



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310220-21

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<b>Development</b>	Construct an office and welfare building and permission for the decommissioning of existing holding tank and install a wastewater treatment unit and uv filter.
<b>Location</b>	Cromane lower, Killorglin, Co Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20461
<b>Applicant(s)</b>	Cromane Seafoods Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Michael Horgan.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	13 <sup>th</sup> August 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to an established industrial site Cromane Seafoods located at Cromane on the Iveragh Peninsula in Co Kerry. The site has a stated area of .46 hectares and is located circa 4km to the north of the settlement of Cromane and circa 8km west of Killorglin. The site is immediately adjacent to the foreshore towards the northern extremity of Cromane Point. The appeal site is occupied by two main industrial type buildings and adjacent hardstanding areas used for the established shellfish farming business.

## 2.0 Proposed Development

- 2.1. The proposal as initially set out involved permission to replace existing mobile home unit with an office and welfare building. Application details indicate that the proposed building is to be used as an office and welfare building for 2/3 persons working at the site.
- 2.2. Following a request for additional information and clarification of additional information proposal was revised to permission to construct an office and welfare building and permission for the decommissioning of exiting holding tank and install a wastewater treatment unit UV filter and polishing filter and all associated site works. I note that the proposed wastewater treatment system is located outside the site boundary as defined on site location plans submitted with the application on 27<sup>th</sup> May 2020.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 21<sup>st</sup> April 2021, Kerry County Council issued notification of the decision to grant permission and 8 conditions were attached which included the following of particular note.

Condition 1. Development in accordance with submitted details. within two weeks of the date of decision a revised site location map to scale 1:2400 shall be submitted

with the application outlined in red to correspond with the revised site layout map to scale 1:750 received on 15.3.2021

Condition 2. The unauthorised mobile unit on site shall be removed within 3 months of this decision. The Planning Authority shall be notified in writing when the said works have been carried out.

Condition 3. Development Contribution €720.00 in accordance with the Development Contribution Scheme.

Condition 6. Packaged Wastewater Treatment Unit. Requirements and specifications.

Condition 9 The proposed development shall be used for purposes ancillary to the running of Cromane Seafoods only and not for any other commercial, habitation or agricultural uses.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Initial planner's report noted the unauthorised nature of the mobile home and holding tank and sought additional information to include alternative wastewater treatment proposals. A subsequent request for clarification of additional information in relation to the details of proposed treatment system. Final report recommends permission subject to conditions.

### **3.2.2. Other Technical Reports**

Building Control Officer. No objection subject to fire safety cert and disability access cert.

Biodiversity Officer notes that the compound is contained on built ground within a fenced area associated with Shellfish farming. There is no annexed habitat or functionally linked habitats that support birds of Special Conservation Interest within the site compound. No potential to impact the pNHA or European Sites. Considering the ongoing use of the site for many years it is likely that birds of SCI have existing

levels of habitation to the development and operations at this location. The species predominantly feed during the winter months on the extensive mudflats and sandbanks within the SPA that extends over the entire Castlemaine and Dingle bays. Not likely that the development will have a significant effect on populations of birds of SCI. Appropriate Assessment is not required.

Environment Report. Site assessment unit outlined concerns with regard to holding tank. Alternative treatment options should be considered. Suitability for on site treatment should be assessed. Following submission of additional information and clarification of same report indicates no objection subject to conditions.

### **3.3. Prescribed Bodies**

No submissions

### **3.4. Third Party Observations**

Submission from Michael Horgan, Secretary of Lakes and Rivers of Kerry Salmon and Trout Conservation and Protection Association. Objection to the development is outlined on the following grounds.

- Site within a Special Area of Conservation.
- Existing mobile home unauthorised.
- Negative impact on tourist industry.
- Impact on Wildlife.

## **4.0 Planning History**

95/1802 Permission granted to Cromane Seafoods to erect a shellfish depuration / process facility.

## 5.0 Policy Context

### 5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers.

NR-27 is the objective to Support the sustainable development of marine aquaculture and fishing industries and its diversification at appropriate locations having regard to the requirements of the EU Water Framework Directive, the relevant River Basin Management Plans, the Habitats Directive, the integrity of the Natura 2000 network and visual amenity.

Within Chapter 13 Development Management Standards and Guidelines it is outlined that The EPA Wastewater Treatment Manual “Treatment Systems for Small Communities, Business, Leisure, Centres & Hotels” (EPA, 1999) shall be used for other developments. All on-site wastewater treatment systems shall comply with the relevant part(s) of I.S. EN 12566 and Circular PSSP1/10 and all amended and updated documents/publications

### 5.2. Natural Heritage Designations

The site is adjacent to the Castlemaine Harbour SAC (Site Code 00343) The Castlemaine Harbour SPA (Site Code 004029)

### 5.3. EIA Screening

- 5.3.1. On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development and nature of the receiving environment no likelihood of significant effects on the environment arises from the development. The need for environmental impact assessment can, therefore, be excluded.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal is submitted by Michael Horgan, 2 Upper Cloonbeg Tralee Co Kerry, Secretary of Lakes and Rivers of Kerry, Salmon and Trout Conservation and Protection Association. Grounds of appeal are summarised as follows:

- Unauthorised mobile unit on the site.
- Site is adjacent to SAC and SPA.
- Site is zoned rural general and proposed natural heritage area.
- Sewage Treatment plant would not be in the interest of proper planning.
- Proposal would create urban sprawl. Development in an unserviced rural area would create long term impact with regard to access to local services.
- Unsustainable transport, greenhouse gases.

### **6.2. Applicant Response**

The Applicant did not respond to the grounds of appeal.

### **6.3. Planning Authority Response**

The Planning Authority did not respond to the grounds of appeal.

### **6.4. Observations**

No submissions.

## 7.0 Assessment

7.1 I consider that the key issues to be considered in determining this appeal area as follows:

- Principle of Development
- Procedural Matters Servicing – Wastewater Treatment and Flooding.
- Appropriate Assessment Screening.

### 7.2 Principle of Development

7.2.1 The proposal involves the construction of an office and welfare building intended to meet the needs of the established aquaculture facility on the site. I note that the previously sited unauthorised mobile home unit which served this purpose had been removed off site on the date of my site visit. I consider that the principle of development here is acceptable having regard to the established use of the overall site. The development is supported by the relevant planning policies set out within the County Development Plan which seek to promote sustainable development of fishing and aquaculture industries in County Kerry. As regards the third-party appellant's submission that the proposal represents unsustainable urban sprawl having regard to the established use and the nature of the proposed building, I consider that this does not arise. As regards the design and visual impact given the modest scale of the structure and location within the established industrial complex, I am satisfied that the proposal will integrate with the established structures and will not give rise to any significant negative visual impacts. On this basis I consider that there is no objection in principle to the development as proposed subject to consideration of detailed matters.

### 7.3 Procedural Matters, Servicing Wastewater Treatment and Flooding.

7.3.1 As regards servicing the proposal evolved during the course of the application to the Council. It is proposed to replace the existing (unauthorised) holding tank which currently serves the site by way of provision of a mechanical aeration unit, uv filter,

and polishing filter with discharge to ground. I note that the location of the proposed wastewater treatment system is outside the boundaries of the site as defined in red on-site plans submitted to the planning authority with the application. I note that revised site notices were submitted and the planning authority and condition 1 requires the submission within two weeks of the date of decision of a revised site location map to scale 1:2500 with the application outlined in red to correspond with the revised site layout map to scale 1:750 received on 15/3/2021. I consider that procedurally the application is deficient and in light of these deficiencies the application should be resubmitted.

7.3.2 As regards assessment of site suitability for effluent treatment the details indicate that in trial hole excavated to 3m bedrock and watertable were encountered at 3m. T value of 14.69 was determined and P value of 15.22. I note that the application relies on the argument that the proposal is replacing an existing deficient (and unauthorised) holding tank which does not meet any regulatory standard and clearly an improved system is to be encouraged. I have however a number of concerns with regard to the level of detail and information provided. I note that history files 95/1802 has not been provided to the Board and it is not clear what previous servicing arrangements existed for the established buildings on the overall site. I note the letter submitted OSC received in response to clarification of further information request outlines that the proposal involves the upgrade of an existing holding tank and on the basis that it is proposed to cater for the overall facility the population equivalent(pe) is increased from 2pe up to 4pe. The system as outlined indicates a pe capacity of 6pe.

7.3.3 I note with some concern that the issue of potential flood risk with regard to the wastewater treatment system is not at all addressed within the application. I note from OPW draft flood maps that information on flooding is currently not available with respect to the area however it is clearly within an area at flood risk. I further note that whilst the proposed office use would be deemed to be a “less vulnerable” use, no detailed proposals for flood risk have been addressed. Clearly having regard to the Planning System and Flood Risk Management Guidelines Department of



Environment, Heritage and Local Government November 2009, the proposal should be subject to a flood risk assessment and the justification test. A site-specific flood risk assessment to quantify the risks and effects of any necessary mitigation together with measures needed or proposed to manage residual risk would be required.

7.3.4 Given the procedural deficiencies in the application as outlined above and the lack of detailed information with regard to established development and operations on the site and in the absence of flood risk information I consider that the development should be refused.

#### **7.4 Appropriate Assessment Screening.**

7.4.1 On the issue of appropriate assessment, I note that the application site is located adjacent to two Natura 2000 sites namely

- Castlemaine Harbour SPA Site Code 004029
- Castlemaine Harbour SAC Site Code 000343

7.4.2 The qualifying interests in respect of the sites are as follows:

##### **Castlemaine Harbour SAC 000343**

1095 Sea lamprey *Petromyzon marinus*

1099 River lamprey *Lampetra fluviatilis*

1106 Atlantic salmon (*Salmo salar*) (only in fresh water)

1130 Estuaries

1140 Mudflats and sandflats not covered by seawater at low tide

1210 Annual vegetation of drift lines

1220 Perennial vegetation of stony banks

1310 *Salicornia* and other annuals colonizing mud and sand

1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

1355 Otter *Lutra lutra*  
1395 Petalwort *Petalophyllum ralfsii*  
1410 Mediterranean salt meadows (*Juncetalia maritimi*)  
2110 Embryonic shifting dunes  
2120 Shifting dunes along the shoreline with *Ammophila arenaria* ("white dunes")  
2130 \* Fixed coastal dunes with herbaceous vegetation ("grey dunes")  
2170 Dunes with *Salix repens* ssp. *argentea* (*Salix arenariae*)  
2190 Humid dune slacks  
91E0 \* Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion,  
*Alnion incanae*, *Salicion albae*)

#### **004029 Castlemaine Harbour SPA**

A001 Red-throated Diver *Gavia stellata* wintering  
A017 Cormorant *Phalacrocorax carbo* wintering  
A046 Light-bellied Brent Goose *Branta bernicla hrota* wintering  
A050 Wigeon *Anas penelope* wintering  
A053 Mallard *Anas platyrhynchos* wintering  
A054 Pintail *Anas acuta* wintering  
A062 Scaup *Aythya marila* wintering  
A065 Common Scoter *Melanitta nigra* wintering  
A130 Oystercatcher *Haematopus ostralegus* wintering  
A137 Ringed Plover *Charadrius hiaticula* wintering  
A144 Sanderling *Calidris alba* wintering  
A157 Bar-tailed Godwit *Limosa lapponica* wintering  
A162 Redshank *Tringa totanus* wintering  
A164 Greenshank *Tringa nebularia* wintering

A169 Turnstone *Arenaria interpres* wintering

A346 Chough *Pyrrhocorax pyrrhocorax* non-breeding

A999 Wetlands & Waterbird

7.4.3 The specific Conservation Objectives the overall aim of which is to maintain or restore the favourable conservation status of habitats and species of community interest are set out in NPWS (2011) Conservation Objectives: Castlemaine Harbour SAC 000343 and Castlemaine Harbour SPA 004029. Version 2.0. National Parks and Wildlife Service, Department of Arts, Heritage and the Gaeltacht Version 2.0 July 2011.

7.4.4 I note that the report of the Kerry County Council biodiversity officer dated June 24<sup>th</sup> 2020 which screened out the need for Appropriate Assessment was completed prior to the modification of the description of the proposed development to include the provision of a wastewater treatment system.

7.4.5 In terms of identification of likely effects the proposed development it is not connected with or necessary for the conservation management of any natura 2000 site and all works associated with the proposed development are intended to take place outside of any European Site. Potential indirect effects include surface water runoff during construction and potential silt sediments or polluting contaminants to the foreshore which could clearly impact on the qualifying habitats and species in the vicinity. Foul waste generated would have potential effect on water quality. The matter of flood risk resulting in potential malfunction of the wastewater treatment system is also a potential pollution risk.

7.4.6 Having regard to the source pathway receptor model a link exists between the site and the Castlemaine Harbour SAC and Castlemaine Harbour SPA via water quality impacts during construction and operational phases. On the basis of the limited information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development

individually, or in combination with other plans or projects would not result in adverse effects on the Castlemaine Harbour SAC and Castlemaine Harbour SPA in view of the sites' consideration objectives.

## 8.0 Recommendation

Refuse Permission for the following reasons.

### Reasons and Considerations.

1. Having regard to the planning history of the site, the location of the site in an area at risk of flooding, the nature of the proposed development which includes the provision of a wastewater treatment system in close proximity to the foreshore and based on the limited details provided in the application and appeal and the absence of a Natura Impact Statement the Board is not satisfied that the proposed development would not adversely affect the integrity of the European Site Castlemaine Harbour Special Area of Conservation (Site Code 000343) and Castlemaine Harbour SPA (Site Code 004029). Accordingly, the Board is precluded from granting permission.
2. Having regard to the scale of the proposed development, to the proposed method of wastewater treatment and to the location of the wastewater treatment plant outside the boundaries of the site and within an area at risk of flooding, the Board is not satisfied on the basis of the submissions made in connection with the application and the appeal, and in the absence of a site specific flood risk assessment, that a satisfactory effluent treatment and disposal system can be provided and sustained on the site. It is therefore considered that the proposal would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell, Planning  
Inspector 18<sup>th</sup> August 2021