

**From:** Peter Thomson <peter@ptplanning.ie>  
**Sent:** Saturday 12 November 2022 08:58  
**To:** John Cannon; Appeals2; Bord  
**Subject:** ABP ref: PL93.305618  
**Attachments:** Response to letter of ABP dated 22092022.pdf

Please confirm safe receipt.

Regards,

Peter Thomson,  
Peter Thomson Planning Solutions,  
4 Priory Grove,  
Kells,  
County Kilkenny

Tel: 086 819 6856



Master of Science Urban and Regional Planning (Strathclyde) 1990  
Advanced Diploma in Planning and Environmental Law (Kings Inns) 2017





# Peter Thomson Planning Solutions



The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

10 November 2022.

**Re: Objection to Substitute Consent Application ref: PL93.305618**

**Applicant: Meitheal Trá na Rinne Teo**

**Application Description: Oyster Processing Facility**

**At: Moat, Ring, Dungarvan, Co. Waterford**

Dear Sir/ Madam,

## **Introduction**

I act on behalf of Coiste Caomhnaithe agus Oidhreacht Pholl a' Phúca, per Dobbryn and McCoy Solicitors, 5 Colbeck Street, Waterford, an Environmental and Heritage Group ("The Group") made up of a group of residents living in the vicinity of the site who have particular interest in protecting the environment, heritage and amenity of their immediate environs, including the coastline and beach in the vicinity of the existing oyster storage and processing plant.

I previously made a detailed submission to the Board outlining the detailed history of the site and the unauthorised developments thereon, providing observations of the application and listing the grounds of objection.

Finally, I listed the outcomes the Group sought from the process which included the Board not consenting to the rock revetment in its present location and its removal along with the entire lower yard. This would result in the reinstatement of all of the lands below the High-Water Mark to the foreshore beach and the unrestricted public along the foreshore.

It was further requested that the use of articulated lorries to service the premises be prohibited by planning condition and that the hours of operation of the business be restricted to the hours between 8 am and 8 pm. That would ensure residents are not unduly disturbed by the coming and going of workers and the starting up of machinery. It was also requested that appropriate night-time noise restrictions be imposed by a planning condition to regulate noise levels when the premises are closed. Such conditions would provide the Planning Authority with clear parameters to detect a breach of condition.

**Response to public notice in respect of the letter from Fehily Timoney dated 27<sup>th</sup> July 2022**

Item (a)

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

Response: As previously advised, it was stated in the introduction of the AA Screening and RNIS report that the AA Screening and RNIS were in respect of the application made to An Bord Pleanála for Substitute Consent.

As the application for Substitute Consent did not include for the unauthorised lower yard or all of the rock revetment, the entirety of the oyster processing facility as exists (as shown on the site layout plan accompanying the EIA Screening Report), was not examined in the AA Screening Report and RNIS.

As a result, it is respectfully submitted that An Bord Pleanála cannot undertake the required Appropriate Assessment which has to assess the entirety of the project.

- Figure 1.2 of the Stage One Appropriate Assessment Screening Report and Stage Two Remedial Natura Impact Statement confirms the vast majority of the rock revetment is within the SPA boundary.
- The application and associated documents do not address the water abstraction equipment associated with the development which is within the SPA.

Also, the response letter of 27 July 2021 on behalf of the applicant mis-represents the actual use of the lower yard over the years. This includes tractors and trailers parking and manoeuvring on the lower yard, produce packaging being stored there, product waste discarded on and around the yard, all of which is likely to have resulted in pollution seeping through the impervious yard surface and discharging in the SPA. Not acknowledging and/ or mis-representing the manner in which the yard was and still is used would appear to have been deliberate for the purposes of circumventing the purpose and objective of the Habitats Directive.

Item (b)

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

Response:

The applicant employed the services of a professional architect for the original building and use. It clearly did that in the knowledge that planning permission was required.

Any responsible business engages experts to advise on matters which are outside their own expertise. Any qualified architect or planning consultant would have been

able to advise the applicant on potential exemptions which could be availed of and situations where exemptions did not exist, and planning permission would be required.

In preparing the original application, the applicant would have been required to provide its architect with the extent of its ownership. The lower yard and rock revetment are constructed on land outside the original ownership and they have encroached onto neighbouring land. The applicant must have known it had no permission to develop on land outside its control.

In 2016 the applicant was advised by the Planning Authority to stop works on the extension which triggered the application for Leave for Substitute Consent and then the application Substitute Consent. It was made aware there was no permission for the extension and that the extension was unauthorised, yet it continued to complete and occupied the building without planning permission. These works were also undertaken when the applicant was in possession of a declaration under Section 5 of the Act stating the works were development and not exempt development; a declaration which the applicant did not challenge by referring the matter to An Bord Pleanála.

The applicant's response to item (b) includes a statement that works to the rock revetment were 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. My client's submission of 4<sup>th</sup> November 2019 includes photographic evidence the rock revetment was in place in 2010.

The applicant does not properly address the use of the lower yard. The Board Inspector at the time of reporting on the application for Leave for Substitute Consent refers to the lower yard being used by third party oyster farmers to store equipment. The applicant claims ownership and control of this yard, therefore ownership of equipment etc is irrelevant. Moreover, it is intensely used for storage, parking and manoeuvring vehicles and trailers and maintenance work. The applicant's application submissions give the impression of occasional incidental and immaterial use. The photographs of the current use of the yard are demonstrated in the photographs attached to this submission.

Finally, the application does not include for the use of the yard. The description only refers to "coastal defences consisting of rock revetment of approximately 80m in length". The use is unauthorised.

Under all these circumstances, the applicant could not reasonably have had a belief that the development was not unauthorised.

Item (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;*

Response:

One of my client's concerns is that they were precluded from engaging at the "Leave" stage of the process and that the applicant provided highly misleading information in its leave application which was subsequently granted and allowed them to apply for Substitute Consent.

The applicants have continued with the development of the site since the Substitute Consent period of public participation expired in 2019. This current round of consultation is solely in respect of responding to the letter of 27 July 2021 by Fehily Timony. It is likely there has been further impacts on the SPA since the rNIS was prepared which will not be taken into account in the assessment of the application and which my client has been unable to comment upon.

Item (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;*

Response:

The applicant's response to this item makes no reference to the use the lower yard. It has been used for parking vehicles etc.

My client accepts that the retention of the buildings themselves are unlikely to have adverse impacts. However, the way they are used has the potential for adverse impact, including noise and disturbance and artificial lighting.

The retention of the lower yard will result in the further coastal erosion of the adjoining land outside the site which impacts on wildlife supported by the SPA. The careful removal of the unauthorised lower yard would fully address this issue.

Item (e)

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

Response:

It is considered the appropriate remediation includes the removal of the lower yard for reasons outlined earlier.

Item (f)

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

Response:

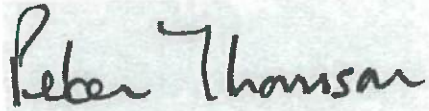
The Board's attention is drawn to the series of unauthorised developments by the applicant on this site as outlined in the earlier submission of 4 November 2022. In

particular, the Board's attention is drawn to the works undertaken to complete the most recent extension following enforcement proceedings and the continues use of the unauthorised structure at this time.

The applicant has no complied with previous planning permissions granted, has previously carried out an unauthorised development and continues to do so.

The Board is requested to take these matters into account.

Yours faithfully,

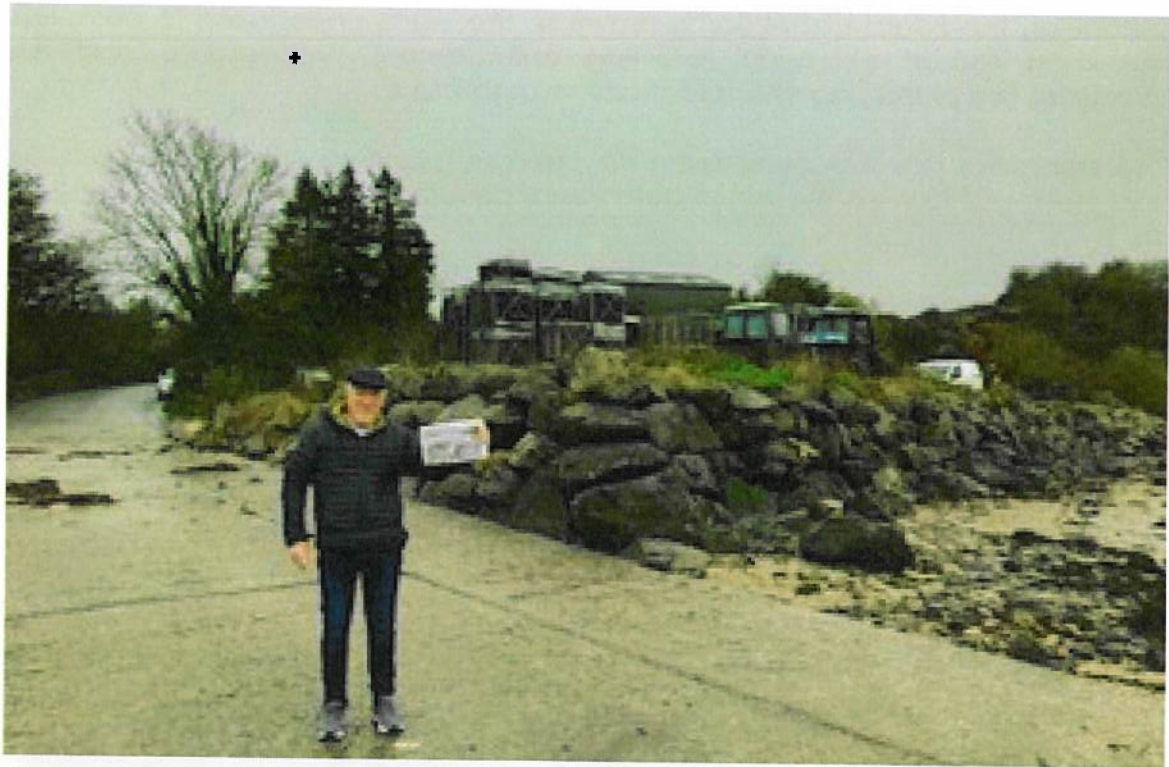
A handwritten signature in black ink that reads "Peter Thomson". The signature is written in a cursive, flowing style.

Peter Thomson, MSc, MIPI



Photographs taken Friday 11 November 2022









Newspaper dated Friday 11 November 2022

