

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

LDG _____
ABP- _____
28 JUL 2021
Fee: € _____ Type: _____
Time: _____ By: post

27 July 2021

Re: **ABP-305618-19**
Application for substitute consent for an Oyster processing facility
Móta, An Rinn, Dungarvan, Co. Waterford

Dear Sir/Madam,

I refer to your correspondence dated 06 July 2021 regarding the above referenced application for substitute consent for the regularisation of unauthorised development at Móta, An Rinn, Dungarvan, Co. Waterford. We confirm our understanding of the revisions of the substitute consent process and submit information for the purpose of the Board satisfying itself on the question of the existence of exceptional circumstances, as requested.

Please find hereunder reference to Section 177D(2) of the Planning and Development Act 2000, as amended, with respect to whether exceptional circumstances exist. We also refer to the previous file submitted in support of the application for leave to apply for substitute consent which includes planning drawings, planning statement, relevant correspondence, EIAR Screening Report and remedial Natura Impact Statement.

SECTION 177D(2) EXCEPTIONAL CIRCUMSTANCES

Section 177D(2) of the Planning and Development Act 2000 (as amended) identifies the matters to which the Board must have regard in considering whether exceptional circumstances exist such as to allow the Board grant leave to apply for substitute consent. Each of these factors is analysed in turn as they apply to development at the oyster facility in Móta, An Rinn, Dungarvan.

Cont'd...

- a) *Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.*

The rock revetment associated with the lower yard, storage, packing and purification structure and covered area has not caused any pollution, nuisance or other significant environmental effects. Discharge from the storage, packing and purification structure is sea water only, which is used in the oyster purification process and is discharged to the Maoil an Chronaigh stream under licenced from Waterford City and County Council. Run-off from the facility's yard and other surfaces is channelled through silt, oil and grease traps before discharge to the Maoil an Chronaigh stream. Sewerage waste is discharged separately into the public sewerage system.

Schedule 5, Part 2, Class 10 (k) of the Planning and Development Regulations 2001 (as amended) states that an EIAR is only required for coastal works that exceed 1km in length. The storage, packing and purification structure and covered area do not fall within Schedule 5 Part 1 or part 2, therefore an EIAR is unlikely to have been required.

With regard to the Habitats Directive, an exercise to consider the potential impact on European (Natura 2000) sites arising from the development of the storage, packing and purification structure was completed and submitted to the planning authority as part of the previous planning application (ref. 18/481). The Appropriate Assessment screening report found that no individual or cumulative impacts were identified with regard to the storage, packing and purification structure and therefore has not adversely affected the integrity of a European Site. However, this screening report did not satisfy the Planning Authority. Additional information has been provided in an amended report in respect of the application to seek leave for substitute consent so to enable ABP to assess possible implications of works associated with this development on European sites. This report is included in appendix 7 of the original application for leave to apply for substitute consent.

- b) *whether the applicant had or could reasonably have had a belief that the development was not unauthorised.*

The applicant was under the impression that the works within the curtilage of the facility (storage, packing and purification structure and covered area) did not require the benefits of planning permission as they were considered to be minor modifications to the existing building which were carried out over a number of years from 1997 to 2016. In the context of the overall aquaculture development they are relatively modest structures with the purification tank, a prefabricated structure that does not require foundations.

The rock Revetment on the shoreline below the lower yard was carried out as emergency works to protect the applicants yard. This work was carried out over a number of years in the form of upgrade and maintenance works.

In addition, the applicants did not engage with professional Architects or Planning Consultants prior to carrying out the works.

There were no complaints or concerns with the revetment works and the covering of the yard until the applicants installed the purification tank. Waterford City & County Council subsequently issued a warning letter in October 2016 advising the applicant that the purification tank may require the benefit of Planning Permission.

The applicant duly responded explaining the following:

“The structure is to the rear of our building and measures 9.6 meters by 12.9 meters. It is a ‘farm shed’ type building of galvanised steel and closed by insulated Kingspan sheeting and 2 doors. The structure is enclosed and essentially complete at this state.

It is our belief that the structure is exempt from planning permission due to the agricultural nature of our activities and its location away from the road and to the rear of our existing buildings. Our building is classed as agricultural for the purposes of rates. You might clarify the position for us, please, in relation to exemption from planning”.

The applicant subsequently applied for a Section 5 Declaration pursuant to WCCC Ref. D5/2017 4 requesting a formal declaration on the question as to whether the works were exempted development. The Planning Authority determined that “the covering of an existing yard with a shed within an oyster processing plant is development and is not exempt development”.

Subsequently, the applicant lodged a planning application, as outlined in the Planning History submitted with the original file, and it only came to light during the preparation of the planning application that the Rock Revetment may also require the benefit of planning permission. It should also be noted that the works to the rock revetment was carried out at a time when the area did not fall within or proximate to the SPA boundary which was extended to the shoreline in 2011.

Having invested a large amount of money in the storage, packing and purification structure in order to modernise output and having limited funds to remove the development, the applicant has no option but to seek an application for substitute consent.

- 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;*

In the event that a substitute consent application is allowed, the rNIS and application documentation will be subject to full public participation as with any regular application. In relation to the carrying out of assessments of the environmental impacts of the development for the purpose of an appropriate assessment, it is considered that the ability to carry out such assessments has not been compromised.

It is noted that the functions of the development have been on-going since the early 1990s and the expansion of the SPA area to the shoreline of Meitheal Trá na Rinne's lands occurred post construction of the shore-line defences. Confirmation that the SPA designation is bounded by the rock armour as it constitutes a 'practical boundary', as stated by the Designated Areas Appeals Advisory Board, is included in the original application for leave to apply for substitute consent.

- 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;*

The update Appropriate Assessment Screening Report and Natura Impact Statement accompanies the original application for leave to apply for substitute consent. The screening report concludes that the potential for significant impacts to the qualifying interests of the Dungarvan Harbour SPA (Site Code 004032) will be considered further within the Stage Two Natura Impact Statement, while the remaining 7 no. Natura 2000 sites within 15km of the subject development have been screened out of the Stage Two assessment.

The submitted Natura Impact Statement sets out the potential impacts the existing development has had or may have on the Dungarvan Harbour SPA. No direct impacts are envisaged on the SPA as the location of the works are outside the SPA boundary. The lower yard rock revetment works were completed before the extension of the SPA boundary in 2011, however, are nevertheless considered in the assessment. As favourable conservation conditions of wetland and waterbirds is defined solely in terms of habitat area, no impact is possible on this Special Conservation Interest.

Low potential for indirect impacts exists to the ornithological interest of the SPA. While the extension and canopy area do not result in indirect impacts, the rock revetment has the potential for ornithological disturbance. This would occur during the construction period where increased activity levels would cause noise, vibration and anthropogenic elements. Additionally, during construction works there is the potential for release of sediments or contaminants which may enter Dungarvan Harbour SPA and impact on foraging habitat and prey availability within the Harbour.

The integrity of the Dungarvan Harbour SPA could be indirectly affected by the development through a potential impact on the ornithological interests of the SPA. Disturbance may occur which could in turn lead to reduced numbers, reduced range or reduced breeding success of the species for which the SPA is designated. Although considered highly unlikely the potential ornithological disturbance associated with the development works is acknowledged and mitigation is presented in the submitted NIS to avoid possible impacts.

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

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 works to date. In the event that a substitute consent application is allowed by the Board, the remedial NIS includes and assesses the impact of the overall development including the consented facility, on the potential impacts on Natura 2000 sites.

- f) *whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*

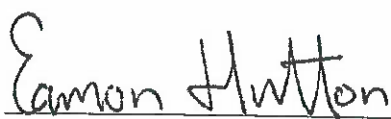
The applicant, Meitheal Trá na Rinne Teo, in applying for leave for substitute consent, the applicant is attempting to regularise all development at their facility at Móta, An Rinn, Dungarvan. It was through urgent actions and actions thought to be exempt within the planning regulations that the unpermitted development came to be. The planning consented of the oyster processing facility granted under planning ref. 92/20 has been fully complied with since the facility began operation in the early 1990s.

CONCLUSION

It is not believed that the Habitats Directive has been circumvented as the AA Screening and remedial Natura Impact Statement submitted to An Bord Pleanála excludes the development, individually or in combination with other plans and projects, from having a significant effect on any European Site. It is also noted that the SPA boundary did not encroach on the rock revetment when it was originally constructed in 2003, and when urgent works were conducted on the revetment in 2007 and again in 2009.

The availability of base line data on the receiving environment through the carrying out of the remedial Appropriate Assessment, and the provision of relevant details of the existing development, will allow the competent authority to carry out a Remedial Appropriate Assessment of the development. We trust ABP will have full regard to the above as well as the drawings and materials submitted in support of the original application for leave to apply for substitute consent, in determining whether exceptional circumstances are present in this case. We hope that An Bord Pleanála will issue a timely decision in due course.

Yours sincerely,



Eamon Hutton
for and on behalf of Fehily Timoney and Company

