



An  
Bord  
Pleanála

## Inspector's Report ABP-305618-19

<b>Development</b>	Oyster processing facility.
<b>Location</b>	Móta, An Rinn, Dungarvan, Co. Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	N/A
<b>Applicant(s)</b>	Meitheal Trá na Rinne Teo
<b>Type of Application</b>	Substitute Consent Application
<b>Planning Authority Decision</b>	N/A
<b>Observer(s)</b>	Coiste Caomhnaithe agus Oidhreachta Pholl a' Phúca Edel and Pierce Murray Domhnall Ó Murchadha and others Noel and Breege Uí Mhurchadha Muireann Ní Mhurchadha
<b>Date of Site Inspection</b>	19 <sup>th</sup> October 2023
<b>Inspector</b>	Emer Doyle

## **1.0 Site Location and Description**

- 1.1. The site is located along the shoreline at Moat (An Móta), Ring (An Rinn), approx. 8km south of Dungarvan town, County Waterford. The village of Ring is located approx. 2km to the east.
- 1.2. The oyster processing facility (Meitheal Trá na Rinne Teo), is accessed via a short cul de sac road L-6118 connecting to the R674 which connects to the N25 to the west and Helvic Head to the east. The road also provides access to a slipway into the harbour directly east of the subject site. The Maoil an Choirnigh stream runs along the eastern side of the access road. The coastline at this location forms part of Dungarvan Harbour SPA (Site Code 004032). Part of the Dungarvan Harbour pNHA (Site Code 000663) is located within the site boundary. There is evidence of coastal erosion along the coastline.
- 1.3. The facility comprises the following elements:
  - The Oyster Processing Plant which was granted planning permission by Waterford County Council in January 1992. It has a stated area of 250m<sup>2</sup> and comprises a forecourt, yard and parking area, a pumping chamber with associated pipe and power line and associated works.
  - A covered area comprising canopy/open ended structure for storage and to facilitate the sheltered loading /unloading of produce. This is located on the southern side of the permitted building and has a stated area of approximately 180m<sup>2</sup>.
  - A rock revetment, within the lower yard to the north within the foreshore, which was constructed as emergency protective works in 2002/2003 with further additions in 2007 and 2009. It comprises mainly of 23 stones and boulders. The lower yard is currently in use as an equipment and tractor store area.
  - A storage, packing and purification structure at the northern elevation of the permitted structure. It is approximately 130m<sup>2</sup> in area and has a height of 6.9m at its highest point. The extension was built within the facility's yard,

previously in use for storage. The development is designed to house a large tank for the storage of oysters in seawater for purification purposes. The area is also used for clean packaging and clean storage of materials for sanitary reasons. The material used for the development consists of Kingspan cladding panels fixed to steel beams on the roof and to steel columns.

- The development includes sea water intake from the permitted water pump located above the rock armour. Discharge from the development is seawater only which is discharged to the nearby Maoil an Choirnigh stream at Móta under licence.

1.4. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the file. These serve to describe the site and location in further detail.

## **2.0 Proposed Development**

2.1. As set out in the public notices, the application consists of substitute consent seeking permission for the regularisation of an existing development described as follows:

- Coastal defences consisting of a rock revetment of approximately 80m in length and an area of approximately 280m<sup>2</sup> (Section 2.3 Rock Revetment of Application for Substitute Consent planning report submitted with application.)
- An extension to the facility consisting of a canopy/ open ended structure for storage and sheltered loading/ unloading of produce. This is attached to the southern side of the existing oyster processing building.
- An extension to the facility to accommodate storage, packing and purification area. This is attached to the northern side of the existing oyster processing building. Purification, in summary, consists of a large tank where oysters can be treated by the use of UV light.
- The application is accompanied by a remedial Natura Impact Statement, an EIA Screening Assessment, and a Planning Report detailing the history of the application together with consultations with the Planning Authority.

### **3.0 Planning History**

#### **ABP Ref. 303535-19**

Permission was granted to the current applicant for leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below as set out in the Board Order:

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that:

(a) the development is one where a determination as to whether an Environmental Impact Assessment is required, and an Appropriate Assessment is required, and  
(b) that exceptional circumstances do exist by reference, in particular, to the following:

- the fact that the regularisation of the development would not circumvent the purpose and objectives of the Habitats Directive,
- the nature and limited scale of the development,
- the ability to carry out an Appropriate Assessment and provide for public participation has not been substantially impaired,
- the limited nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the development, and
- the extent to which such significant effects, if any, on the environment can be remediated

and, therefore, concluded that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

#### **P.A. Reg. Ref. 18/481**

Application for retention of the extension behind the existing oyster building comprising a storage, packing and oyster cleansing building 130m<sup>2</sup> in area. The application included an Appropriate Assessment Screening document. The

Screening concluded that no individual or cumulative impacts were identified with regard to the storage, packing and purification structure. WC&CC corresponded with the applicant as follows; 'The Planning Authority is not satisfied based on the information provided to it, that the impacts associated with the subject development in combination with the other unauthorised development on the Dungarvan Harbour SPA were not and are not significant. Therefore, in accordance with Section 34(12B) of the Planning and Development Act, 2000, as amended, the application is being returned.'

#### *Subsequent Retention Applications*

**P.A. Reg. Ref. 17/298:** Application for retention permission May 2017 (on foot of the Section 5 Determination) for the storage, packaging and purification structure at rear of existing building and connection to sewerage system and other necessary on site works. Application withdrawn.

**P.A. Reg. Ref. 17/549:** Permission sought for retention of the following: 1. The roof structure over the loading and unloading yard on the south side of the existing building. 2. The storage shed to the south of the existing building. 3. The concrete yard and storage yards to the north of the existing building. 4. Change to the site boundary of P.A. 20/92. 5. The storage, packing and purification building including toilets to the north of the building and existing service connections. 6. Changes to car parking spaces.

A request for further information issued September 2017 and the application was subsequently withdrawn.

#### *Section 5 Determination*

##### **PA Ref. D5/2017/4:**

Section 5 request as to whether the covering of an existing yard with a shed is development or is or is not exempted development. Determination by the P.A. March 2017 concluded that:

- The covering of an existing yard with a shed constitute works which come within the scope of Section 2(1) of the Planning and Development Act 2000-2010.
- The said works constitute development which comes within the scope of Section 3(1) of the Planning and Development Act 2000-2010.

- The said works do not come within the scope of the exemption set out in Part 3 of schedule 2 of the Planning and Development Regulations 2001-2013.

### *Parent Permission*

**P.A. Reg. Ref. 20/92:** Permission granted February 1992 for an Oyster Processing Plant subject to 12 no. conditions.

### *Enforcement*

**UD Ref. 01622:** Warning Letter issued June 2012 in in respect of unauthorised infilling of the Foreshore Area in an area of Dungarvan Harbour Designated a SPA.

- **UD. Ref. 2535:** Warning Letter issued April 2018 in respect of the unauthorised steel structure located at the premises. The P.A. requested a composite map indicating;
- The new line of the Dungarvan Harbour SPA relative to the mapping submitted.
- Location of the outer edge of the Rock Armouring constructed, and
- Line of the applicants' folio map indicating ownership relative to the above.

Enforcement Notice issued July 2018 requiring the removal of the unauthorised steel structure and to reinstate the site to its condition prior to the commencement of unauthorised development within a period of 8 weeks of the date of the notice.

## **4.0 Policy Context**

### **4.1. National Policy**

National Planning Framework (Project Ireland 2040) sets out a vision for the future development of the country and, in particular, to support the sustainable development of rural areas by encouraging growth. National Policy Objective 23 seeks to facilitate the development of the rural economy.

### **4.2. Development Plan**

The operative Development Plan is the Waterford City and Council Development Plan 2022-2028.

Site is zoned as HA- High Amenity with an objective to ‘protect highly sensitive and scenic locations from inappropriate development that would adversely affect the environmental quality of the locations.’

Section 11.3 deal with ‘non conforming uses’. Non-conforming uses are described as ‘uses in a zone that are not in conformance with the use zoning objectives.’ Section 11.3 states that ‘the expansion of existing non-conforming uses will be permitted where such use is consistent with sustainability development principles and good planning practice.’

Section 9.1 deals with Climate Change. Objective CA 01: To support and implement the policies of the Climate Adaptation Strategy in collaboration with Waterford Climate Action Team the Climate Action Regional Office, and review/ replace the strategy pursuant to the provisions of the Climate Action Plan 2021 and Low Carbon Act. We will vary the Development Plan as necessary following the review/ replacement of the strategy.

Section 4.7 deals with Rural and the Marine Economy. Objective ECON 13: To facilitate farm or rural resource related enterprises and diversification, including food production and processing on farm/ agricultural holdings, mineral and aggregate extractive industry, aquaculture and marine, the circular economy, and proposals which support rural tourism initiatives which are developed upon rural enterprise, social enterprise, natural/ cultural heritage assets and outdoor recreational activities, subject to the capacity of the site and the location to facilitate the proposal.

Subject to environmental policies and the development management standards of this Development Plan, the nature and scale of any proposed development will be assessed having regard to a number of factors, including nature and scale of the existing operation, building, or tourist attractions, source of material (where appropriate), traffic movements, water and wastewater requirements, capacity to reuse existing and redundant buildings, and likely impacts on amenity and the environment and the Natura 2000 Network.

*Appendix 8 – Landscape and Seascape Character Assessment*

The site is located in areas designated as 'most sensitive' and 'high sensitive' in the Landscape and Seascape Character Assessment. The coastline and beach at this location is designated as 'most sensitive'. The area directly adjacent to the coastline and beach is designated as 'high sensitive.' To be considered for permission in the most sensitive areas development must be shown not to impinge in any sensitive way upon its character, integrity or uniformity when viewed from the surroundings.' In areas of high sensitivity, development must demonstrate an awareness of these inherent limitations by having a very high standard of site selection, siting layout, selection of materials and finishes.

### **Climate Change Adaptation Strategy 2019-2024**

The local authority adaptation strategy takes on the role as the primary instrument at a local level to:

- Ensure a proper comprehension of the key risks and vulnerabilities of climate change.
- Bring forward the implementation of climate resilient actions in a planned and proactive manner.
- Ensure that climate change adaptation considerations are mainstreamed in all plans and policies and integrated into all operations and functions of the LA.

### **4.3. Natural Heritage Designations**

The following European sites are within the vicinity of the subject site:

- Dungarvan Harbour SPA 004032 Adjoining
- Dungarvan Harbour pNHA 000663 part of site within pNHA
- Helvick Head to Ballyquin SPA 004192 1.1km SE
- Helvick Head SAC 000665 1.4 km SE
- Blackwater River SAC 002170 5.5km SW
- Glendine Wood SAC 002324 7.2km N
- Mid-Waterford Coast SPA 004193 8km NE



- Comeragh Mountains SAC 001952 14km N
- Ardmore Head SAC 002123 14.3km SW

## 5.0 Legislative Context

- 5.1. The basis for substitute consent is set out in Part XA (Section 177A – Q) of the Planning and Development Act, 2000, as amended.
- 5.2. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on the 16<sup>th</sup> day of December 2023.
- 5.3. Section 30 of the 2022 Act amends Section 177K of the 2000 Act as follows: by the insertion of the following subsection after subsection (1) (i):

“(1J) In considering whether exceptional circumstances exist under subsection (1A) the Board shall have regard to the following matters:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised.
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.
- (g) such other matters as the Board considers relevant.”

## **6.0 Submissions**

6.1. Five No. third party submissions have been received from the following parties:

- Coiste Caomhnaithe agus Oidhreachta Pholl a’ Phúca
- Edel and Pierce Murray
- Domhnall Ó Murchadha and others
- Noel and Breege Uí Mhurchadha
- Muireann Ní Mhurchadha

The contents of the observations are summarised as follows:

- The lower yard has been used to park trailers and tractors which is unauthorised.
- The rock revetment and lower yard is fully outside the application site and extends beyond the high water mark. Part of the yard and rock revetment is the subject of legal proceedings.
- Foreshore was unaltered until around 2009/2010. That was when the revetment was put in place. The rock armour was constructed within the SPA boundary, as existed at the time.
- Parking lot built for tractors and storage in lower yard area without planning permission.
- Incursion into foreshore has changed the flow of tides and substantially increased erosion.
- Invasion into original SPA.
- AA screening is incomplete as not all of the unauthorised developments and activities are included e.g use of lower yard- permeable surface used for parking of trailers and tractors hydrologically linked to SPA.

- Applicant continued unauthorised development even when ordered to stop by Council.
- Concerns in relation to rock revetment and foreign materials on site.
- The applicant has failed to address the Foreshore Act and encroachment into the foreshore seems to have taken place without a Foreshore Lease or Foreshore Licence.
- The public right of way is completely inaccessible in the 2 hour period preceding and the 2 hour period following high tide. The only option during this period to access the western side of the strand is to enter the lower yard.
- Impact on tidal patterns, wildlife, and residential amenity.
- Photos attached from 2003 demonstrate that the rock armouring and lower yard were not constructed in 2003. Previously tractors parked on the public road.
- Cliff erosion due to change in tidal pattern.
- Concerns regarding conservation objectives of SPA.
- Debris is trapped and deposited at slip entrance.
- Mussel bed has suffered and is now almost extinct because of changes in tidal turbulence.
- Coastal erosion has occurred in a westerly direction. Seawater during high tides is deflected from the rock armour onto adjoining land resulting in scouring and erosion of third party neighbouring lands.
- Concern over visual impact of storage.
- Silt effluent from mussels will impact on water quality.
- Change in roosting patterns of the heron population as some have relocated to the eastern side of Baile na nGall. This may be a consequence of habitat disruption due to increased industrial activity and/or the increased rate of coastal erosion at nesting sites facilitated by landfilling and rock armouring construction.
- Concerns about noise, traffic speeds, and increased processing activity.

- Petition should be disregarded as was obtained in local public houses and from people not directly impacted.
- EIA Screening Report deals with lands outside of the applicant's ownership.
- Water abstraction unit is within the SPA and not addressed in application.
- It is highly likely that fill in lower yard includes C and D waste and other pollutants that are constantly seeping into the area.
- The following requests are made by Coiste Caomhnaithe agus Oidhreachta Pholl a' Phúca:
  - That the Board refuses permission for the rock revetment and the applicant be directed to prepare a Remedial Natura Impact Statement and a Demolition and Reinstatement Management Plan in respect of the removal of the entire rock revetment and unauthorised lower yard.
  - That the Board include a condition prohibiting the loading of produce from the site from vehicles parked on the boreen.
  - That the Board prohibit the loading of produce from articulated lorries.
  - That if the Board is minded to grant permission, hours of operation should be limited from 8am to 8pm.

## 6.2. Planning Authority

No response submitted.

## 6.3. Prescribed Bodies

**HSE:** Recommends a number of conditions relating to noise management, avoidance of spillage from tractors, location of fuel tanks to bunded areas and pest control measures.

**Irish Water:** Standard observations. No specific recommendations in relation to the development.

**Inland Fisheries Ireland:** Concerns in relation to coastal erosion, impact on fish species, absence of adequate buffer area between this enterprise and the

important habitat of Dungarvan Harbour. It is stated that the discharge licence has been reviewed by IFI and it is considered that it does not adequately protect the receiving stream and Dungarvan Harbour.

**An Taisce:** Concerns in relation to coastal erosion, absence of hydrological modelling, and impact of revetment on bird populations.

## **7.0 Observations following Public Notices**

7.1. Four No. third party submissions have been received from:

- Coiste Caomhnaithe agus Oidhreachta Pholl a' Phúca
- Edel and Pierce Murray
- Noel and Breege Uí Mhurchadha
- Domhnall Ó Murchadha and others

### **7.2. Coiste Caomhnaithe agus Oidhreachta Pholl a' Phúca**

I have excluded comments previously made in order to avoid repetition. The comments made can be summarised as follows:

- The entirety of the lower yard is excluded from the substitute consent application and excluded from the EIA Screening Report, the AA Screening Report and the rNIS. As a result, ABP cannot undertake the required Appropriate Assessment.
- Figure 1.2 of the AA Screening Report confirms the vast majority of the rock revetment is within the SPA boundary.
- The application does not address the water abstraction equipment.
- The applicant's response misrepresents the use of the lower yard. This would appear to have been deliberate for the purposes of circumventing the purpose and objectives of the Habitats Directive.
- The applicant could not reasonably have had a belief the development was not authorised.

- It is likely that there have been further impacts on the SPA since the leave application was granted.
- The retention of the lower yard will result in further coastal erosion of the adjoining land outside the site which impacts on wildlife supported by the SPA.
- It is considered that appropriate remediation includes the removal of the lower yard.
- The Board's attention is drawn to unauthorised development by the applicant as outlined by themselves. The applicant has not complied with previous planning permission granted.

### **7.3. Domhnall Ó Murchadha and others**

I have excluded comments previously made in order to avoid repetition. The comments made can be summarised as follows:

- The unauthorised foreshore and subsequent rock armour could well have been a significant pollutant factor on the foreshore. Leaking from tractors could have had an impact on habitat.
- It would beggar belief that the applicant considered that the development would not require permission.
- The applicant carried out development in a 'hurried covert fashion' without Appropriate Assessment or Environmental Impact Assessment.
- The vulnerable cliff structure and habitats were impacted by this intensification.
- Any environmental impact assessment would have due regard for the effects of changing tidal forces generated by the rock revetment.
- The nearby Lir Uisce stream is continually choked by tidal debris and has to be cleared by machinery. This is not a good scenario for marine breeding habitat.

### **7.4. Pierce and Edel Murray**

- Comments are noted and similar in content to previous submission.

### **7.5. Noel and Breege Uí Mhurchadha**

I have excluded comments previously made in order to avoid repetition. The comments made can be summarised as follows:

- The facility continues to cause a nuisance to the local community and environment. Diesel spillage from tractors is evident.
- Effluent is being discharged from the facility.
- Access to the beach is restricted for an hour on either side of full tide.
- Subsidence on the beach suggests erosion.
- No opportunity for adjacent landowner to comment on environmental impact study.
- Local schools which previously took nature walks can no longer use the beach due to it being cut off.
- The rock revetment on the shoreline has become a storage facility.
- A company should not be allowed to profit from the illegal structure on foreshore.
- The impact to the environment and the subsidence has moved the direction of the waves and tidal activities.
- The erosion and subsidence has impacted on the environment and in particular on habitats of nesting birds - e.g. herons and owls.
- Concern regarding working hours, traffic and intensified activities.

### **8.0 Applicant's Response to Further Submissions**

8.1. The applicant's response can be summarised as follows:

- All of the facility including the lower yard has been assessed in the rNIS -see Section 3.9 and 4.1 of the rNIS.
- The seawater pump was permitted in the 1992 permission. This seawater pump serves the purpose of the purification of oysters in the tanks. This pump is regularly maintained and renewed. A discharge licence was granted to the

facility in 1997 which allows for the facility to discharge effluent arising from the process and washing of oysters, to the Maoil and Choirnigh also known as Lir Uisce Stream.

- There is no 'oyster sludge' from the purification system- clean and purified seawater is discharged in compliance with the licence.
- The submitted rNIS/ AA points out that for the operational phase, the emissions are constrained to remain within established parameters, and the large dilution factor provided by the waters of Dungarvan Bay mean that no significant negative impacts as a result of the proposed works are envisaged.
- The processing at the facility involves washing of oysters without any chemicals or harmful substances.
- Any effluent/ storm water run off is to continue to be discharged in accordance with the facilities licence.
- The rNIS clearly states that the yard is not located in the SPA.
- Dungarvan Harbour SPA was designated in 1994 and expanded in 2011. The 2011 expansion included the lower yard which had been a necessity to the oyster industry in this area and is considered a man-made area in use for aquaculture activities and therefore does not form part of the natural habitats important for nesting, roosting or foraging to the bird species for which the SPA is designated.
- The applicant lodged a formal appeal in September 2011 and on foot of an oral hearing in 2012, the Designated Areas Appeals Board recommended the area be 'excluded from the SPA as the rock armour constituted a practical boundary and was clearly identifiable'.
- Attached to response is a letter from National Parks and Wildlife Service dated June 2016 which recommends that the area of lands within the applicant's ownership are excluded from the SPA as the rock armour constitutes a practical boundary.
- A letter dated June 2018 from Waterford County Council states that there is incorrect mapping around the SPA as a portion of the yard remains within the



mapping of the SPA thus indicating that the SPA boundary was drawn incorrectly.

- No direct impacts are envisaged on the Dungarvan Harbour SPA. The majority of works were located outside the SPA boundary, even though mapping still incorrectly includes the rock revetment within the SPA. Construction machinery had to briefly enter the existing boundary of the SPA for very short timeframes to ensure safe construction of the revetment. However, at the time of the works, the SPA boundary did not extend to include the area where construction machinery was operating.
- It is considered that the revetment does not form part of the SPA and there is acknowledgement from several bodies that works, especially the rock armour will not have a negative impact on the SPA.
- The lower yard has been in use from the time the industry was in its infancy before even the factory was built.
- Due to ongoing issues around erosion, the rock revetment was built c. 2003 and repaired/ upgraded in 2007 and again in 2009.
- The lower yard is necessary for the ongoing farming activities in the area. It is not railed in or closed off in any way to the public, who are free and welcome to cross it at any time.
- The removal of the lower yard would have a significant impact on the local amenity as it would create traffic congestion in the area and result in very significant coastal erosion.
- The lower yard is used as a turning facility for many unconnected road users such as the Council and Irish Water.
- The applicant acknowledges that the lower yard was not maintained as well as it could have been for a number of years. Unlicensed operators were using the lower yard for their own use. The applicant has since taken steps to ensure that the lower yard is maintained. The lower yard is now only used for parking, for bag storage by oyster farmers associated with the facility and acts as a turning facility for road users.

- The red line boundary submitted as part of the substitute consent process is representative of the land folio WD1730F and some development has taken place outside this folio including the pump and sections of the rock revetment. The applicant was advised at the time by the contractor that it would be better to not to end the rock armour abruptly and instead to taper it off.
- The adjacent landowner of adjoining folio WD3535F agreed in 1993 to permit the applicant to further develop on their land. The adjacent landowner's son ordered the drilling of a borehole/ well for the factory on the strip of land to the east.
- Since 1993 the adjoining landowner has raised no objection for the applicant for use of the eastern part of WD3535F for access, water and the finishing off of the rock revetment.
- If ABP has significant concerns about the yard, the business is viable without it.
- The tonnage handled at the facility has decreased significantly since the facility commenced operation at this location. See Table 1 which shows that annual output at the plant has decreased from c. 600-700 tonnes in 2008/2009 to between 250-400 tonnes in recent years.
- Shift work is normal in this industry and was envisaged in the 1992 application.
- Works have to be carried out at the early hours due to the tides restricting access to the oyster beds.
- Oysters are generally dispatched once a week in a refrigerated truck with the exception of 4-6 weeks prior to Christmas.
- The substitute consent application does not generate any additional traffic.
- On rare occasions, there can be issues with lorries arriving at unsociable hours which can happen due to ferry delays. It is more than 3 years since this happened.
- Access to the west is not hindered in any way. For at least 90% of the time this rocky beach is accessible without going near the applicant's lower yard

and at full tide there is simply no beach to go to as the tide comes all the way in to the bottom of the cliff.

- It is considered that the visual impact is minimal.
- The water extraction unit was allowed for in the 1992 application and serves the purpose of the purification of oysters in the tanks. This has been contained within a steel box to make it safe and inaccessible to the public. Over the years the pump has been maintained and renewed.
- There is no oyster 'sludge'- only clean and purified sea water in compliance with the licence.
- The Irish Water pumping station to the east has had operational issues.
- The rNIS proposes mitigation measures that any effluent storm water run-off is to continue to be discharged in accordance with the facility's licence in reducing the risk of contaminated run off/pollutants entering Dungarvan Harbour SPA.
- The applicant participates in clean-ups of the beach.
- Although considered highly unlikely the potential ornithological disturbance associated with the development works is acknowledged and various mitigation measures are outlined in the rNIS.

## **9.0 Assessment**

### **9.1. Introduction**

- 9.1.1. This application relates to the retention of two extensions to an existing oyster processing facility and the retention of coastal defences consisting of a rock revetment. Permission was granted for leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, and the Board considered that exceptional circumstances did exist such that it would be appropriate to permit the opportunity for the regularisation of the development by permitting an application for substitute consent.

9.1.2. Following the enactment and commencement of the provisions of the Planning and Development, and Residential Tenancies Act 2020 on the 19th of December, 2020, the Board in a letter dated 6th July, 2021 under section 177K(1C)(a), invited the applicant to submit information in relation to exceptional circumstances. Details of exceptional circumstances were submitted by the applicant on the 28<sup>th</sup> of July 2021. A total of four observations were received by the Board on foot of the publication of new site and newspaper notices which were circulated. The applicant submitted a response to the Board on the 1<sup>st</sup> of February 2023.

9.1.3. This assessment is set out in two parts as follows:

- Planning Assessment
- Remedial Appropriate Impact Assessment

There is an inevitable degree of overlap between the assessments, however I will endeavour to avoid undue repetition.

## **10.0 Planning Assessment**

10.1. The main planning issues in this application relate to the following:

- Principle of Development
- Exceptional Circumstances
- Environmental Impact Assessment Screening
- Impact on Residential Amenities
- Impact on Water Quality
- Other Issues

### **10.2. Principle of Development**

10.2.1. There are three elements to this application as follows:

- An extension to the existing facility comprising of a canopy/ open ended structure for storage and sheltered loading/ unloading of produce. This structure is attached to the southern side of the existing building.
- An extension to the building to accommodate storage packing and a purification area. This is attached to the northern side of the existing building.
- Coastal defences consisting of a rock revetment of approximately 80m in length and an area of approximately 280m<sup>2</sup>.

10.2.2. Permission was granted for the development of this site as an oyster processing facility in 1992 and the use of these lands for such a process area are well established. I note the current zoning of the site is HA- High Amenity with an objective to 'protect highly sensitive and scenic locations from inappropriate development that would adversely affect the environmental quality of the locations.' I am of the view that the development is acceptable in principle in terms of consideration as a non-conforming use and which is provided for under the terms of the Section 11.3 of the current Development Plan. Non-conforming uses are described as 'uses in a zone that are not in conformance with the use zoning objectives.' Section 11.3 states that 'the expansion of existing non-conforming uses will be permitted where such use is consistent with sustainability development principles and good planning practice.'

10.2.3. I note from aerial photographs that the open-ended structure is in place from at least 2011 and the processing facility is a more recent development. The structures are considered acceptable in terms of the improvement/ extension of an existing use on the site. These units were constructed on existing yard areas associated with the use of this site and generally visually/ design wise integrate with the existing structures on the site.

10.2.4. The rock revetment forming part of this application is for a relatively short area of coastline. I am of the view that it is acceptable in principle.

### 10.3. **Exceptional Circumstances**

- 10.3.1. The applicant was granted leave to appeal for substitute consent under ABP 303535-19 on the 17<sup>th</sup> of July 2019. The Board Order considered that exceptional circumstances exist.
- 10.3.2. The Board in a letter dated 6th July, 2021 under section 177K(1C)(a), invited the applicant to submit information in relation to exceptional circumstances. Following this request, the applicant submitted information to the Board in relation to exceptional circumstances in a letter dated the 28<sup>th</sup> of July 2021. I consider that this information is very similar to the information previously submitted to the Board in the leave to appeal application. Four observations have been submitted to the Board in relation to the issue of exceptional circumstances. Taking the tests undertaken in turn, my assessment is as follows:
- (a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive***
- 10.3.3. In relation to the EIA Directive it is noted that the original permission for the oyster farm development, granted in 1992, predated the first advertisement of the Dungarvan Harbour SPA in 2011. While it is acknowledged that the rock armour was initially installed 2002/2003 with further upgrades in 2007 and 2009 this was also prior to the designation of the SPA. The rock armour is still sub-threshold for EIA purposes. It is also the case that had permission been sought for the rock armour and the other elements of the development to be retained, then there is at least a strong possibility that EIA would not have been required at that time, not alone because the SPA had not been advertised at that time, but also because of the requirements of the legislation at that time and which laid down significantly less onerous requirements in relation to EIA, and determination of EIA, than is the case now.
- 10.3.4. Taking a balanced approach, I do not consider that the regularisation of the development would circumvent the purpose and objectives of the EIA or Habitats Directives.
- (b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised***
- 10.3.5. I note that the constructed canopy/open ended structure on the southern side of the permitted facility and the storage, packing and purification structure at the northern

elevation does not have the benefit of planning permission. The applicant's response states that these were considered to be minor modifications and he was under the impression that the works within the curtilage of the facility did not require the benefit of planning permission.

- 10.3.6. In relation to the rock armour, it is conceivable that the applicant could reasonably have had the belief that the development which included the rock armour was permissible as an emergency response, comprising works adjoining a public road edge from which there is public access to a shoreline. As such, it is concluded that the applicant could reasonably have had the belief that the development was permissible.

***(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.***

- 10.3.7. The applicant reiterates that the functions of the development have been on-going since the early 1990's and the expansion of the SPA area to the shoreline occurred post construction of the shore-line defences. A remedial Appropriate Assessment Screening Report and remedial Natura Impact Statement were submitted with the application which are subject to public participation. I note that a total of 4 observations have been submitted to the Board and consider that there has been no impairment of public participation in this particular application.

***(d) The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.***

- 10.3.8. The remedial Natura Impact Statement states that the integrity of Dungarvan Harbour SPA could be indirectly affected by the development through a potential impact on the ornithological interests of the SPA. Mitigation measures are presented in the rNIS to avoid possible impacts. I am satisfied that there are no adverse effects on the integrity of a European site resulting from the existing development.

***(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.***

10.3.9. It is stated by the applicant that the development has not caused significant impacts on the environment or the integrity of a European Site therefore no remedial measures are required for the completed development.

**(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.**

10.3.10. The applicant's response states that 'it was through urgent actions and actions thought to be exempt within the planning regulations that the unpermitted development came to be.' Since the applicants have become aware of the status of the development, they have sought to regularise the situation. I conclude that the applicant is making appropriate efforts to regularise this development by engaging in the substitute consent process.

**(g) Other such matters that the Board considers relevant.**

10.3.11. The response from the applicant does not bring any other matters to the attention of the Board. I am not aware of any other matters that are relevant in this case.

**10.4. Impact on Residential Amenities**

10.4.1. The main issues raised in terms of impact on residential amenities relate to hours of work, and traffic impacts.

10.4.2. I note that the industry is a resource based industry in that the oysters are harvested from Dungarvan Harbour adjacent to the site. Dungarvan Harbour boasts one of the largest concentrations of oyster cultivation in Ireland. The location of the site is untypical for an industry in normal circumstances but having regard to the function of the business, I consider that the location is acceptable. Development surrounding the site is typical of many rural locations and there are a significant number of one off rural dwellings on the road leading to the site.

10.4.3. In terms of the impacts on these neighbouring dwellings, concern is firstly raised in relation to unsocial working hours and noise associated with same. In addition, concern is raised regarding a huge increase in the volume of traffic on a local rural cul de sac.



- 10.4.4. As stated in the principle of development section of this report, the principle of development has already been granted at this location. In terms of the substitute consent application, whilst there is an increase in floorspace of buildings, there is no corresponding increase in sales.
- 10.4.5. In this regard I refer the Board to Table 1 on page 8 of the applicant's response to the Board dated the 1<sup>st</sup> of February 2023. The annual output of the plan has decreased from a peak of c. 600-700 tonnes in c. 2008/2009 to between 250,000 to 400,000 tonnes in recent years.
- 10.4.6. The response indicates that a degree of shift work was provided for in the 1992 application and permission was granted on this basis. Works have to be carried out at early morning hours due to the times of tides restricting access to the oyster beds. The earliest start time is 6:00 am (in which case the working day finishes by 2 or 3pm). Within the oyster processing industry, it is normal to work 2 tides a day, however this operation only works one tide a day. Oysters are generally dispatched once a week in a refrigerated truck with the exception of around 4-6 weeks leading up to the Christmas market when there are dispatches on a maximum of 2-3 days a week. It is stated that the number of producers who supply oysters to the business has decreased from 33 down to 4 resulting in much lower volumes of traffic and other traffic compared to previously.
- 10.4.7. It is clear that the nature of the aquaculture development presents a difficulty in that it needs to be located in a coastal area and is governed by tides and associated shift work, yet it does have impacts on the local area. I note that the northern building houses a large purification tank, clean packaging area and packaging storage area required to produce a retail ready product under strict food safety regulations and conditions which would not have been possible in the original building. The method for processing within the facility has changed but the addition of a purification tank has not led to an intensification of use from the facility permitted in 1992.
- 10.4.8. I consider that should the Board be minded to grant permission, a number of conditions could be included to address some of the negative impacts on nearby residences and minimise disruptions including the preparation of an environmental management system to manage noise from tractors and trucks. I note that some of the observations have requested conditions in relation to more restricted hours of business operations. Having regard to the dependence of the business on tidal

patterns, I consider that it would be difficult to include conditions in relation to the hours of operation. I also note that the report of the HSE does not recommend the inclusion of such conditions.

- 10.4.9. Having regard to the nature of the aquaculture development at this location, together with the information submitted that there is a decrease in volume of production in recent years notwithstanding the construction of new buildings, I am satisfied that this substitute consent application will not significantly detract from residential amenities at this location.

## **10.5. Environmental Impact Assessment Screening**

- 10.5.1. Screening for Environmental Impact Assessment was carried out under the Leave to Apply for Substitute Consent ABP-310595-21. The Board determined that 'the development is one where a determination as to whether an Environmental Impact Assessment is required.
- 10.5.2. The application is accompanied by an EIA Screening Assessment. I note that Schedule 5, Part 2, Class 10(k) of the Planning and Development Regulations 2001 (as amended) requires EIAR for coastal works that exceed 1km in length. In this case, the rock armour is c. 80m in length. The storage, packing and purification structure and covered area do not fall within Schedule 5 Part 1 or Part 2 of the Regulations. Therefore, I agree with the conclusion that the development is sub threshold and there is no mandatory requirement for EIAR.
- 10.5.3. Having regard to the Board direction as outlined above the question now is to determine if the existing development would be likely to have significant effects on the environment and if the preparation and submission of an environmental impact report is required.
- 10.5.4. I have examined the information contained in Sections 3.3, 3.4 and 4 of the report and am satisfied that sufficient information has been provided by the applicant as follows:

Nature of Development: The existing development is not exceptional in the context of the existing environment. It is a rural based aquaculture activity which needs to be located in close proximity to the sea. I do not consider that the development results in significant waste or significant pollutants.

Size of Development: The existing development is small in scale and from the evidence available to me, production has decreased in recent years.

Location: Dungarvan Bay SPA is located adjacent to the site and is linked hydrologically to the site. Sewerage from the facility is discharged to mains and run-off from the yard and other surfaces is channelled through silt, oil and grease traps before discharge to a stream which then enters Dungarvan Bay. Sea water is used to wash oysters and is then discharged under licence to Dungarvan Bay.

- 10.5.5. Having regard to the above, I am satisfied the existing development would not be likely to have significant effects on the environment and the preparation and submission of an Environmental Impact Assessment Report is not, therefore, required.

#### **10.6. Impact on Water Quality and Use of Lower Yard**

- 10.6.1. Issues have been raised regarding the impacts on water quality from oyster 'sludge' and the seawater pump. Concerns have also been raised in relation to the use of the lower yard and the diesel spillage from tractors using the lower yard.
- 10.6.2. The applicant's response notes that the seawater pump was permitted in the 1992 permission. This seawater pump serves the purpose of the purification of oysters in the tanks. This pump is regularly maintained and renewed. A discharge licence was granted to the facility in 1997 which allows for the facility to discharge effluent arising from the processing and washing of oysters, to the Maoil and Choirnigh also known as Lir Uisce Stream. It is stated that there is no 'oyster sludge' from the purification system- clean and purified seawater is discharged in compliance with the licence. The processing of oysters at the facility involves the washing of oysters without any chemicals.
- 10.6.3. The submitted rNIS/ AA points out that for the operational phase, the emissions are constrained to remain within established parameters, and the large dilution factor provided by the waters of Dungarvan Bay mean that no significant negative impacts as a result of the proposed works are envisaged. Any effluent/ storm water run off is to continue to be discharged in accordance with the facilities licence.
- 10.6.4. I note that Dungarvan Harbour is a coastal waterbody in an area for protection- i.e a waterbody which is not at risk of meeting the objectives of the Water Framework

Directive. I have examined the EPA data available and the existing ecological status is good. From the information available in relation to processing of the oysters, it appears that oysters are washed without chemicals or harmful substances and after the purification process, clean water run off is discharged in accordance with the facilities licence. The Board received a submission from Inland Fisheries Ireland which indicated that the waters of Dungarvan Harbour provide significant nursery habitat for the larval and juvenile forms of (transitional and marine) fish species, in addition to providing shelter and food for many young and adult fish. The IFI submission raises a number of concerns in relation to the impact on coastal erosion and the potential impact on fish species from the sea water intake. The suitability of the yard immediately adjacent to Dungarvan Harbour is questioned and it is asked why a site away from the high water mark which guaranteed an adequate buffer zone between this enterprise and the important habitat of Dungarvan Habitat was not considered. It is also stated that the Section 4 Discharge Licence for this facility has been reviewed and it is considered that an Emission Limit Value of 60ppm BOD and 60ppm suspended solids adequately protects the receiving stream and adjacent Dungarvan Harbour.

10.6.5. I would share the concerns regarding the lower yard. It is an unattractive element of the business which is used for parking of tractors and equipment storage. In Section 4 of the response submitted by the applicant, it is stated that the lower yard has been in use from the time the industry was in its infancy. It is stated that it is not railed in or closed off in any way to the public who are free to welcome or cross it at any time. I note that access to the beach for 2 hours either side of high tide at this location and the cessation of nature walks by a local school on this beach were raised as issues in the objections submitted. I note that the applicant contends that the lower yard is used as a turning area for various unconnected businesses such as Waterford Co. Co., Irish Water, the Sea Fisheries Protection Authority and local residents. I have examined the parent permission and this area does not appear to have any stated use and the use appears to have evolved over time.

Having visited the site, I consider that one would have to be very familiar with the area to know that this area could be used as a turning area. It is down gradient at the end of a cul de sac behind the main business operational buildings with no signage. Whilst I note that the area is not fenced off and is open to the public, I direct the Board to photographs 1, 2, 3 and 6 of the photographs attached to this report and

consider that the use of this area detracts from the visual amenities of the area. Appendix 8 – Landscape and Seascape Character Assessment of the Development Plan designates this area as both ‘most sensitive’ and ‘high sensitive’. The coastline and beach at this location is designated as ‘most sensitive’. The area directly adjacent to the coastline and beach is designated as ‘high sensitive.’ To be considered for permission in the most sensitive areas development must be shown not to impinge in any sensitive way upon its character, integrity or uniformity when viewed from the surroundings.’ In areas of high sensitivity, development must demonstrate an awareness of these inherent limitations by having a very high standard of site selection, siting layout, selection of materials and finishes.

- 10.6.6. It is acknowledged by the applicant that for a few years the lower yard was not maintained and was used by unlicensed unconnected oyster operators. It is now maintained by the applicant and the stated uses are parking, bag storage by oyster farmers and as a turning facility by other road users. Section 5.1 states that if the Board has significant concerns about the use of the yard, the applicant submits that the business remains viable in its absence.
- 10.6.7. I consider that the removal of the yard would address some of the concerns raised in relation to buffer area between the site and Dungarvan SPA, traffic and traffic impacts including potential diesel spillage on the yard area, visual impact, and access. In terms of the impact on water quality, there is a significant diluting factor in Dungarvan Harbour and there is no evidence that the processes of the business are impacting on the good ecological status this coastal waterbody currently has. I note the submission of the IFI in relation to the emission limits of the current discharge licence. It is important to note that the Discharge Licence and the emission levels set by same are not within the remit of the Board.

#### **10.7. Other Matters**

- 10.7.1. Issues have been raised regarding the construction of the rock revetment in terms of land ownership and foreshore development.
- 10.7.2. The applicant’s response states that ‘the red line boundary submitted as part of the substitute consent process is representative of land folio WD17403F and some development has taken place outside this folio including the pump to the east and

sections of the rock revetment.' It is stated that the landowner has had no objection to same since 1993.

10.7.3. I note the concerns raised with regard to the spatial relationship between the existing rock revetment and the High-Water Mark (HWM). In the event that the site or part of the site lies beyond the High Water Mark, the applicant may have to consider whether or not a Marine Area Consent (MAC) license is required. I refer the Board to maps I have attached to the report photographs from OS maps and Tailte Eireann in this regard. I also refer the Board to condition 9 of the parent permission which requires that 'no material related to any aspect of the farming or processing of the oysters shall be stored or deposited on the foreshore.'

10.7.4. In terms of the land ownership issue, I refer the Board to the applicant's response as summarised above. I am satisfied that the applicant has provided adequate information to submit the planning application and that this is a civil matter. I would be satisfied that the provision of Section 34(13) of the Planning and Development Act, 2000 as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is relevant.

## **11.0 Appropriate Assessment Screening**

### **11.1. Compliance with Article 6(3) of the Habitats Directive**

11.1.1. Compliance with Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000, as amended, are considered fully in this section.

### **11.2. Background to Application**

As set out in the public notice, the application consists of substitute consent seeking permission for the regularisation of an existing development described as follows:

- Coastal defences consisting of a rock revetment of approximately 80m in length and an area of approximately 280m<sup>2</sup>.
- An extension to the facility consisting of a canopy/ open ended structure for storage and sheltered loading/ unloading of produce. This is attached to the southern side of the existing oyster processing building.

- An extension to the facility to accommodate storage, packing and purification area. This is attached to the northern side of the existing oyster processing building. Purification, in summary, consists of a large tank where oysters can be treated by the use of UV light.

### 11.3. Description of Characteristics of Existing Development

Section 1.2.3 of the AA Screening Report and rNIS describe the activities of the plant. The main activities of the plant are as follows:

- Grading, washing and packaging of oysters harvested from trellises located on the sand flats of Dungarvan Bay.
- Seawater for washing oysters is abstracted from Dungarvan Bay and the resultant effluent is discharged into the Maoil an Chronaigh stream. The plant is licenced by Waterford City and County Council to discharge effluent from the process of washing oysters to the stream.
- Sewerage waste is discharged separately into the public sewerage system; storm water is required to be discharged separately to the stream, with run off from yards and other surfaces used by vehicles required to be channelled through silt, oil, and grease traps before discharge to the stream.

#### 11.3.1. Submissions and Observations

The submissions from the observers, An Taisce, and IFI are summarised in Section 6 and 7 above.

### 11.4. Appropriate Assessment Stage 1 – Screening

- 11.4.1. This project was subject to Appropriate Assessment Screening and I have examined the Stage 1 screening report for Appropriate Assessment. Eight European Sites are deemed to be located within the zone of influence of application site and their location relative to the site is listed in Table 1 below.

European Site and Site Code	Location relative to application site
Dungarvan Harbour SPA 004032	Adjacent

Helvick Head to Ballyquin SPA 004192	1.1km SE
Mid Waterford Coast SPA 004193	8 km N
Helvick Head SAC 000665	1.4km SE
Comeragh Mountains SAC 001952	14km N
Ardmore Head SAC 002123	14.3km N
Glendine Wood SAC 002324	7.2km N

11.4.2. I note that the map included in the AA Screening Report is incorrect and page 22 of the AA Screening Report notes that the inclusion of parts of the rock revetment in the Dungarvan Harbour SPA appears to be due to a mapping error, since the edge of this area has been recognised as a clearly identifiable practical boundary by the NPWS. I have checked the current NPWS mapping and can clarify that the site is adjacent to Dungarvan Harbour SPA boundary. I have attached a map of same to the photographs on file in the interests of clarity. I note that the NPWS mapping has now addressed the issue raised regarding the boundary at this location. I refer the Board to page 9 of the Screening Report which notes that the SPA boundary was altered in June 2016 to exclude the yard/ revetment area as an appeal to NPWS stated that ‘this constituted a clearly identifiable boundary.’

11.4.3. I am satisfied that the other European sites outside of this potential zone of influence can be discounted as having potential for significant effects on the basis of separation distance and the lack of any complete source-pathway-receptor chain.

11.4.4. In relation to consideration of Dungarvan Harbour SPA, a hydrological pathway exists between this site and the application site via the Maoil an Choirnigh also known as Lir Uisce Stream. Given the source-pathway-receptor link between the two as is submitted that there is potential for impacts to the ornithological interests of Dungarvan Harbour SPA and this site cannot be screened out. Therefore this site requires further consideration at Appropriate Assessment Stage 2.



11.4.5. Having regard to the separation distance and the absence of any hydrological connection I consider that the following sites can be screened out:

- Helvick Head to Ballyquin SPA 004192
- Mid Waterford Coast SPA 004193
- Helvick Head SAC 000665
- Blackwater River SAC 002170
- Comeragh Mountains SAC 001952
- Ardmore Head SAC 002123
- Glendine Wood SAC 002324

#### **11.5. Appropriate Assessment Stage 1 – Screening Conclusion**

11.5.1. Potential for significant effects on Dungarvan Harbour SPA (Site Code 004032), noting the sites conservation objectives cannot be screened out for the reasons outlined above. Accordingly, a Stage 2 Appropriate Assessment is required to determine the integrity of potential of the existing development to adversely affect the integrity of this site.

11.5.2. It is reasonable to conclude on the basis of information on file, which I consider to be adequate in order to issue a screening determination, that the existing development, individually or in combination with other plans or projects would not be likely to have a significant effect on Europeans sites:

- Helvick Head to Ballyquin SPA 004192
- Mid Waterford Coast SPA 004193
- Helvick Head SAC 000665
- Blackwater River SAC 002170
- Comeragh Mountains SAC 001952
- Ardmore Head SAC 002123
- Glendine Wood SAC 002324

or any other sites in view of their Conservation Objectives and a Stage 2 Appropriate Assessment is not therefore required in respect of these sites.

## 11.6. Appropriate Assessment- Stage 2

- 11.6.1. The planning documentation included a remedial Natura Impact Statement (rNIS). The rNIS examines and assesses the potential for adverse effects of the development on Dungarvan Harbour SPA.
- 11.6.2. The NPWS site synopsis for Dungarvan Harbour SPA outlines that *“a major part of the ecological importance of Dungarvan Harbour is the wintering waterbirds which are present in large numbers”*. The special conservation interests for the SPA are identified below.

<b>Special Conservation Interests Dungarvan Harbour SPA</b>
Great Crested Grebe ( <i>Podiceps cristatus</i> ) [A005]
Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046]
Shelduck ( <i>Tadorna tadorna</i> ) [A048]
Red-breasted Merganser ( <i>Mergus serrator</i> ) [A069]
Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130]
Golden Plover ( <i>Pluvialis apricaria</i> ) [A140]
Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]
Lapwing ( <i>Vanellus vanellus</i> ) [A142]
Knot ( <i>Calidris canutus</i> ) [A143]
Dunlin ( <i>Calidris alpina</i> ) [A149]
Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156]
Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157]
Curlew ( <i>Numenius arquata</i> ) [A160]
Redshank ( <i>Tringa totanus</i> ) [A162]
Turnstone ( <i>Arenaria interpres</i> ) [A169]
Wetland and Waterbirds [A999]

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11.6.3. The overarching Conservation Objective for Dungarvan Harbour SPA is to ensure that waterbird populations and their wetland habitats are maintained at, or restored to, favourable conservation condition. This includes, as an integral part, the need to avoid deterioration of habitats and significant disturbance; thereby ensuring the persistence of site integrity. The site should contribute to the maintenance and improvement where necessary, of the overall favourable status of the national resource of waterbird species, and the continuation of their long-term survival across their natural range. The NPWS has prepared site specific conservation objectives, attributes and targets (Version 1.0) dated the 16<sup>th</sup> of January 2012 for the Special Conservation Interests (SCI) which can be found online at the NPWS. The NPWS Conservation Objectives Supporting Document for the Dungarvan Harbour SPA outlines that pollution and issues of water quality at Dungarvan Harbour may translate into direct effects upon waterbirds (direct toxicity) or indirect effects due to changes to invertebrate community composition, spatial distribution and/or abundance.

11.6.4. The results of an ecological survey were included in Section 3.3 of the AA Screening document which indicated that seven coastal bird species were recorded on the 3<sup>rd</sup> of December 2018. Of the seven species recorded, five are of qualifying interest. The survey was repeated on the 18<sup>th</sup> of December 2018 and four species of qualifying interest were recorded.

## 11.7. **Potential Direct and Indirect Effects**

11.7.1. I have summarised the potential direct and indirect effects as follows:

Potential for disturbance during construction phase and in particular of rock revetment.
During construction phase, construction machinery entered SPA.
Potential for release of pollutants and /or sediments during construction phase into Dungarvan Harbour

The requirement for silt, oil and grease traps to intercept storm water runoff from yards used by lorries as specified in the plant's discharge licence.
Potential for impacts on ornithological interest of SPA.
Potential for indirect impacts on water quality during construction of rock revetment due to sediments or run-off into Dungarvan Harbour.
No significant impacts envisaged during operational phase due to benign nature of effluent (oyster run-off) and the fact that emissions are constrained to remain within established parameters of discharge licence and large dilution factor of waters of Dungarvan Bay.
Potential for impact via disturbance of key species or reduction of key species as a result of the development works.

- 11.7.2. Section 4.4 of the rNIS sets out that the SCI species within Dungarvan Harbour SPA are not anticipated to be negatively affected by habitat loss or disturbance during the operational phase. It is considered that 'although considered unlikely' there may have been indirect impacts during the construction phase.

## 11.8. Mitigation Measures

- 11.8.1. Measures used to prevent and/or avoid impact have been set out in Section 4.6 of the rNIS. The measures include the following:
- Effluent/ storm water run-off will continue to be discharged in accordance with the facilities licence.
  - Emergency response procedures will be put in place and training in pollution incident control response will be given.
  - Emergency response procedures will ensure that appropriate information will be available on site outlining the spillage response procedures and a contingency plan to contain pollutants.
  - All personnel working at the facility will be given a toolbox talk and informed of the ornithological interests at Dungarvan Harbour SPA.

11.8.2. Overall, I am satisfied that, subject to the adoption of mitigation measures referenced in the rNIS and identified above, the existing development did not adversely affect the integrity of the aforementioned European designated sites, having regard to the conservation objectives for the site as set out above and no reasonable scientific doubt remains in the absence of such adverse effects on the site as a result of the existing development.

#### 11.9. **In-combination effects**

11.9.1. The potential of in combination effects were considered in Section 3.7 of the rNIS. There are no significant effects from this stand alone site and therefore a significant contribution to cumulative or in combination effects are not anticipated.

11.9.2. I am satisfied that the current site would not act in combination with any other projects such to result in any significant effects on the Dungarvan Harbour SPA or any of the special conservation interests for which the site is designated, having regard to their conservation objectives.

#### 11.10. **Appropriate Assessment – Stage 2 Conclusion**

11.10.1. On the basis of the information provided with the application, including the rNIS, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, the submissions received and the assessment carried out above, I am satisfied that the existing development, individually or in combination with other plans or projects would not adversely affect the integrity of Dungarvan Harbour SPA, in view of the sites Conservation Objectives

#### 12.0 **Recommendation**

I recommend that the Board grant substitute consent in accordance with the following Draft Order

### 13.0 **Recommended Draft Board Order**

The Board, in accordance with section 177K of the Planning and Development Act 2000, as amended, and based on the Reasons and Considerations set out below, decided to GRANT substitute consent in accordance with the conditions set out below

### 14.0 **Reasons and Considerations**

In coming to its decision the Board had regard, inter alia, to the following:

- (a) the provisions of the Planning and Development Act the provisions of the Planning and Development Regulations, 2001, as amended;
- (b) the applicable national, regional and local planning policy including in particular, the provisions of the Waterford County Council Development Plan 2022-2028;
- (c) the remedial Natura Impact Statement and supporting documentation submitted with the application;
- (d) the submissions received from prescribed bodies;
- (e) the observation submissions received;
- (f) the planning history of the site.

### **Environmental Impact Assessment**

The Board completed an Environmental Impact Assessment Screening Determination in relation to the development that has taken place, taking account of:

- (a) the nature, scale, location and extent of the development for substitute consent,
- (b) the remedial Environmental Impact Assessment Screening Report and

associated documentation submitted in support of the application,

- (c) the document 'EIA of Projects – Guidance on Screening' (2017) issued by the European Commission,
- (d) the document 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-Threshold Development' issued by the Department of Environment, Heritage and Local Government in August 2003,
- (e) the ecological sensitivity of the receiving environment, including the Dungarvan Harbour SPA (Site Code 004032),
- (f) the characteristics of potential impacts, including, in particular those of biodiversity and water quality,
- (g) the limited potential for significant impacts arising from the existing development,
- (h) The report and recommendation of the Board's Inspector.

It is considered that the existing development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment is not, therefore, required.

## **Appropriate Assessment**

### **Appropriate Assessment Stage 1 (Screening)**

The Board agreed with the Screening Assessment carried out by the Inspector which concluded that the following European Site is one for which a Stage 2 Appropriate Assessment was required, and that significant effects on any other European Sites can be ruled out:

Dungarvan Harbour SPA (004032)

## **Appropriate Assessment Stage 2**

The Board considered the remedial Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the existing development for the Dungarvan Harbour SPA (004032) in light of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the assessment, the Board considered that the likely direct and indirect impacts arising from the historic development, both individually or in combination with other plans or projects, the monitoring measures set out in the remedial Natura Impact Statement and the conservation objectives for the European Site.

The Board is satisfied that, subject to the implementation of the identified monitoring measures and on the basis of the information available, the development, either individually or in combination with other plans or projects, did not adversely affect the integrity of this European site or any other such European designated site, in view of the conservation objectives of any such site.

## **Proper Planning and Sustainable Development**

Having regard to the nature, scale and extent of the development and to the acceptability of the environmental effects and noting the integrity of European Sites were not adversely affected, in view of the relevant sites' conservation objectives, as set out below, and subject to compliance with the conditions set out below, the Board is satisfied that to grant substitute consent to the development accords with the proper planning and sustainable development of the area.

## **Conditions**

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála on the 9<sup>th</sup> of October 2022, except



as may otherwise be required in order to comply with the following conditions.

(b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development on the subject site.

**Reason:** In the interest of clarity.

2. The applicant shall cease the use of the lower yard for activities associated with the business and shall remove all vehicles, equipment, waste, and debris from this location within 12 weeks of this decision.

**Reason:** In the interests of visual and residential amenities and the protection of the environment.

3. Mitigation and monitoring measures outlined in the remedial Natura Impact Statement shall be compiled into a single Schedule of Monitoring and Mitigation Measures and submitted to the planning authority. These measures shall be carried out in full. The Schedule shall be included in an Environmental Management System (EMS) which shall be submitted and agreed with the Planning Authority within 12 weeks of this decision.

The EMS shall include, as a minimum, the following:

- (a) Noise Management Plan to manage noise from tractors and trucks;
- (b) Details of schedule for mechanical and physical checks of tractors including fuel tanks and proposals to rectify any defects within 24 hours;
- (c) Proposals to locate fuel tanks in bunded areas;
- (d) Details of areas for tractor refuelling which must take place on a hard standing area and wash water and surface water is drained through a hydrocarbon interceptor prior to discharge;
- (e) Proposals for alternative use of oyster shells;

(f) Proposals for collection of oyster shells by an authorised contractor;

(g) Proposals for pest control;

(h) Monitoring of ground and surface water quality;

(i) Details for clean up and maintenance of lower yard area;

**Reason:** In the interest of protecting the environment and the amenities of property in the vicinity and in the interest of public health.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Emer Doyle  
Planning Inspector

28<sup>th</sup> March 2024

