Submission HLG 00142-23: FS007027 Uisce Éireann/Irish Water Construction of a Waste Water Collection and Treatment System for the combined villages of Whitegate and Aghada, Co. Cork

TO:	Minister of State O'Donnell	AUTHOR:	Aileen Fitzharris (Housing)
STATUS:	Completed	OWNER:	Aileen Fitzharris (Housing)
PURPOSE:	For Decision and Signature	REVIEWERS:	Regina Deegan (Housing) Aileen Fitzharris (Housing) Nina Murray (Housing)
DIVISION:	Foreshore		
DECISION BY:	19/04/2023		

Final comment

Read and approved by Minister O'Donnell 19 April 2023

Action required

Ministerial approval is sought to grant a Foreshore Licence to Uisce Éireann under Section 3 of the Foreshore Act 1933, as amended to construct a Waste Water Collection and Treatment System, for the combined villages of Whitegate and Aghada.

Executive summary

The approval of the Minister is sought to grant a Foreshore Licence to Uisce Éireann under Section 3 of the Foreshore Act 1933, as amended for a term of 35 years, to carry out Construction of a Waste Water Collection and Treatment System at Whitegate, Rostellan, Whitebay, Glanagow and Aghada, Co. Cork.

1- Proposed Pump Station (part of) and Rising Main at Rostellan.

Because of the location of the HWM on the local 25″ Ordnance Survey map, the following two elements of the proposed pump station in Rostellan would be located in the foreshore:

a. Part of the proposed pump station;
b. Part of the proposed rising main.

2- Proposed Pump Station (part of) and Rising Main and Emergency Overflow at Whitegate.

Because of the location of the HWM on the local 25″ Ordnance Survey map, the following three elements of the proposed pump station in Whitegate would be located in the foreshore:

a. Part of the proposed pump station;
b. Part of the proposed rising main from the proposed Whitegate pump station to the proposed WwTP;
c. The overflow pipeline from the proposed pumping station.

3- **Marine Outfall at White Bay, Glanagow.**

- The laying of a proposed 295m (approx.) long marine outfall (from the High Water Mark (HWM)) to convey treated effluent from the proposed Whitegate & Aghada Wastewater Treatment Plant (WwTP) to be discharged in WhiteBay;
- The construction works for the proposed development would also require temporary working areas to accommodate the required infrastructure within the foreshore.

Detailed information

Uisce Éireann/Irish Water have applied for a 35 year Foreshore Licence Section 3 of the Foreshore Act 1933 as amended, for the purposes of constructing a Waste Water Collection and Treatment System at Whitegate, Rostellan, Whitebay, Glanagow and Aghada, Co. Cork.

The proposed development consists of the construction of a wastewater collection system and a wastewater treatment plant (WWTP) at Ballytigeen for the villages of Whitegate and Aghada, Co. Cork. Currently wastewater from the villages of Whitegate and Aghada is being discharged untreated directly into Cork Harbour. This is not in compliance with obligations of the Urban Wastewater Treatment Directive (UWWTD) 91/271/EEC. The proposed development will rectify this issue and facilitate the future development in the villages which is currently constrained by the lack of adequate wastewater treatment. The overall developments consists of a wastewater treatment plant, upgrade works to existing sewerage system, extensive new sewage system, 3 no. pump stations and an marine outfall to the sea at White Bay.

Total area of foreshore the subject of the application: 2.016ha

Brief Description of Works

The following are the elements of the development that are on foreshore and require a consent under the foreshore act:

1. Foreshore at Rostellan for part of proposed Pump Station and Rising Main
2. Foreshore at Whitegate for part of proposed Pump Station, Rising Main and Emergency Overflow.
3. Foreshore at White Bay, Glanaglow for Marine Outfall to the sea

The treated effluent from the proposed Whitegate and Aghada WWTP is to be discharged to the sea at White Bay via a marine outfall. The proposed outfall will extend approximately 295m beyond the high water mark and approx. 190m beyond the low water mark discharging in a water of minimum depth of 4.3m at low water spring tide.

The construction works for the proposed development would also require temporary working areas to accommodate the required infrastructure within the foreshore. Existing outfall pipelines are to be repurposed to serve as combined Emergency Overflow / Surface Water Overflows (EO/SWOs). Connections to these existing pipelines will be made on-shore and there will be no additional works within the foreshore area.

Further details of the proposed activity are outlined in the application form and associated documents and at the link: https://www.gov.ie/en/foreshore-notice/43d64-foreshore-notice-fs007027/

The Application form submitted by Uisce Éireann is attached at **(TAB 01)**

The Foreshore Licence Maps are attached at **(TAB 02,03,04)**

Public Consultations:

Public Consultation under Section 19 of the Foreshore Act as amended:
The public consultation was held between 7th April 2021 and 6th May 2021.

Public notices for this application appeared in the "Irish Examiner" (1st April 2021), the "Southern Star" (3rd April 2021) papers.

They were also on public display at the following locations:

- **Midleton Garda Station, Oliver Plunkett Place, Midleton, Co. Cork.**

- **Cork County Council Office, Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork.**

The Department received one submission from the public during the Public Consultation period, which is attached at (**Tab 05)**. The applicant's response to the submission is attached at (**Tab 06)**.

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 requested and received from:

- Department of Housing, Local Government and Heritage Marine Advisor
- Department of Housing, Local Government and Heritage (National Parks and Wildlife Service)
- Department of Housing, Local Government and Heritage (Underwater Archaeology)
- Department of Agriculture Food and the Marine (Aquaculture)
- Marine Institute

- Inland Fisheries Ireland
- Marine Survey Office (MSO)
- Sea Fisheries Protection Agency
- Environmental Protection Agency

Observations were forwarded to the applicant **(Tab 07)** and there were no objections in principle to the proposed works. The applicant responded to each PBC comment and observations **(Tab 08)**.

These documents are also available on the Department's website: https://www.gov.ie/en/foreshore-notice/43d64-foreshore-notice-fs007027/

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 Consultation in accordance with Regulation 42 of EC Birds and Natural Habitats Regulations 2011, as amended:
The 30 day Public Consultation commenced on **17 November 2022** and ended on **16 December 2022**. The Public Notice 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.
All documents that informed the Screening for Appropriate Assessment Determination (links available above) were made publicly available at: https://www.gov.ie/en/foreshore-notice/43d64-foreshore-notice-fs007027/

Notices were published in The Irish Examiner and The Southern Star newspapers. 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**
- **Cork Co. Co. Planning Office, Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork**

No submissions were received.

In addition to the application documents submitted Uisce Éireann/Irish Water, the following documents were also on public display at the above locations and published on the Department's website: https://www.gov.ie/en/foreshore-notice/43d64-foreshore-notice-fs007027

- Screening for Appropriate Assessment Determination
- Screening for Appropriate Assessment Report (Prepared by IEC)
- Marine Advisor Environmental Report
- Submission on Screening for Appropriate Assessment Determination

Prescribed Bodies Consultation for Appropriate Assessment (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 (Marine Advisor - Engineering)
- Department of Housing, Local Government and Heritage (Marine Advisor - Environmental)
- Department of Housing, Local Government and Heritage (National Parks and Wildlife Service)
- Department of Housing, Local Government and Heritage (Underwater Archaeology)
- Department of Agriculture Food and the Marine (Aquaculture)
- Marine Institute
- Environmental Protection Agency
- Inland Fisheries Ireland
- Marine Survey Office (MSO)
- Sea Fisheries Protection Agency

Observations were forwarded to the applicant **(Tab 07)** and there were no objections in principle to the proposed works. The submitted observations and the applicant's response to these Prescribed Body observations **(Tab 08),** have been considered as part of the Appropriate Assessment.

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 Roughan & O'Donovan (ROD), 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 Uisce Éireann/Irish Water, 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 a Stage 2 Appropriate Assessment was required as the project, individually or in combination with other plans or projects, is likely to have a significant effect on European sites.

The Department's Marine Advisor (Environment) agrees with and accepts the Screening for Appropriate Assessment and its conclusions.

Screening for Appropriate Assessment Determination:

The Minister adopted the Screening for Appropriate Assessment report and determined that an Appropriate Assessment was required. See Submission HLG 00263-22 HLG 00004-23 (cloud.gov.ie)

Appropriate Assessment

An appropriate assessment was submitted by the applicant and assessed by the Environmental Consultant Roughan & O'Donovan (ROD) in February 2023.

The Appropriate Assessment Report, along with all relevant material, was considered by a Marine Ecologist in the Department.

It was concluded that subject to compliance with the mitigation measures are identified in the Natura Impact Statement and the further mitigation measures were identified through the Prescribed Bodies consultation that the proposed project, either alone or in-combination with other projects, will not adversely affect the integrity of any European Site.

Appropriate Assessment Determination:

Upon a review of all materials of the application, Minister of State O'Donnell concurred with the Departments Recommending Officer accepted and adopted the Appropriate Assessment conclusions. The AA Determination Submission was signed by the Minister on 05/04/2023 See Submission HLG 00004-23 HLG 00004-23 (cloud.gov.ie)

Risk Assessment for Annex IV:

A Risk Assessment for Annex IV species likely to occur in Irish waters was carried out by the IEC. The Assessment determined that with strict adherence to the DAHG 2014 Guidance to manage the risk to marine mammals from man-made sound sources in Irish waters the works will not result in the committing of any offence under Article 12 of the Habitats Directive towards any of the species listed in Annex IV of the Habitats Directive that are likely to occur within the site. The proposed which is the subject of this application has undergone significant considerations as to possible environmental implications. It is concluded that subject to condition that there will not be detrimental effects to protected areas or species.

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.

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. Total area of foreshore the subject of the application: 2.01

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 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 licence for the proposed development is in the public interest.

Marine Licence Vetting Committee (MLVC)

The Marine Licence Vetting Committee Report is attached at (**Tab 17)**. 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 04 Foreshore Licence Map 3
- Tab 05 Public Consultation: Public Submissions
- Tab 06 Applicants response to Public Submissions
- Tab 07 Combined PBC Obs 2021, 2022
- Tab 08 Applicants response to PBC obs
- Tab 14 NIS

Independent Environmental Consultants submissions including:

- Environmental Report (Non-Statutory)
- Screening for Appropriate Assessment Report
- Risk Assessment for Annex IV Species
- AA Report

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

- Screening Stage Environmental Report
- EIA Screening Examination
- Screening Determination for Appropriate Assessment
- State 2 Environmental Report
- Appropriate Assessment and Determinations Report

Agreement of the Applicant

The Applicant has agreed to the recommended conditions attached at **(Tab 18)** which will be attached to the licence if granted.

Financial Considerations

Uisce Éireann have agreed to pay a once off fee for following 3 Licences.

1- (Proposed Pump Station (part of) and Rising Main at Rostellan.)

On the basis of a 35-year Licence agreement and subject to a peppercorn annual rental o [redacted] exclusive.

2- (Proposed Pump Station (part of) and Rising Main and Emergency Overflow at Whitegate.)

On the basis of a 35-year Licence agreement and subject to a peppercorn annual rental of [redacted] exclusive.

3- (Proposed Marine Outfall at White Bay, Glanagow.)

On the basis of a 35-year Licence agreement and subject to a peppercorn annual rental o [redacted] exclusive.

Notification of Ministerial Determination

If approval is granted by the Minister, Uisce Éireann 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 00004-23: Appropriate Assessment Determination on Foreshore Application FS007027 Uisce Éireann/Irish Water for Construction of a Waste Water Collection and Treatment System for the combined villages of Whitegate and Aghada, Co. Cork

HLG 00263-22: Screening for Appropriate Assessment Determination on Foreshore Application FS007027 Irish Water Whitegate to Aghada Waste Water Collection and Treatment System

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