(Tab 02) and (Tab 03)**.

Companion Consents

Dumping at sea permit from the EPA.

Consultations

Public Consultation under Section 19 of the Foreshore Act 1933, as amended.

Public Notice of the application was published on the 16th July 2021 in the Irish Examiner and 17th July 2021 in the Southern Star newspapers.

The public consultation period ran from **26th of July 2021 to the 24th of August 2021**.

The application documentation was made available for inspection by the public at:

- **Midleton Garda Station**, Oliver Plunkett Place, Midleton, Co. Cork, P25 Y439.
- **Midleton Library**, Main Street, Midleton, Co. Cork, P25 W085.

- **Cork County Council Planning Department**, Cork County Council, County Hall, Cork, T12 R2NC.

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

Public Consultation under R42 of EC Birds and Natural Habitats Regulations 2011 as amended.

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 5th August 2022 in the Irish Examiner and on the 6th August 2022 in the Southern Star newspapers.

The consultation period ran from **8th August 2022 to the 6th September 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.

- **Midleton Garda Station**, Oliver Plunkett Place, Midleton, Co. Cork, P25 Y439.
- **Midleton Library**, Main Street, Midleton, Co. Cork, P25 W085.
- **Cork County Council Planning Department**, Cork County Council, County Hall, Cork, T12 R2NC.

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

Prescribed Bodies Consultation 2021

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 sought and received from the following:

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

Prescribed Bodies Consultation 2022

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 sought and received from the following:

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

Observations from the above **[Tab 08 and Tab 09]** have been forwarded to the applicant and there were no objections in principle to the proposed works. The applicant's response to the PBC observations are attached at **[Tab 10]**.

Recommended conditions have been considered as part of the Appropriate Assessment and were also considered as part of the assessment of

this application.

Environmental Assessments

Independent Environmental Consultant (IEC):

As part of the assessment of the foreshore licence application, Ove ARUP & Partners Ireland Ltd ("ARUP") with Hartley Anderson Ltd, as IEC were commissioned to provide assistance with regard to the statutory and non-statutory environmental assessments of this Foreshore Licence application. The IEC has conducted independent assessments of the information provided by Cork County Council, having regard to the Habitats Directive, the Birds and Natural Habitats Regulations and, the public and prescribed bodies' consultations.

Screening for Appropriate Assessment

The Independent Environmental Consultants completed the Screening for Appropriate Assessment report in March 2022, which concluded that likely significant effects could not be ruled out for a number of SACs that lie within the Zone of Influence. Therefore, a stage 2 Appropriate Assessment is required. The Department's Marine Advisor (Environment) agrees with and accepts the Screening for Appropriate Assessment and its conclusions.

The department's Marine Advisor completed a Screening for Appropriate Assessment report in June 2022, which concluded that likely significant effects as a result of this project, alone or in-combination with other plans and projects, on the conservation objectives of European sites cannot be excluded and therefore an Appropriate Assessment is required.

Screening for Appropriate Assessment Determination:

The Minister adopted the Screening for Appropriate Assessment report and determined that an Appropriate Assessment was required on 22nd 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: Screening for AA [HLG 00297-22](#)

Appropriate Assessment

Independent Environmental Consultants Arup with Hartley Anderson Limited in November 2022 adopts the comments from the Public Consultation and the Prescribed Bodies Consultation on Appropriate Assessment.

The applicant has shown that the operations will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects, and there is no reasonable scientific doubt in relation to this conclusion.

Appropriate Assessment Determination:

The Appropriate Assessment Report, along with all relevant material included the NIS (**Tab 13**) and NSER (**Tab 14**) further information provided on the NIS was considered by a Marine Ecologist in the Department and concluded that:

The Appropriate Assessment Screening process determined that likely significant effects could not be ruled out with respect to disturbance to species at a number of European sites within the Zone of Influence of the proposed project. 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 effects are identified as strict adherence to Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (DAHG 2014). This measure will be included as a licence condition. Strict 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.

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 27th February 2023 [HLG 00077-23](#)

Risk Assessment for Annex IV:

A review of the applicant's environmental reports provided sufficient relevant information to carry out a Risk Assessment of Annex IV species. To accommodate dredging at all times of the year it is recommended that the DAHG Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (DAHG 2014) is followed strictly.

With implementation of the above mitigation measures, it is very unlikely that there will be negative residual impacts from the proposed works on Annex IV species in the area. It is also very unlikely that any animals will be injured or killed as a result of the proposed works. The Department's Marine Advisor agrees with and accepts the Risk Assessment for Annex IV species including the mitigation measures outlined in section 4 of the Risk Assessment report **(Tab 04)**.

It is concluded that subject to site specific conditions that the proposed activities will not have a detrimental effect on the environment.

Environmental Impact Assessment EIA Regulations

The Department's Marine Advisor concluded that the proposed project does not fall within the classes defined under Annex I or Annex II of the EIA Directive. This conclusion is agreed with by the MLVC.

Non-statutory Environmental Report

The IEC prepared a NSER as part of the Appropriate Assessment which is attached at **(Tab 14)**.

Estate management

The proposed activity is in line with the promotion of safe navigation and is in line with the prudent use of the states maritime estate.

National Marine Planning Framework (NMPF)

This proposal is aligned with objectives of the NMPF in particular, 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 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 state owned foreshore is a finite and valuable state resource and a 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 resource.

The proposed works are to ensure the safe operation of the harbour and safe navigation and mooring of vessels within the harbour. Harbours such as Ballycotton are the gateway to the sea and are fundamental infrastructure that supports public access, marine leisure, tourism, sea fishing, communications and the associated local community and economy.

Considering this The Department's Marine Advisor is satisfied that the proposed dredging and disposal at sea are in the public interest.

Marine Licence Vetting Committee (MLVC)

The Marine Licence Vetting Committee Report is attached at **(Tab 06)**. The following submitted documentation were considered by the MLVC:

The following documents were considered and assessed:

- Tab 01 Application Form
- Tab 02 Foreshore Licence Map 1

- Tab 03 Foreshore Licence Map 2
- Tab 05 EIA Screening
- Tab 08 Prescribed Bodies Observations
- Tab 09 Prescribed Bodies Observations
- Tab 10 Applicant Responses to PBC Observations
- Tab 12 Appropriate Assessment Screening
- Tab 13 NIS prepared by IEC
- Tab 14 NSER prepared by IEC

Independent Environmental Consultants submissions including:

- Environmental Report (Non-Statutory)
- Screening for Appropriate Assessment Report
- Risk assessment of Annex IV Species (Labelled Article 12 Risk Assessment)

Department of Housing, Local Government and Heritage Marine Advisor (environment) Reports:

- Screening Stage Environmental Report
- EIA Pre-Screening Examination
- Screening Determination for Appropriate Assessment
- Environmental Assessment and Determinations Report annexed to the MLVC report

Agreement of the Applicant

The Applicant has agreed to the recommended conditions attached at **(Tab 07)** which will be attached to the licence if granted.

Financial Considerations

The Applicant has agreed to pay The Department of Housing Local Government and Heritage the fee of [REDACTED]

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 00077 -23: Appropriate Assessment Determination on Foreshore Application FS007037 Cork County Council for a Licence to Dredge in Ballycotton Harbour Co. Cork.

HLG 00297 -22: FS007037 Cork County Council - Screening for Appropriate Assessment Determination

User details

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