



**Brady Shipman
Martin.**

**Celebrating.
50 Years.**

Drogheda Port Company

Planning Opinion 12 February 2019

Re: Query on Maintenance Dredging with respect to Planning Requirements

Further to correspondence from Drogheda Port of 18th January 2019 (herewith attached), querying the requirement or otherwise for planning permission to support an application to the EPA for a Dump at Sea Permit (DAS) for maintenance dredger on the river Boyne and seaward approaches, the following represents our professional opinion in relation to this Query.

It is noted that Drogheda Port Company currently have an EPA / DAS Permit (ref: S0015-02) issued in February 2013 for which no planning was sought or requested. It is further noted that no planning was sought or requested to support previous DAS applications issued by the Department of Communication, Marine and Natural Resources.

Drogheda Port Company state that the maintenance dredging activity is essential to maintaining the safe navigation within the port and that no other activities are associated with this operation.

Brady Shipman Martin has reviewed the requirements of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001-2018, and precedent decisions in relation to maintenance dredging.

1. Planning & Development Regulations (2001-2018)

The Planning and Development Regulations (2001-2018) set out that *dredging of a harbour* falls within Exempted Development, as follows:

Schedule 2 Part 1 Exempted Development – Class 24

The carrying out by any harbour authority of development of the following description—

*(b) the cleaning, scouring, deepening, improving or **dredging of the harbour** or the approaches thereto or the removal of any obstruction within the limits of the harbour, and the use of land for the disposal of dredged material in accordance with an objective in a development plan for the area in which the land is situated*

Further, Schedule 5 Part 2 excludes maintenance dredging from the requirements of EIA.

Schedule 5 Part 2 Extractive Industry

*(d) Extraction of stone, gravel, sand or clay by marine dredging (**other than maintenance dredging**), where the area involved would be greater than 5 hectares or, in the case of fluvial dredging (other than maintenance dredging), where the length of river involved would be greater than 500 metres.*



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2. Precedent decisions in relation to maintenance dredging

See attached An Bord Pleanála case on Dredging Scheme at Sligo Harbour 21.YD006

- Inspectors Report
- Board Order

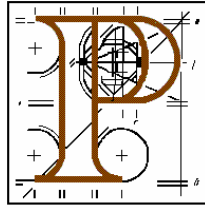
The Inspectors Report concludes that “**Maintenance dredging would appear to be exempted development, and not to come within any class of development referred to in either parts 1 or 2 of the 5th Schedule to the Planning and Development Regulations 2001 (as amended) in relation to developments requiring Environmental Impact Assessment**”. The Board concurred.

Conclusion

We therefore conclude that it is set out in the Planning & Development Regulations, and through precedent case from An Bord Pleanála, that there is no requirement for planning permission to be obtained for maintenance dredging.

END

An Bord Pleanála



Inspector's Report

Nature of Report: EIS Direction

Nature of Scheme: Dredging scheme at Sligo Harbour, Co. Sligo.

Board Reference: 21.YD0006

Planning Authority: Sligo County Council

Date of site inspection: None

Inspector: **Michael Dillon**

1.0 BACKGROUND TO CONSIDERATION BEFORE THE BOARD

- 1.1 RPS Consulting Engineers (agent on behalf of Sligo County Council) in a letter, received by the Board on 13th June 2011, sought written confirmation from the Board that the capital and maintenance dredging of the navigation channel of Sligo Port would not require planning consent. This written confirmation was stated to be required as part of an application for ‘dumping at sea’ of the dredged materials. It was stated that Sligo County Council would be applying for a Foreshore Licence to undertake the dredging works. The letter stated that RPS had been engaged to prepare an Environmental Impact Statement (EIS) for the scheme.
- 1.2 Three maps/charts were received on 13th June 2011, as follows-
- Extract from OS Discovery Series Map showing the extent of the proposed dredging.
 - Extract from relevant chart for Sligo Harbour and beyond, to indicate the location of the ‘dumping at sea site’.
 - Environmental Designations within Sligo Bay.
- 1.3 By letter dated 11th July 2011, the Board wrote to RPS Consulting Engineers, informing it that if an EIS was required for a development to be carried out by a local authority, under the terms of section 175 of the Planning and Development Act 2010 [sic], an application for approval should be made to the Board. The letter pointed out that section 226 of the Planning and Development Act 2000 (as amended) makes provision for a local authority, in relation to sub-threshold development, to request the Board to determine the question of whether a development would be likely to have significant effects on the environment. The letter concluded that it was open to RPS to seek a direction from the Board as to whether an EIS was required for the proposed dredging scheme.
- 1.4 In a letter received from RPS Consulting Engineers on 4th August 2011, a direction was sought from the Board as to whether it considered the dredging works to be carried out would require an EIS. The contents of this letter can be summarised in bullet point format as follows-
- Initial scoping indicated that dredging was exempted development under class 24 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001.
 - It is now understood that the scheme may require planning consent under Part XV of the 2000 Act.
 - The Department of Agriculture, Fisheries and Food (then responsible for foreshore licensing) indicated that an EIS would be required.
- 1.4.1 The letter of 4th August 2011 was accompanied by a copy of a letter from the Department of Agriculture, Fisheries and Food (dated 23rd November 2009), to state that in view of the fact that the area of the proposed works lay within designated Natura 2000 sites, an EIS would have to accompany any Foreshore

Licence application. [It should be noted that the then proposed scheme included the possibility of depositing of dredged materials at Cummeen Strand (a Natura 2000 site)]. It was also indicated that the issue of Appropriate Assessment would apply – Article 6 of the Habitats Directive.

2.0 SITE LOCATION AND NATURE DESIGNATIONS

The site comprises the navigation channel at Sligo Port – between Oyster Island and the Barytes Jetty – some 5.3km of channel which hugs the northern/northeastern shoreline of the water body comprising Sligo Harbour. An additional 0.4km of the site is separated from the main part – being part of the channel cutting through the Bungar Bank, some 3km to the northwest of the aforementioned Oyster Island. This short stretch of channel (0.4km) is within Drumcliff Bay, and is outside of any nature designations. The main 5.3km length of channel is affected by a number of nature designations as follows-

- Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC.
- Cummeen Strand/Drumcilff Bay (Sligo Bay) pNHA.
- Cummeen Strand SPA.
- Sligo Bay EU Shellfish Waters.
- Sligo Harbour is a Ramsar site.

2.1 Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC

This SAC (site code 000627) is divided into two discrete parts. The proposed scheme lies within the Cummeen Strand portion of the SAC. Dominant habitats are estuaries and intertidal sand and mud flats. The area supports diverse invertebrate species and has expanses of eel grass for feeding birds. The area is listed in Annex I of the Directive. Sand dunes support important species of flora, and are an Annex I habitat. There are petrifying springs on the north side of Sligo Harbour. Red Data book species recorded on site include Rough Poppy (*Papaver hybridum*), Hoary Whitlowgrass (*Draba Incana*) and Yellow Saxifrage (*Saxifraga aizoides*). Large colonies of waterfowl use the area in autumn/winter. Annex I birds using the site include Barnacle Goose, Chough, Golden Plover and Bar-tailed Godwit. The site extends to 4,919.12ha.

2.2 Cummeen Strand/Drumcliff Bay (Sligo Bay) pNHA

This is the most extensive of the nature conservation designations in the area – forming one area – with portions of Coney Island, and all of Oyster Island excluded. The site code is 000627 (the same as the SAC, although the area is more extensive than the SAC).

2.3 Cummeen Strand SPA

This area forms one of the three estuarine bays within Sligo Bay – site code 004035. Exposed sand and mud flats support diverse macro-invertebrate fauna

which provide an important food supply for wintering waterfowl. Eel grass provides valuable feeding for herbivorous wildfowl. The estuarine and intertidal flat habitats are of conservation significance and are listed in Annex I of the Habitats Directive. Brent Goose, Oystercatcher and Redshank are common. Less common are Shelduck, Wigeon, Teal, Mallard, Red-breasted Merganser, Golden Plover, Lapwing, Knot, Sanderling, Dunlin, Bar-tailed Godwit, Curlew, Greenshank and Turnstone. Whooper Swans, Golden Plover and Red-tailed Godwit are of particular note, as these species are listed in Annex I of the Birds Directive. The site extends to 1,732.43ha.

2.4 Sligo Bay EU Shellfish Water

Part of Sligo Harbour was designated Shellfish Waters under the European Communities (Quality of Shellfish Waters) Regulations 2006. The channel to Sligo Port does not encroach on the designated shellfish waters. At its closest, the channel is approximately 150m from the designated shellfish waters. Characterisation Report Number 17 (Sligo Bay) - Shellfish Pollution Reduction Programme identifies, amongst other things, marine physical modifications in the area – of which it is stated that there are none. Map no. 17 indicates the shellfish area and shows the channel to Sligo Port to the north and northeast. Section 5.0 of the Report deals with pressures on the shellfish area. Table 4 is a summary of pressures – indicating that Maintenance dredging is a pressure on the shellfish area, but not capital dredging. Section 5.1 indicates that dredging affects levels of suspended sediment. However, once these modifications are established or the activities have ceased, the surrounding environment can acclimatise and impacts do not necessarily continue. A commentary at Table 7 indicates the maintenance dredging area within 1km of the shellfish waters. Monitoring in the area does not highlight any water quality issues which are likely to result from these modifications.

2.5 Ramsar Site no. 842

This estuarine arm of Sligo Bay comprises a Ramsar wetland site of 1,491ha which was designated on 11th June 1996. The site contains mud flats and sand flats which are an important arrival point for Brent Geese (*Branta bernicla*) and also has internationally important population of Common Ringed Plover (*Charadrius hiaticula*).

3.0 PROPOSED SCHEME

The nature and elements of the proposed dredging scheme can be summarised in bullet point format as follows-

- Capital and maintenance dredging of approximately 250,000 cubic metres of sediment from the navigation channel at Sligo Harbour – to minus 3.0m Chart Datum. The area to be dredged involves a 5.3km length of navigation channel from Oyster Island to the Barytes Jetty. An additional

0.4km length of channel will be dredged at the Bungar Bank (further to the west). The total area involved measures approximately 27.2ha. Having regard to the amount of material to be dredged and the area for dredging, an average depth of 0.92m would be dredged. This assumes an even deposition of sediment throughout the entire site.

- All dredging will take place below the low water mark. No activities or disturbance above the high water mark is envisaged.
- Sediment testing has been undertaken (by the Marine Institute) – and the material has been found to be uncontaminated and suitable for ‘dumping at sea’ – the most economic means of disposal. The dredger will take one load out to sea at each tide.
- The former licensed dump site previously used for the disposal of dredged sediments from Killybegs Harbour has now been closed. An application is being made for a ‘dumping at sea’ licence for a new dump site location – some 34 nautical miles west of Sligo Port.
- Dredging will permit vessels with a draft of up to 5.2m to access the Barytes and Deepwater Jetties for a greater period of the tide cycle.
- There are no current plans to expand the port’s commercial activities. However, the Barytes Jetty was previously refurbished in 2008, and the scheme will improve the accessibility of the port for larger vessels which may contribute to an increase in trade.
- The primary purpose of the dredging is to safeguard existing trade at the port and to create opportunities to strengthen the recreation, fishing and sea tourism industries from the Timber Jetty, which was also upgraded in 2008.

4.0 ASSESSMENT OF ISSUES

4.1 Foreshore Development

4.1.1 Section 225(1) of the Planning and Development Act 2000 (as amended) refers to an obligation to obtain permission in respect of development on the foreshore not being exempted development. Sub-section (3) states that the section shall not apply to development to which section 226 applies. Section 226 specifically relates to local authority development wholly or partly on the foreshore. Section 226(1) provides that an application for approval in this instance be made to the Board. Unlike section 225, section 226 makes no reference to ‘*development on the foreshore not being exempted development*’. Under section 226(6) a local authority can seek a determination from the Board as to whether a development would have significant effects on the environment [as has been done in this instance]. The word “foreshore” is defined in the Foreshore Act, 1993 as follows-

means the bed and shore below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek, and bay of the sea or of any such river or estuary.

4.2 Exempted Development

4.2.1 Section 4(1) of the Planning and Development Act 2000 (as amended) provides that the following shall be exempted development for the purposes of the Act-

- (b) *development by the council of a county in its functional area, exclusive of any borough or urban district;*
- (c) *development by the corporation of a county or other borough in that borough;*
- (e) *development consisting of the carrying out by the corporation of a county or other borough or the council of a county of an urban district of any works required for the construction of a new road or the maintenance or improvement of a road;*
- (f) *development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;*
- (g) *development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires or other apparatus, including the excavation of any street or other land;*

4.2.2 Under section 4, certain works carried out by a county council or county borough council can be considered to be exempted development. Sub-section 4(1)(f) clearly refers to such works being carried out on behalf of, or jointly or in partnership with the local authority. Subsection 4(1)(e) refers to ‘*maintenance or improvement of a road*’. Shipping channels (marked by navigation buoys, perches, lighthouses, beacons, fixed lights etc.) at the approach to ports are often referred to as roads – as in Southampton Roads or Toulon Roads. Areas for shipping to ride at anchor outside ports are referred to as “roadsteads”. It could, therefore, be argued that the channel approach to a port could be described as a “road”, and therefore, come under subsection 4(1)(e).

4.2.3 In addition, sub-section 4(1)(g) clearly refers to the ‘*excavation of any street or other land*’. Section 2(1) of the Planning and Development Act 2000 (as amended) states- “*land*” includes any structure and any land covered with water (whether inland or coastal). I would contend that Sligo Harbour and Sligo Bay are considered to be “land”, and that dredging of a channel could be described as a work of “excavation”, and could, therefore, be classified as exempted development under section 4(1)(g).

4.2.4 Article 6 of the Planning and Development Regulations 2001, provides that, subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1. Class 24 of Part 1 of Schedule 2 (Exempted Development – General) states as follows-

The carrying out by any harbour authority of development of the following description-

(b) *the cleaning, scouring, deepening, improving or dredging of the harbour or the approaches thereto or the removal of any obstruction within the limits of the harbour, and the use of land for the disposal of dredged material in accordance with an objective in the development plan for the area in which the land is situated.*

4.2.5 There are no conditions or limitations to this type of exempted development listed in the adjoining Column 2. The agent for Sligo County Council has indicated that a licence is to be sought to dispose of dredged material at sea; therefore, the issue of disposal of dredged material on land does not arise. The class clearly refers to the ‘scouring, deepening, improving or dredging of the harbour or the approaches thereto’. It would appear that dredging works are therefore, exempted development under Class 24.

4.3 Restrictions on Exempted Development

4.3.1 Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended) provides for a number of restrictions on exempted development, of which sub-article (vii) may be considered to be of relevance-

(vii) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological or historical, scientific, or ecological interest, the preservation of which is an objective of the development plan for the area in which the development is proposed or,...*

4.3.2 In this instance, it could be argued that capital and maintenance dredging involves excavation within a place of ecological interest (Sligo Bay) identified as a pNHA, SAC and SPA in the Sligo County Development Plan. On the face of it, this would appear to remove the exemption provided for within Class 24(b) of Part 1 of Schedule 2 of the Regulations.

4.3.3 Article 9(1)(c) of the Regulations, which also de-exempts certain types of development, states-

if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.

4.3.4 [Council Directive here means Council Directive No. 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive No. 97/11/EC of 3 March 1997 and any directive amending or replacing those directives. This definition in the 2000 Act was amended by the Planning and Development Amendment Act 2010, to include reference to amendments to the Council Directive – No. 2003/35/EC and No. 2009/31/EC].

4.3.5 **In order to decide whether Article 9(1)(c) applies, it is necessary to decide whether the proposed capital and maintenance dredging is a ‘development’ to which Part 10 of the Regulations applies – the very question which lies at heart of the current case before the Board.**

4.4 Local Authority Development

4.4.1 Section 179 of the Planning and Development Act 2000 (as amended) relates to local authority own development. In this instance, Sligo County Council would appear to be acting in the role of Sligo Harbour Authority. Sub-section (6) provides that the need for public notices, Manager’s Report and resolution of elected members shall not apply to proposed development which-

- (a) *consists of works of maintenance or repair other than works to a protected structure or a proposed protected structure...*
- (b) *is necessary for dealing urgently with any situation which the manager considers is an emergency situation calling for immediate action,*
- (bb) *consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists...*
- (c) *consists of works which a local authority is required to undertake-*
 - (i) *by or under any enactment,*
 - (ii) *by or under the law of the European Union, or a provision of any act adopted by an institution of the European Union, or*
 - (iii) *by order of a court,*
- (d) *is development in respect of which an environmental impact statement is required under section 175 of under any other enactment.*

- (e) *is development in respect of which an appropriate assessment is required under section 177AE, or under any other enactment.*
- 4.4.2 Sub-paragraph (6)(a) clearly refers to ‘*works of maintenance*’. It could be argued that works to keep the channel to Sligo Port navigable for ships comprise ‘*works of maintenance*’. Sub-paragraph (6)(d) brings the argument straight back to whether the dredging would or would not have significant effects on the environment, thereby triggering the requirement for an EIS.

4.5 Environmental Impact Assessment Legislation

- 4.5.1 Part 10 of the Planning and Development Regulations 2001 (as amended) deals with Environmental Impact Assessment (EIA). Schedule 5 to the Regulations contains two Parts, 1 & 2 – setting out thresholds for developments which would require EIA. There is no mention made of capital & maintenance dredging within Part 1. **There is mention of maintenance dredging in Part 2, but only to exclude it from EIA. The reference occurs under the following heading-**

2. Extractive Industry

- (d) ***Extraction of stone, gravel, sand or clay by marine dredging (other than maintenance dredging), where the area involved would be greater than 5 hectares or, in the case of fluvial dredging (other than maintenance dredging), where the length of river involved would be greater than 500m.***

- 4.5.2 The reference to fluvial dredging is not relevant in the context of the request for a determination before the Board at present. Whilst the proposed dredging of the channel to Sligo Port is not for the purpose of winning aggregates (any dredged material is to be disposed of at sea), the specific exclusion of maintenance dredging within the category would appear to indicate that the Regulations did not countenance the necessity of EIA for routine dredging of a channel servicing an existing port.
- 4.5.3 Part 2 of Schedule 5 includes another reference to coastal works which may also be considered to be of relevance-

10. Infrastructure Projects

- (k) *Coastal work to combat erosion and maritime works capable of altering the coast through the construction for example of dikes, moles, jetties and other sea defence works, where the length of coastline on which works would take place would exceed 1 kilometre, but excluding the maintenance and reconstruction of such works or works required for emergency purposes.*

- 4.5.4 Other than the relation of the above sub-class to marine works, the analogy with dredging is not particularly strong. However, I would consider that the reference to *‘excluding the maintenance and reconstruction of such works’* to be of relevance. The sub-section requires that the original works would be subject to EIA, but that maintenance works would not – and this in a marine setting. This would appear to have applicability to ‘maintenance’ works on a shipping channel.
- 4.5.6 The European Communities document entitled “Interpretation of definitions of certain project categories of annex I and II of the EIA Directive” (2008) offers no insight into dredging as it might relate to EIA.
- 4.5.7 The Department of Environment, Heritage & Local Government publication, “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development” (August 2003), states that Ireland chose to set mandatory thresholds for each of the project classes in Annex II – thresholds which were substantially lower than comparable Annex I thresholds in the Directive. This, it was thought, would limit the need for sub-threshold EIA. Subsequent Irish court and ECJ rulings have indicated that notwithstanding a project being sub-threshold, consideration must be given to those projects *‘likely to have significant effects on the environment by virtue, inter alia, of their nature, size, or location are made subject to a requirement for development consent and an assessment with regard to their effects’*. The difficulty in this instance lies in the use of the word ‘threshold’ – implying that one has been set, when in fact there is no threshold set in the EIA Directives and implementing legislation in relation to dredging. The 2003 Guidance goes on to refer to the need for competent/consent authorities to formally decide whether or not a project would or would not be likely to have significant effects on the environment – particularly on sites of conservation sensitivity. Small projects can have significant effects: therefore, the nature and location of a project must be taken into account. This document does not offer any insight on whether the dredging of a port or the approaches thereto, requires EIA, as the issue of ‘thresholds’ does not arise in this instance.
- 4.5.8 Schedule 7 of the 2001 Regulations sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment. The schedule looks at-
- Characteristics of the proposed development;
 - Location of the proposed development – particularly areas classified or protected under legislation, including special protection areas (SPAs), and
 - Characteristics of potential impacts of a proposed development.
- The term ‘proposed development’ would seem to countenance something new which was not in existence beforehand. Shipping channels are often referred to as ‘roads’. The widening, lengthening or deepening (beyond historical depths) of a channel could be likened to the upgrading of a roadway to a motorway, something which would require an EIS. However, in this instance, there is no indication of any proposal to widen or lengthen the channel to Sligo Port. It is not clear from

the information submitted whether the dredging will involve ‘capital dredging’ which would go beyond the clearance of silt and mud from the historical channel to Sligo Port. A figure of minus 3.0m Chart Datum has been indicated in documentation submitted, without giving any indication of whether this involves an increase in the depth of the channel beyond the removal of accumulated sediment within the said channel.

4.6 Definition of Dredging & Proposed Development

- 4.6.1 At this juncture, it is necessary to attempt to differentiate between ‘capital’ and ‘maintenance’ dredging. The following definitions have been obtained from the internet, and are not included anywhere within the planning legislation.
- 4.6.2 Capital dredging is carried out to create a new harbour, berth or waterway or to deepen existing facilities in order to allow larger ships access. Because capital works usually involve hard materials or high-volume works, the work is usually done using a cutter suction dredge or large trailing suction hopper dredge. But for rock works, drilling and blasting along with mechanical excavation may be used.
- 4.6.3 Maintenance dredging to deepen or maintain navigable waterways or channels which are threatened to become silted with the passage of time due to sedimented sand and mud, possibly making them too shallow for navigation. This is often carried out using a trailing suction hopper dredge. Most dredging carried on is for this purpose.
- 4.6.4 The documentation submitted to the Board by RPS Consulting Engineers clearly refers to both ‘capital’ and ‘maintenance’ dredging. Capital dredging would appear to countenance deepening of a channel beyond the habitual (pre-silting) depth of the channel. The channel is to be dredged to minus 3.0m Chart Datum. There is no indication given of what the historical Chart Datum depth of the channel is or was. Whilst mention in section 4.5.1 above relates to ‘Extractive Industry’ (which the proposed dredging most certainly is not), the reference to the exclusion of ‘maintenance’ dredging only from the need for EIA, could be interpreted as implying that ‘capital’ dredging was not to be considered in the same light.
- 4.6.5 The letter of RPS Consulting Engineers (received on 13th June 2011) states that all of the dredging will take place below the high water mark. The second letter of RPS Consulting Engineers (received 4th August 2011) states that all of the dredging will take place below the low water mark. These two statements are not necessarily contradictory, in that all development below the low water mark must, of necessity, be below the high water mark also.

4.7 Precedent

Whilst each case must be examined on its merits, the attention of the Board is drawn to a referral case in County Cork – ref. 04.RL2789 [copy included with this Inspector’s Report] which may have applicability in the case currently before the Board. The Board decided on 23rd February 2011, that the laying underground of electricity cables through an area of ecological interest (a proposed Special Protection Area), was exempted development. In arriving at this decision, the Board had regard to the area affected (as a percentage of the overall proposed SPA – in this instance less than 1%); the fact that the cable would be laid for the most part in roads and forest tracks which were of little ecological value, as related to the Site Synopsis published by the National Parks and Wildlife Service (NPWS); that the affected area would be returned to its pre-existing state upon completion of cable-laying; that the laying of cables would have no significant effect, in terms of disturbance of habitats or species; and applying a purposive interpretation of the provisions of Article 9(1)(a)(vii), which would allow for exempted development under the appropriate class of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

4.8 Potential Impact of Dredging on Designated Nature Conservation Sites

- 4.8.1 The purposive intent of nature conservation designations within Sligo Bay must be examined in any attempt to give an opinion as to whether dredging of the channel would have any significant effect(s) on the environment. The Sligo Bay shellfish waters were designated to specifically avoid the channel to Sligo Port. The Shellfish Pollution Reduction Programme for Sligo Bay indicates that maintenance dredging can put pressure on shellfish waters through suspended sediment. However, once modifications are established and activity ceases, the surrounding environment can acclimatise and impacts do not necessarily continue. Only one dredger will operate and will carry sediment once per tide to a disposal site some 34 nautical miles west of Sligo Port. The area for dredging will be limited on any particular day. No indication has been given of the duration of dredging, whether dredging will be carried out in all weathers, at all states of the tide or whether during hours of daylight only. It has not been indicated whether facilitation of port traffic will place restrictions on dredging activity.
- 4.8.2 Cummeen Strand SPA (site code 004035) has been designated for its exposed sand and mud flats which are important feeding areas for wintering waterfowl. The estuarine and intertidal flat habitats are of conservation significance and are listed in Annex I of the Habitats Directive. The proposed dredging will be carried out in the channel to Sligo Port, and it is stated that all works will be carried out below the low water mark. The channel is to be deepened to minus 3.0m Chart Datum. Assuming an approximate 0.92m removal of sediment – the channel must be currently an average minus 2.08m Chart Datum. Eelgrass is present within the SPA – an important food source for herbivorous waterfowl. Areas of salt marsh fringing the SPA provide roosting sites for birds during high tide periods. The

dredging area will not encroach on any mud or salt flats, salt marsh or areas of eel grass. The SPA extends to 1,732.43ha. The dredging area extends to 27.2ha (a portion of which [7%] is located outside the SPA. This means that approximately 26ha is located within the SPA. This 26ha dredging area represents some 1.5% of the total area of the SPA. A single dredger working in the channel will not impact to any significant degree on waterfowl – particularly as the channel is already used by shipping entering and leaving Sligo Port.

4.8.3 Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC (site code 000627) has been designated for its estuarine and intertidal mud flat/sand flat, and dune habitats. The designation also has areas of eel grass – an important source of food for herbivorous wintering waterfowl. The area is listed in Annex I of the Directive. There are a number of marine Annex II species within the area – Sea Lamprey (*Petromyzon marinus*), River Lamprey (*Lampetra fluviatilis*) and Harbour Seal (*Phoca vitulina*). The dredging area will not encroach on any mud flats or salt flats, salt marsh or areas of eel grass. The SAC extends to 4,919.12ha. The dredging area extends to approximately 26ha located within the SAC. This 26ha dredging area represents some 0.53% of the total area of the SAC. A single dredger working in the channel will not impact to any significant degree on habitats or protected species – particularly as the channel is already used by shipping entering and leaving Sligo Port.

4.8.4 The Cummeen Strand/Drumcliff Bay (Sligo Bay) pNHA is the most extensive of the nature designations in the area – slightly more extensive than the SAC of similar name. Comments made in relation to the SAC would apply to the pNHA.

4.9 Appropriate Assessment

4.9.1 The Planning and Development (Amendment No. 3) Regulations 2011, make changes to Part 20 of the 2001 Regulations (as amended). Part 20 relates to Appropriate Assessment. Article 250 (relating to development by local authorities) relates to Screening for Appropriate Assessment, and states-

(1) *In order to ascertain whether an appropriate assessment is required in respect of a development which it proposes to carry out, a local authority shall carry out a screening of the proposed development to assess, in view of best scientific knowledge, if the development, individually or in combination with other plans or projects, would be likely to have a significant effect on a European site.*

(2) *If on the basis of a screening under sub-article (1) it cannot be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans and projects, would have a significant effect on a European site, the local authority shall determine that an appropriate assessment of the proposed development is required and shall prepare an NIS [Natura Impact Statement] in respect of the*

proposed development and shall submit the proposed development to the Board for approval under section 177AE of the Act.

(3)(a) The Board shall, where it considers that an application for development proposed to be carried out by a local authority would be likely to have significant effect on a European site, require the local authority to prepare, or cause to be prepared, an NIS in respect thereof.

4.9.2 It is a matter for the local authority to decide whether or not a NIS is or is not to be prepared for the proposed dredging – based on any screening for appropriate assessment which has been or may be carried out. Sub-article (3)(b) provides that where any person considers that a development to be carried out by a local authority would be likely to have a significant effect on a European site, he or she may apply to the Board for a determination as to whether the development would be likely to have such significant effect and the Board shall make a determination on the matter as soon as possible. Article 250 does not appear to provide for a local authority making such a request to the Board. Section 177U of the Planning and Development Act 2000 (as amended) relates to screening for appropriate assessment. Sub-section (5) states- ‘The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is not required if it can be excluded, on the basis of objective information, that the draft Land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site. This judgement, is a matter for the local authority, based on the information available to it in relation to the nature of the works to be carried out and any likely significant effects on the environment. Section 177AE of the 2000 Act (as amended), relates to appropriate assessment of certain development carried out by or on behalf of local authorities.

5.0 CONCLUSION

Arising from my assessment above, I consider that a full Environmental Impact Assessment is not warranted in this instance. This is contingent upon maintenance dredging only being carried on in the channel and that no capital dredging is proposed. Maintenance dredging would appear to be exempted development, and not to come within any class of development referred to in either parts 1 or 2 of the 5th Schedule to the Planning and Development Regulations 2001 (as amended) in relation to developments requiring Environmental Impact Assessment. Whilst the majority of the proposed dredging works will be located within Natura 2000 sites, I would be satisfied that the nature and scale of maintenance dredging proposed within an existing channel to Sligo Port, and which would extend to a limited area of the overall designated areas, would not have significant effects on the environment. Screening for Appropriate Assessment is a matter for Sligo County Council.

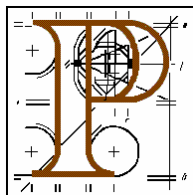
6.0 RECOMMENDATION

Direct the local authority that the preparation of an Environmental Impact Statement is not required in respect of the proposed maintenance dredging of the channel. Any proposal for capital dredging of the channel or any part(s) of it would require the preparation of an Environmental Impact Statement.

**Michael Dillon,
Inspectorate.**

15th December 2011.

An Bord Pleanála



Planning and Development Acts 2000 to 2011

Sligo County Council

APPLICATION by Sligo County Council, care of RPS Consulting Engineers, Elmwood House, 74 Boucher Road, Belfast, BT126RZ, Northern Ireland, requesting An Bord Pleanála to exercise its power under article 120(3)(a) of the Planning and Development Regulations, 2001, as amended, to direct the local authority to prepare an environmental impact statement in respect of proposed dredging works at Sligo Harbour, County Sligo.

DECISION

NOT TO DIRECT the local authority to prepare an environmental impact statement in respect of the said proposed development based on the reasons and considerations set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.

REASONS AND CONSIDERATIONS

Having regard to:

- (i) The nature and scale of the project in question, as set out in the project description and information supplied by the applicant in relation to the proposed project,
- (ii) the environmental sensitivity of the receiving environment, including the designated areas in Sligo Harbour, including Special Areas of Conservation (Cummeen Strand and Drumcliff Bay), Special Protection Areas (Cummeen Strand), proposed National Heritage Areas (Cummeen Strand and Drumcliff Bay), a Ramsar site (Cummeen Strand) and Shellfish Waters (Sligo Bay and Drumcliff Bay),

- (iii) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter, as supplemented by the memorandum on file from the Assistant Director of Planning, and
- (iv) the guidance set out in the document entitled “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development” issued by the Department of the Environment, Heritage and Local Government in August 2003,

it is considered that the ‘maintenance dredging’ proposed does not come within the scope of any category of development included in Schedule 5 of the Planning and Development Regulations 2001, as amended, and is therefore not subject to a requirement for environmental impact assessment.

It is further considered that the modifications to the harbour/port brought about by the capital dredging proposed might be considered to form part of an *Infrastructure Project* coming within the scope of Schedule 5, Part 2, paragraph 10, class (e) of the Planning and Development Regulations 2001, namely “new or extended harbour and port installations”, but in this case it is considered that the proposed development (viewed in its entirety):

- (a) does not exceed any threshold set out in said Part 2, paragraph 10, class (e), (including that it will not result in the area of water enclosed exceeding the relevant threshold set),
- (b) is unlikely to result in any significant direct effects on the environment by reason of increased noise, activity and disturbance from the proposed works,
- (c) is unlikely to result in any significant indirect effects on the marine and shore environment by reason of increased noise, activity and disturbance generated by additional volumes of shipping and harbour traffic and

it is therefore considered that the proposed development would not be likely to result in significant effects on the environment.

**Member of An Bord Pleanála
Duly authorised to authenticate
The seal of the Board.**

Dated this day of 2012.