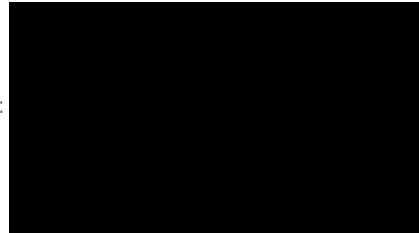


Submission HLG 00288-22: FS007084 Donegal County Council Dredging and Beach Nourishment at Magheraroarty Pier, Co Donegal

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

AUTHOR:
OWNER:
REVIEWERS:



DIVISION: Foreshore
DECISION BY: 24/06/2022

Final comment

Approved by minister, 19/10/22

Action required

Ministerial approval is sought to grant a Foreshore Licence to Donegal County Council under Section 3 of the Foreshore Act 1933, as amended, to carry out dredging works and beach nourishment at Magheraroarty Pier, Co Donegal.

Executive summary

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

A S3.3 Temporary licence was issued in respect of these works in the interest of the health and safety of mariners and their vessels for a period of three months. This Temporary Licence FS007526 term is from 29/03/2022 – 29/06/2022.

[HLG 00124-22 FS007526 Section 3.3 eSub Magheraroarty Pier Co. Donegal](#)

The temporary licence will expire on 29/06/2022 and this 5 year licence will commence if approved.

Detailed information

Donegal County Council have applied to the Department of Housing, Local Government and Heritage for a Foreshore Licence under Section 3 of the Foreshore Act 1933, as amended, for a duration of 5 years to conduct dredging and beach nourishment at Magheraroarty Pier, Co. Donegal.

Magheraroarty harbour is located south west of the 3km beach known as Dooley Strand. The harbour is used daily by the Tory Island ferry and is also home to a small number of commercial vivier crabbers as well as some seasonal shellfish vessels and leisure craft.

Over the winter months sand continues to be transported along Dooley Strand and deposited along the berthing face of the pier. This sand is removed annually during the equinoctial Spring Tides in March/April and deposited back on Dooley Strand as beach nourishment.

The annual maintenance dredging is required to maintain navigable depths of -2.5m Chart Datum within the harbour particularly for the Tory Island Ferry service.

Location: Magherorarty Harbour, Co Donegal

Brief Description of the proposed works

Sand has been depositing at Magheraroarty Harbour since the construction of the pier in the 1970s. In 2002 an L-shaped extension was added to the pier and this has increased the build-up of sand at the base of the pier. Since 2002, annual maintenance dredging is required to remove sediment from the harbour basin. The dredged material is then returned to the adjacent beach, replenishing

areas which have been eroded.

The project involves the relocation of sand material from the area of accretion (Magheraroarty Harbour) to an intertidal area on the strand which experiences natural erosion from wave, wind and longshore drift action. Over the winter months sand continues to be transported along Dooley Strand and deposited along the berthing face of the pier.

A maximum volume of 20,000 tonnes per annum of deposited sand is to be removed from the Harbour and dumped onto an intertidal zone encompassing an area of 12.7 ha. The annual maintenance dredging of Magheraroarty Harbour is required to maintain navigational depth to -2.5m Chart Datum (CD) for the Tory Island ferry, commercial fishing boats and charter boats in the local area.

The proposed dredging is scheduled to take place at low tide over a 5-6 day period during the equinoctial spring tides in March/April each year. Completing the dredging work over the spring tide will allow access to the entire berthing area. The sand is to be excavated by 360-degree tracked excavators working at low tide and loading articulated dumpers. The sand will be brought to the adjacent beach, where it will be spread evenly using a 360-degree low bearing tracked excavator. The beach nourishment area and haulage route will be mapped out in advance. The work is restricted by the tide therefore there will be no build-up of sediment along Dooley Strand during the 5-6-day period of works. It is expected that the total duration of works on-site will be 6 days (mobilisation, preparation, spreading and demobilisation) with 4 days of dredging activity during that period. The proposed area of foreshore associated with the works is 13.32 Ha.

Further details of the proposed development are outlined in the application form and associated documents submitted by Donegal County Council and can be found at the following link: www.housing.gov.ie or <https://www.gov.ie/en/foreshore-notice/6da98-fs007084-application-for-foreshore-licence-for-dredging-and-beach-nourishment-at-magheraroarty-pier-co-donegal/>

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

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

Companion Consents

No marine disposal permit is required for this activity so 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:

The Foreshore Section of the DHLGH conducted the public consultation. All consultation was undertaken to conform to the requirements of the Section 19 of the Foreshore Act 1933 as amended and the European Directive 2003/35/EC

Public Notice of the application was published on the 11th March 2021 in the Irish Independent and Donegal Democrat newspapers. The public consultation period ran from **12th of March 2021 to the 12th of April 2021**.

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

- Donegal County Council Planning Office, Dungloe Public Services Centre, Gweedore Road, Dungloe, Co. Donegal F94 H4CF;
- Falcarragh Garda Station, Main Street, Falcarragh, Co. Donegal, F92 P212

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 25th November 2021 in the Irish Independent and Donegal Democrat newspapers. The consultation period ran from **25th November 2021 to the 24th December 2021**.

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.

- Donegal County Council Planning Office, Dungloe Public Services Centre, Gweedore Road, Dungloe, Co. Donegal F94 H4CF;
- Falcarragh Garda Station, Main Street, Falcarragh, Co. Donegal, F92 P212 for 30 days.

One Public Submission was received and is attached at **Tab 03**. The applicant's response to the submission is attached at **Tab 04**.

This submission is noted and relates to issues about the length of time for consideration of the application, need for particular environmental considerations and issues to do with the need for annual dredging. In response there is a requirement for the proposed application to be fully considered including necessary environmental assessments, these have been carried out. In relation to the yearly dredging this would appear to be necessary due to the marine environment in that particular location.

Prescribed Bodies Consultation on Foreshore Licence Application (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 requested from:

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

Prescribed Bodies Consultation for Appropriate Assessment (2021):

Request for PBC observations were requested on 24 November 2021 from the following:

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

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. The submissions received are attached at **Tab 05** PBC 2021 Obs and **Tab 06** PBC Obs for second consultation).

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 07** Applicant's Response 2021 and **Tab 08** Applicant's Response to PBC Obs second consultation.

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

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Environmental Assessments

Independent Environmental Consultant (IEC):

In addition to the Department's in-house Marine Advisor (environment), the Department engaged **RPS Group plc** 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.

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 Magheraroarty and the use of this material for beach nourishment at Dooey Strand, individually or in combination with other plans or projects, would be likely to have a significant effect (s) on a European site(s).

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 has made a determination following screening 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. This determination is based on the location, scale, extent and duration of the proposed development, including temporary works, and has not taken account of measures intended to avoid or reduce significant effects on European sites.

Upon a review of all materials of the application, Minister of State Burke concurred with the IEC and Recommending Officer and **accepted and adopted** the Screening for Appropriate Assessment and its conclusions **Related submission link:** [HLG 00301-21 Appropriate Assessment Screening Determination. Foreshore application by Donegal County Council](#)

Appropriate Assessment Determination:

The Screening for Appropriate Assessment process determined that likely significant effects on four Annex I habitat in the Ballyness Bay SAC (IE001090) could not be ruled out as a result of the proposed project.

An Appropriate Assessment report was prepared by the Independent Environmental Consultant (RPS) in March 2022, which adopts the comments from the Public Consultation on Appropriate Assessment.

The IEC reviewed the Natura Impact Statement which included a comprehensive set of mitigation measures to avoid impacts to European sites. The IEC concluded that with these procedures in place the proposed development, individually or in-combination with other plans or projects, will not adversely affect the integrity of European sites, in view of the said sites' conservation objectives.

Upon a review of all materials of the application, Minister of State Burke concurred with the IEC and Recommending Officer and **accepted and adopted** the Appropriate Assessment Determination and its conclusions **Related submission link:** [HLG 00108-22 Appropriate Assessment Determination. Foreshore Licence Application by Donegal County Council.](#)

Risk Assessment of Annex IV Species

The IEC (RPS) conducted an independent assessment of the information provided by the Applicant to carry out a Risk Assessment of Annex IV species. With implementation of 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.

Risk Assessment of Annex IV Species prepared by the IEC (**Tab 09**); the adoption of the report is recommended.

The Marine Advisor (Environment) has reviewed the IEC's Risk Assessment for Annex IV species Report [dated 22/06/2022] for the Foreshore Application FS007084 and agrees with the IEC's conclusion that the proposed project will comply with the strict protection afforded to Annex IV species by Article 12 of the Habitats Directive.

The MLVC accepts and adopts this report and its conclusion, MLVC report attached at **Tab 10**.

Environmental Impact Assessment EIA Regulations:

The proposed project does not fall within the class defined under Annex I or Annex II of the EIA Directive. The Consent Authority (DHLGH), Marine Advisor (environment), completed an examination for EIA as part of obligations. The MLVC agrees with this recommendation and it has been considered as part of the assessment and these findings are also adopted. The Departments Marine Advisors (environment) EIA Screening Examination document is attached at **Tab 11**.

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. Furthermore, the project is aligned and secures key sectoral/activity objectives set out in under the ports, harbours and shipping section of the NMPF and given that it is the main link with Tory Island also aligns with the NMPF objectives relating to our island communities.

Marine Licence Vetting Committee (MLVC) Conclusions and Recommendation

The Marine Licence Vetting Committee Report is attached at **Tab 10**. The application and supporting documents, Independent Environmental Consultants reports and the Department's Marine Advisor reports were all considered and assessed.

Magheraroarty Harbour is an active harbour with regular and ongoing shipping movements. Due to the marine conditions at the approaches to the port, it is in need of regular dredging in order to allow for safe navigation of shipping. This activity will also allow for beach nourishment which will further protect this exposed coastline.

There is a clear health and safety requirement to allow for the continued safe navigation to the harbour. It will have the consequential effect of promoting beach nourishment which will have positive environmental and coastal protection benefits.

The possible environmental effects of dredging at this location have been extensively considered and concluded that there will be no adverse effects on European sites.

In conclusion, it is considered prudent and reasonable to approve a foreshore licence for the period applied for to allow for the continued necessary dredging and beach nourishment at Magheraroarty Harbour, as outlined in their application in the interests of safe shipping navigation.

Agreement of the Applicant

Donegal County Council have agreed to the recommended site specific conditions, attached at **Tab 12**, which will be attached to the licence, if granted. Letter of acceptance attached at **Tab 13**.

Financial Considerations

Donegal County Council have agreed to pay a once off fee of  **attached at Tab 14**.

Basis for Recommendation

Having regard to:

- The application, together with accompanying documentation;
- The submissions received from prescribed bodies (statutory consultees);
- The public consultations undertaken and submissions received;
- The Screening for Appropriate Assessment Report
- Appropriate Assessment Screening (Stage 1) – 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 will not adversely affect Fishing, Navigation or the Environment and is in the Public Interest.

It is recommended that a foreshore licence be granted to Donegal 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, Donegal 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 00301-21: Appropriate Assessment Screening Determination - Donegal County Council foreshore licence application for dredging at Magheraroarty, Co. Donegal FS007084

HLG 00108-22: Appropriate Assessment Determination FS007084 Dredging at Magheraroarty Pier, County Donegal

HLG 00124-22: FS007526 – Application by Donegal County Council in respect of Emergency Maintenance Dredging and Beach Nourishment, at Magheraroarty Pier and Dooley Strand, Co Donegal.

User details

INVOLVED:



READ RECEIPT:

