



# **Aquaculture Licences Appeals Board**

## **Technical Advisor's Report**

### **Appeal Ref No. AP1/1-3/2022**

#### **Appeal description:**

Appeal against the decision of the Minister to grant a licence to Bantry Marine Research Station Ltd to cultivate various aquatic plants using longlines on the sub-tidal foreshore on site T05/640A adjacent to Dooneen Pier, along the north shore of Dunmanus Bay, Co. Cork.

**Technical Advisor:** Dr Ciar O'Toole

**Date of site inspection:** 27 June 2023

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## 1.0 General Matters / Appeal Details

### 1.1 Licence and Appeal Details:

Appeal Ref.	Site Ref.	Applicant	Type	Minister's Decision	Appellant	Received
AP1/1/2022	T05/640A	Bantry Marine Research Station Ltd	Aquatic Plants (New)	Grant	Fishermen's Inshore Saltwater Heritage Ltd	16 December 2022
AP1/2/2022					Friends of Dooneen Pier	22 December 2022
AP1/3/2022					Paul and Kate Brooks on behalf of Residents of Dooneen	28 December 2022

These appeals relate to a new licence application by Bantry Marine Research Station Ltd to develop a seaweed farm at site T06/640A, close to Dooneen Pier in northern Dunmanus Bay, Co Cork. The site is adjacent to a number of SACs and SPAs and there are no other aquaculture installations in the immediate vicinity.

The Board decided on the 26 January 2023 to exercise its discretion pursuant to section 42 of the Fisheries (Amendment) Act 1997 to consolidate and treat all three appeals relating to Dooneen Pier, Dunmanus Bay as a single appeal.

### 1.2 Name of Observers

There were no observers to this appeal.

### 1.3 Grounds for Appeal

The three appellants to this appeal submitted their appeals under various headings, outlined briefly below:

- AP1/1/2022 – Appellant: Fishermen's Inshore Saltwater Heritage Ltd

*Issues:*

1. Impact on existing fishing grounds:

The appellant states the area is currently in use for inshore fishing and potting and is one of the few sheltered fishing grounds in Dunmanus Bay. They state the species being fished currently include Lobster, crab species, shrimp, scallops, pollack and mackerel.

- **AP1/2/2022 – Appellant: Friends of Dooneen Pier**

*Issues:*

1. Failure by the Minister to address impacts under Section 61 of the Fisheries (Amendment) Act 1997: The appellants state the Minister failed to properly assess the proposed development under the Act and provide examples under each heading.
2. Failure by the Minister to carry out a suitable Appropriate Assessment under the Birds and Habitats Directive: The appellants state a number of protected species will be negatively impacted by the proposed development and associated harvesting activities which they state will occur on Dooneen Pier. They go on to outline perceived deficiencies in the screening carried out and the application of the relevant legislation.
3. Legal issues relating to burden of proof and availability of documents from the Minister.
4. Issues with the Minister's reasons for making a determination, including their contention that the Minister did not fully assess; the impact on public access to Dooneen pier, the potential for negative impacts on the economy of the area and the potential for overlap with Natura 2000 sites.

- **AP1/3/2022 – Appellant: Paul and Kate Brooks on behalf of Residents of Dooneen**

*Issues:*

A number of issues were outlined across a number of submissions from residents of the area, with general themes which are summarised below.

1. Exposed site: the appellants state the proposed site and pier at Dooneen are exposed to extreme weather conditions, especially from Easterly winds.
2. Insufficient AA work carried out: the appellants are concerned by the potential impacts of the proposed development on species in a nearby SPA site.
3. Ecological impacts: the appellants are concerned about the potential impacts on marine mammals and other bird species using the area.
4. Other users:
5. Access: concern regarding the suitability of the access road to Dooneen Pier from the main road as the lane is very narrow.
6. Impact on other users: the appellants have concerns regarding the use of the pier for harvesting and transporting of seaweed and the impacts this will have on existing users. The appellants also discuss the use of the area proposed for development by local fishermen and recreational users, as well as Dooneen pier being a popular area for swimmers and diving.
7. Green Coast Award: the appellants are concerned the proposed development will impact on the recognition of the pier under the Green Coast Awards scheme.

## 1.4 Minister's submission

Section 44 of the Fisheries (Amendment) Act 1997 states that:

*“The Minister and each other party except the Appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it.”*

No additional submission was made by the Minister in relation to these appeals.

## 1.5 Applicant response

The applicant first noted that some of the submissions received by ALAB were the same or variations of submissions made to the Department of Agriculture, Food and the Marine during the public consultation phase.

Response to AP1/1/2022:

- the applicant states it will facilitate continued access for inshore fishing vessels that use the area for potting. They also state that seaweed farms can result in an increase in fish and shellfish production in an area and that aquaculture and fishing can co-exist.

Response to AP1/2/2022:

- There are no plans to harvest seaweed on Dooneen Pier as stated in this appeal as harvesting will occur onboard a boat.
- The applicant is willing to land, and transport harvested seaweed via another pier in Dunmanus Bay.
- The applicant does not accept that the AA screening as carried out was defective and raises the point that neither Birdwatch Ireland or the NPWS raised any objections to the development. They also dispute the claim that additional road traffic from the proposed development will negatively impact on the SPA.
- The applicant outlines the potential economic impact it states the development would create and feed in to.
- The applicant outlines the wider benefits to society of seaweed production.
- The applicant states the visual impact will be mitigated by the use of grey buoys.
- The applicant states that the proposed development is likely to improve water quality and therefore be of benefit to the Green Coat Award criteria.

- The applicant does not find that the proposed development and use of the pier will impede tourists or walkers using the area.
- The applicant feels the procedure undertaken in assessing the proposal by the Department fulfilled the County Development Plans objective of taking account of the economic, social and scenic factors.

#### Response to AP1/3/2022:

- The applicant states they complied with all requirements for public consultation and attended a public meeting arranged by the local community council.
- The applicant states their willingness to use an alternative pier during periods of intensive work.
- They note that the appellants for AP1/1/2020 note the site is sheltered as do other reports, and also note that the site has been designed to withstand the predicted elements.
- The applicant notes that no environmental group or NGO submitted their own appeal, even after being made aware of the development by local interests.
- The applicant notes that the Marine Institute did not note any significant negative impacts during their Appropriate Assessment work.
- The applicant does not feel that the proposed development will have a significant impact on other users of the pier and local walking or cycling routes.
- The applicant notes some photographs used showing Gearahies pier and activities on it do not involve them or the proposed development.
- The applicant then goes on to outline their status as a marine research business.

#### 1.6 Observations received.

1. Observations received by the Applicant are outlined in Section 1.4 above.
2. Observations were received by one Appellant, Friends of Dooneen Pier (AP1/2/2022), referring to new points are outlined below. Their submission also included reference to points raised in their original submission which are not repeated here:

##### Friends of Dooneen Pier:

- The wrong Cork County Development Plan was considered by the Minister as the 2022-2028 version had come into effect on 6 June 2022, before the Minister's Determination was made.
- They dispute BMRS's assertion in their submission to the Minister that no objection was made by the local Community Council
- They dispute BMRS's claim in their submission to the Minister that harvesting will occur at sea and seaweed could be landed at another pier, stating that this is not what is granted in the licence or what was assessed under the Marine Institute's Appropriate Assessment report of June 2022.

- They raise concerns that this new suggested method of collection has not undergone public consultation or proper assessment under the Birds and Habitats Directives.
3. A submission was also received from Kate Brooks, as an individual. She is also a member of the “Residents of Dooneen” group who are appellants in AP1/3/2022. The points she raised below are in response to and in dispute of the BRMS submission to the Minister and are outlined below:
- The submission states that BRMS in their submission appear to agree that their proposal would impact health and safety and that the suggested change now renders the initial application and environmental assessment invalid.
  - That the visual impact of the development is related to visual dissonance and not colours of buoys used.
  - The risk to the Green Coast Award due to the development.
  - The submission raises a complaint that BMRS have only done the minimum required in terms of public consultation.
  - Notes that there will be no direct economic benefit in terms of employment from the development.

Kate Brooks also raised issues relating to the Ministers assessment of the development, outlined below:

- She states that she believes the Marine Engineering Division’s (MED) conclusions around the Cork County Development Plan were not based on the correct guidelines.
- She disputes the MED’s assertion that views of the site are obscured and limited from scenic routes.
- She states the area is used by inshore fishermen for potting.
- She highlights the SFPA response which raises the issue that the proposed development may reduce fishing opportunities.
- She states that leisure interests were not consulted as recommended by the Irish Lights submission to the Minister.

## 2.0 Ministers File

The Minister’s file was requested on 3 February 2023 and received by ALAB on 20 February 2023. It contained:

- The Submission to the Minister, including submissions from Statutory and Technical consultants as well as submissions from the Aquaculture and Foreshore Management Division to the Minister.
- The Determination of the Minister
- A map of the area concerned.



- A copy of the letter sent to the applicant from the Minister stating the licence had been granted.
- Copies of the public consultation submissions received by the Minister's office were not received at first but were provided on request and were received by ALAB on 20 March 2023.

### 3.0 Context of the Area

#### 3.1 Site Description

Dunmanus Bay is located in County Cork, to the south of Bantry Bay, between Mizen Head to the south and Sheep's Head to the north (Figure 1). Dunmanus Bay is approximately 24 km long and ranges in width from approximately 1.3 km at the eastern end to 6.5 km at the mouth of the bay. The largest islands within the bay are Carbery, Furze, Horse and Cold Islands. There are no major freshwater influences flowing into the bay and it is known to be out of the main tidal flow of the area. Durrus village lies at the head of the bay and the area is frequented by tourists and hill walkers.



**Figure 1** showing location of Dunmanus Bay in Co. Cork

There is existing aquaculture in Dunmanus Bay, with six current licences. The species cultured are blue mussels, Pacific oysters, sea urchins and seaweeds and these are located primarily at the head of the bay, along with one site active on the north shore and one site active on the south shore (Figure 2).



**Figure 2:** GIS map of current, lapsed and appealed aquaculture sites provided to ALAB by DAFM on 3 February 2023.

### 3.1.2 Local Population

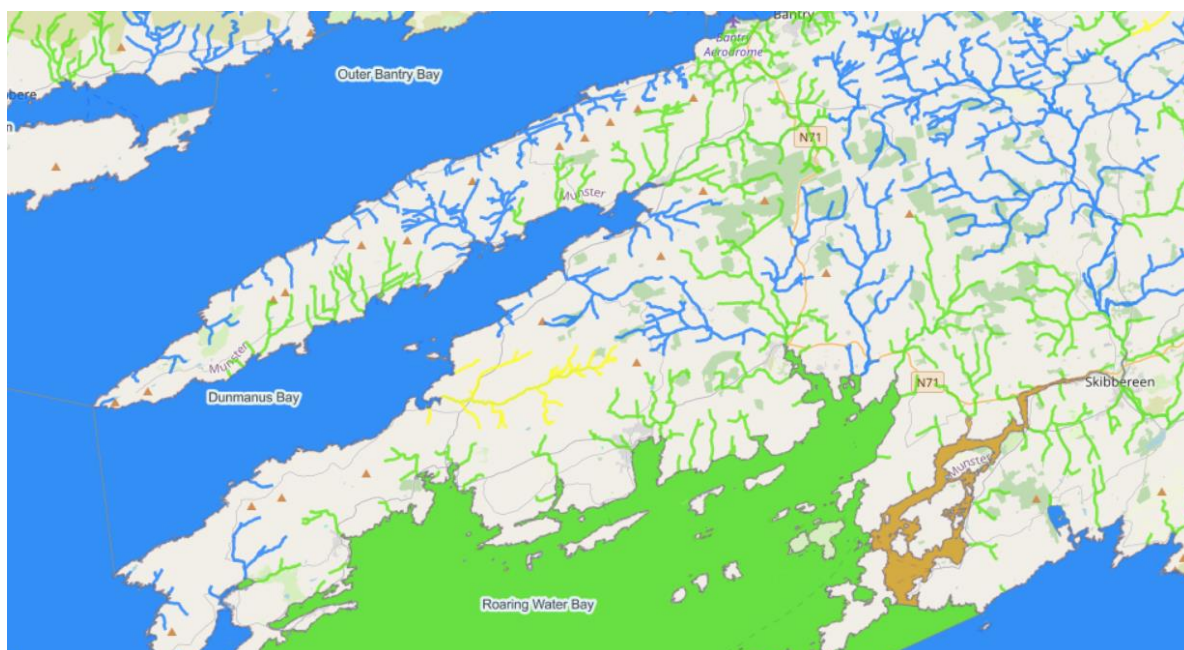
The area immediately surrounding the Bay is sparsely populated and rural. The main population centre in the area is Durrus village. The Sheepshead electoral division had a total population of 198 according to the 2022 Census (CSO, 2022). The population of the surrounding area expands during the summer with an influx of tourists.

### 3.1.3 Land Use

The Sheepshead electoral division had 1158 hectares under farming according to the 2020 Agricultural Census (CSO, 2020). All this land was being used as grassland for the grazing of sheep and cattle.

### 3.1.4 Freshwater Influence and water quality

There are a number of small freshwater influences into Dunmanus bay, mainly streams and very small rivers, the main two being Four Mile Water which enters the bay at Durrus village and Glan stream, which enters the Bay at Dunmanus Harbour. Figure 3 shows the status of the various streams entering into Dunmanus Bay and their water quality status (ranging from Moderate (yellow), Good (green) to High (blue)), as recorded under the Water Framework Directive 2016-2021 cycle. The Bay itself is recorded as having a High status.



**Figure 3:** Map showing water quality status as recorded under the Water Framework Directive 2016-2021 cycle. From epamaps.ie

### 3.1.5 Wastewater treatment

There is no wastewater treatment facility in the area, so waste is discharged directly into the bay or into individual private septic tank systems.

## 3.2 Resource Users

### 3.2.1 Aquaculture Activity

There is existing aquaculture in Dunmanus Bay, with six current licences. The species cultured are blue mussels, Pacific oysters, sea urchins and seaweeds and these are located primarily at the head of the bay, along with one site active on the north shore and one site active on the south shore (Figure 2).

An area in inner Dunmanus Bay near the mouth of the Four Mile Water River and Durrus village is designated as Shellfish Waters. In the bay mussels are cultured using floating longlines with spat (seed) collected on ropes or strings (droppers) suspended on the line. Seaweed is cultured using floating longlines. Oysters are cultured in bags on trestles in the intertidal zone. Urchins are cultured in cage structures in the lower intertidal and subtidal areas or, in the case of suspended culture, are cultured in bins suspended from longlines.

### 3.2.2 Angling Activity

Dunmanus Bay is known for both sea and shore angling. Species fished recreationally in this area include blue shark, conger, bull huss, ling, coalfish, cod and pouting and haddock, although charter boats tend to be based in Schull or Goleen in neighbouring Roaringwater



Bay. Dunmanus Harbour and Dooneen Pier are known for shore fishing of pollack, dogfish, bull huss, flounder, conger, dabs and wrasse.

### 3.2.3 Tourism and Leisure users

Dunmanus Bay is located on the Wild Atlantic Way and is recognised as a prime tourist spot due to the quality of its landscape and seascape. Dunmanus Bay and its environs are recognised in the current Cork County Development Plan as an area that supports significant scenic routes. The Sheepshead Way is a well-known walking trail that runs along the north shore of Dunmanus Bay. The landscape character of the area offers other opportunities for walking and cycling and a variety of other outdoor activities including sailing, kayaking, diving and angling.

### 3.2.4 Commercial Inshore Fishing Activity

Dunmanus Bay supports a variety of fishing activities including line and hook fishing, potting, hand gathering, tangle netting and trawling. Line and hook fishing targeting finfish species, and pot fishing targeting crustacean (including *Nephrops*, crab and shrimp) occurs throughout the majority of Dunmanus Bay. Digging for clam occurs in intertidal muddy sand habitats located on the northern edges of Dunmanus Bay while gathering of urchin (*Paracentrotus*) species occurs along both the north and south coasts of the bay. Dredge fishing occurs in the middle and outer reaches of Dunmanus Bay while tangle netting for crustacean species occurs in the outer Bay. Dunmanus Bay supports extensive midwater trawl fishing for pelagic species and bottom trawl fishing for demersal whitefish and *Nephrops*.

### 3.2.5 Industrial/Agricultural Activity

There is no heavy industry in the region. Agriculture consists predominately of grazing for sheep and cattle as described in 3.1.4 above.

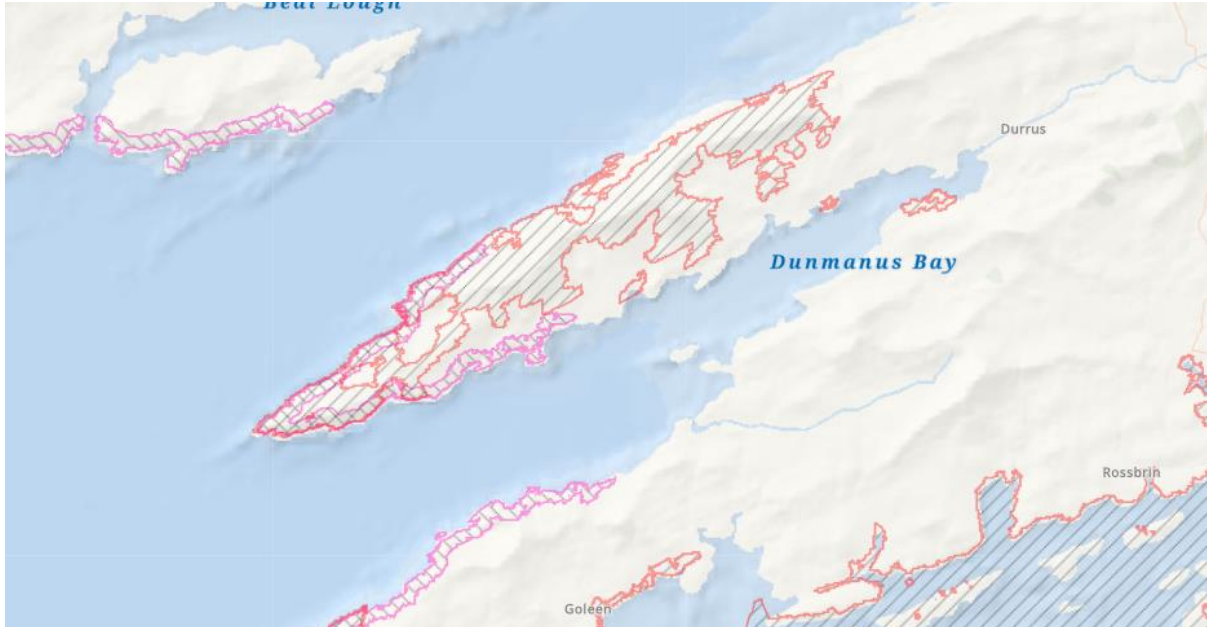
## 3.3 Statutory Status

### 3.3.1 Nature Conservation Designations

Nature Conservation Designations (Natura 2000 sites) are sites designated under the Habitats and Birds Directives. There are two types: Special Areas of Conservation (SAC, habitats and species) and Special Protection Areas (SPA, birds).

Special Areas of Conservation are prime wildlife conservation areas in the country, considered to be important on a European as well as Irish level. The Habitats Directive lists certain habitats and species that must be protected within SACs. The proposed developments are near, but not intersecting with the Sheep's Head SAC (Site Code: 000102).

Special Protected Areas are bird conservation areas in the country, also considered to be important on a national and European level. The Sheep's Head to Toe's Head SPA (Site Code: 004156) is the nearest SPA to the proposed site with the Beara Peninsula SPA (Site code: 004155) to the north.



**Figure 4:** showing locations of SACs and SPAs within the area of the proposed development. Taken from EPA maps.

The Marine Institute on behalf of the Department of Agriculture Food and Marine, produced a “Report Supporting Appropriate Assessment of Extensive Aquaculture in Dunmanus Bay, Co Cork” in June 2022, which details the conservation interests of the SACs and SPAs mentioned above. There appears to be no accompanying Appropriate Assessment Conclusion Statement from DAFM.

### 3.3.2 Protected Species

There are a range of protected species recorded in the Dunmanus Bay area, based on records from Biodiversity Ireland in the last twenty years, including insects, birds, marine mammals and flowering plants (<https://maps.biodiversityireland.ie/Map> [Accessed on 07/04/2024]). Animals with a potential overlap with the marine environment, or a presence within the marine environment are listed in the following table.

**Table 1:** Protected Species Recorded around the Dooneen Pier area of Dunmanus Bay in the last 15 Years.

Species name	Record count	Date of last record	Designation
Arctic Tern ( <i>Sterna paradisaea</i> )	1	31/12/2011	Protected Species: Wildlife Acts EU Birds Directive, Annex I Bird Species Threatened Species - Amber List
Black Guillemot ( <i>Cepphus grylle</i> )	3	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Eurasian Oystercatcher ( <i>Haematopus ostralegus</i> )	1	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
European Shag ( <i>Phalacrocorax aristotelis</i> )	2	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Great Black-backed Gull ( <i>Larus marinus</i> )	1	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Great Cormorant ( <i>Phalacrocorax carbo</i> )	2	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Great Northern Diver ( <i>Gavia immer</i> )	1	31/12/2011	Protected Species: Wildlife Acts EU Birds Directive Annex I Bird Species
Herring Gull ( <i>Larus argentatus</i> )	2	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Red List
Northern Gannet ( <i>Morus bassanus</i> )	1	31/12/2011	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Northern Wheatear ( <i>Oenanthe oenanthe</i> )	1	31/07/1991	Protected Species: Wildlife Acts. Threatened Species: Birds of Conservation Concern - Amber List
Red-billed Chough ( <i>Pyrrhocorax pyrrhocorax</i> )	2	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive, Annex I Bird Species. Threatened Species: Birds of Conservation Concern - Amber List
European Otter ( <i>Lutra lutra</i> )	1	19/06/2013	Protected Species: Wildlife Acts, EU Habitats Directive Annex IV
Common Dolphin ( <i>Delphinus delphis</i> )	3	08/12/2020	Protected Species: Wildlife Acts, EU Habitats Directive Annex IV
Common Porpoise ( <i>Phocoena phocoena</i> )	1	16/02/2012	Protected Species: Wildlife Acts, EU Habitats Directive Annex IV. Threatened Species: OSPAR Convention

Fin Whale ( <i>Balaenoptera physalus</i> )	1	16/11/2016	Protected Species: Wildlife Acts, EU Habitats Directive Annex IV
Minke Whale ( <i>Balaenoptera acutorostrata</i> )	1	19/10/2015	Protected Species: Wildlife Acts, EU Habitats Directive Annex IV

### 3.3.3 Statutory Plans

Dunmanus bay is not subject to its own development plan but is subject to the Cork County Development Plan 2022-2028. The Core Strategy of this Development Plan considers all aspects of what is needed to deliver sustainable communities having regard also to the availability of infrastructure, the carrying capacity of the environment and the need to support economic development. The key areas from the **Core Strategy** relevant to this development are:

- Employment and Economic Growth – The need to protect and consolidate existing critical employment locations that have underpinned Cork’s economic successes to date, while developing new employment locations and opportunities to serve current and future generations.
- Environment – National Policy requires biodiversity to be considered as part of decision making and for biodiversity loss to be reduced and for substantial recovery to be achieved. This plan seeks to ensure a balance between protection of the environment including the maintenance and improvement of water quality and biodiversity and meeting the development needs of the County in accordance with relevant environmental legislation and guidance.

**Chapter 7** of the main body of the plan deals with Marine, Coastal and Islands. In relation to aquaculture, it states: “It is important to acknowledge the essential role played by Roaringwater Bay, Dunmanus Bay and Bantry Bay in aquaculture activities. These areas are mostly involved in shellfish production with a small number of sites licensed for finfish farming. A recent survey of aquaculture sites carried out by the Harbour Masters’ section established that a number of Cork County Council piers in the Beara Peninsula were extensively used by fish farmers and provide opportunities for valuable local employment. Other areas like the Bandon River or Oysterhaven export high value products (oysters) to the European market. Aquaculture developments must take account of the ecological, social and scenic impacts of any such development and these factors will be taken into consideration during the assessment process.” The relevant County Development Plan Objectives Include:

- County Development Plan Objective MCI 7-1: National and Regional Marine Planning Policy (a) Work with the appointed Implementation Groups for the National Marine Planning Framework (NMPF) 2021. (b) Support the potential of the marine environment by nurturing opportunities for innovation in the Maritime economy while ensuring that its ecosystems are managed sustainably.
- County Development Plan Objective MCI 7-2: Development in Coastal Areas (a) Sustainably manage development within the coastal zone taking account of its

environmental, ecological, heritage and landscape values (b) Encourage development generally to be located in accordance with the settlement policies of this Plan and in particular to recognise the limited capacity of many coastal areas for accommodating development on a large scale. (c) Reserve sufficient land in the various settlements to accommodate the particular requirements of coastal ports, harbour development, boat storage and other coastal industry and to improve access to and support the continued development of the ports in County Cork as marine related assets in accordance with the RSES. Also support the provision of infrastructure for the renewable energy sector. The identification of any such lands will need to be subject to environmental, nature conservation and other heritage considerations.

- County Development Plan Objective MCI 7-5: Marine Leisure (a) Support the development of rural Cork's coastal marine leisure facilities, where they are compatible with other objectives and policies in this Plan and any Natura 2000 designations. (b) Proposals for development of marine leisure facilities will be subject to ecological impact assessment and, where necessary, Appropriate Assessment, with a view to ensuring the avoidance of negative impacts on designated sites, protected species and on-sites or locations of high biodiversity value.
- County Development Plan Objective MCI 7-6: Coastal Amenities (a) Maintain and improve County Cork's beaches to a high standard and develop their recreational potential as publicly accessible seaside amenity facilities where appropriate (including facilities such as toilets and changing areas), as appropriate to individual site conditions and in accordance with the principles of proper planning and sustainable development. (b) Proposals for development of marine leisure facilities will be subject to ecological impact assessment and, where necessary, Appropriate Assessment, with a view to ensuring the avoidance of negative impacts on designated sites, protected species and on-sites or locations of high biodiversity value. (c) Support the enhancement of existing Coastal Amenities to include parks and harbours along the coastline, including improved or if required new access arrangements for the general public for recreational purposes where safe and possible to do so and in accordance with MCI 7-6 (b).

**Chapter Eight** looks at economic development and the relevant County Development Plan Objectives include:

- County Development Plan Objective EC: 8-2 Employment Strategy Support economic and employment development in appropriate locations in the Main Towns, and Strategic Employment locations and otherwise in accordance with the Employment Network of the County set out in Table 8.4, which are:
  - West Cork Marine Network Clonakilty\*, Skibbereen, Bantry, Schull, Castletownbere Network based on the N71 West Cork to South Kerry Corridor, leveraging significant marine economy, tourism, food and beverage, digital



and other assets with strategic transport connections to the Cork Metropolitan Area.

- Key Villages and Other Settlements
- All Key Villages Support existing employment uses and the development of local catchment employment, particularly related to local assets, resources or opportunities.
- Rural Areas Support existing employment uses and resource driven sectors like agriculture, fishing, minerals, renewable energy, tourism, recreation etc. Support uses that cannot be accommodated within the towns / villages where the Planning Authority is satisfied that is required due to the unique specific locational or operational requirements of the use, subject to normal planning criteria.
- County Development Plan Objective EC: 8-13 Rural Economy
  - a) Encourage employment growth in County towns to support the population of the towns and their wider rural catchments.
  - b) Strengthen rural economies through the promotion of innovation and diversification into new sectors and services including to ensure economic resilience and job creation.
  - c) New development in rural areas should be sensitively designed and planned to provide for the protection of the biodiversity of the rural landscape.
- County Development Plan Objective EC: 8-14 Business Development in Rural Areas

The development of appropriate new businesses in rural areas will normally be encouraged where:

  - The scale and nature of the proposed new business are appropriate to the rural area and are in areas of low environmental sensitivity.
  - The development will enhance the strength and diversity of the local rural economy. • The proposal will not adversely affect the character, appearance, and biodiversity value of the rural landscape.
  - The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
  - The proposal has a mobility plan for employees home to work transportation.
  - Where possible the proposal involves the re-use of redundant or underused buildings that are of value to the rural scene.
  - The provision of adequate water services infrastructure; and
  - Provision of a safe access to the public road network.
- County Development Plan Objective EC: 8-18 Fishing and Aquaculture
  - a) To support the sustainable development of fishing and aquaculture industries ensuring that new development is compatible with the protection of the environment, nature conservation, heritage landscape and other planning considerations.
  - b) Support the use of existing port facilities for the catching and processing of fish as an economic activity that contributes to the food industry in the County.

- c) Support and protect designated shellfish areas as an important economic and employment sector.
- d) Recognise the potential of alternative sites, such as quarries, for aquaculture and commercial fisheries.
- e) Strengthen rural economies through innovation and diversification into new sectors and services including in the marine economy.

**Chapter Ten** looks at tourism and the relevant County Development Plan Objectives include:

- County Development Plan Objective TO 10-2 Wild Atlantic Way and Irelands Ancient East Continue to actively engage, invest, encourage and promote the development of the Wild Atlantic Way and Irelands Ancient East regional brands through sustainable tourism, which will enable visitors to have enjoyable experiences while having regard for the cultural, built and natural heritage, and environmental impacts, including the protection of Natura 2000 sites.
- County Development Plan Objective TO 10-4: Developing the Marine Leisure Sector
  - a) Develop the marine leisure sector in the County in a coherent and sustainable manner making the best use of existing and planned infrastructure and resources, in a manner that is sensitive to the natural and cultural heritage resources of our coastal zone, and complies with relevant environmental legislation including the Habitats, Birds, Water Framework, Floods, SEA and EIA Directives.
  - b) Support the development of sustainable recreation and activity-related marine tourism developments at appropriate locations along the coastline and in the vicinity of the inland waterways and lakes where these are compatible with the environmental and heritage sensitivities of identified sites.
- County Development Plan Objective TO 10-5: Protection of Natural, Built and Cultural Features Protect and conserve those natural, built, and cultural heritage features that form the resources on which the County's tourist industry is based. These features will include areas of important landscape, coastal scenery, areas of important wildlife interest, historic buildings and structures including archaeological sites, cultural sites including battlefields, the Gaeltacht areas, arts and cultural sites, the traditional form and appearance of many built up areas and promote access and interpretation of archaeological sites in State and Local Authority ownership.

**Chapter Eleven** looks at water management and the relevant County Development Plan Objectives include:

- County Development Plan Objective WM 11-2: Surface Water Protection a) Protect and improve the status and quality of all surface waters throughout the County, including transitional and coastal waters. b) At least secondary treatment should be provided to all wastewater discharges from any new development to surface waters.

**Chapter Fourteen** looks at green infrastructure and recreation and the relevant County Development Plan Objectives include:

- County Development Plan Objective GI 14-9: Landscape
  - a) Protect the visual and scenic amenities of County Cork's built and natural environment.
  - b) Landscape issues will be an important factor in all land-use proposals, ensuring that a pro-active view of development is undertaken while protecting the environment and heritage generally in line with the principle of sustainability.
  - c) Ensure that new development meets high standards of siting and design.
  - d) Protect skylines and ridgelines from development.
  - e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments
- County Development Plan Objective GI 14-12: General Views and Prospects Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.
- County Development Plan Objective GI 14-13: Scenic Routes Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this Plan. The scenic routes identified in this Plan are shown on the scenic amenity maps in the CDP Map Browser and are listed in Volume 2 Heritage and Amenity Chapter 5 Scenic Routes of this Plan.
- County Development Plan Objective GI 14-14: Development on Scenic Routes
  - a) Require those seeking to carry out development in the environs of a scenic route and/or an area with important views and prospects, to demonstrate that there will be no adverse obstruction or degradation of the views towards and from vulnerable landscape features. In such areas, the appropriateness of the design, site layout, and landscaping of the proposed development must be demonstrated along with mitigation measures to prevent significant alterations to the appearance or character of the area.
  - b) Encourage appropriate landscaping and screen planting of developments along scenic routes (See Chapter 16 Built and Cultural Heritage).

**Chapter Fifteen** looks at biodiversity and environment and the relevant County Development Plan Objectives include:

- County Development Plan Objective BE 15-2: Protect sites, habitats and species.
  - a) Protect all natural heritage sites which are designated or proposed for designation under European legislation, National legislation and International Agreements. Maintain and where possible enhance appropriate ecological linkages between these. This includes Special Areas of Conservation, Special Protection Areas, Marine

Protected Areas, Natural Heritage Areas, proposed Natural Heritage Areas, Statutory Nature Reserves, Refuges for Fauna and Ramsar Sites. These sites are listed in Volume 2 of the Plan.

b) Provide protection to species listed in the Flora Protection Order 2015, to Annexes of the Habitats and Birds Directives, and to animal species protected under the Wildlife Acts in accordance with relevant legal requirements. These species are listed in Volume 2 of the Plan.

c) Protect and where possible enhance areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 of the Plan.

d) Recognise the value of protecting geological heritage sites of local and national interest, as they become notified to the local authority, and protect them from inappropriate development

e) Encourage, pursuant to Article 10 of the Habitats Directive, the protection and enhancement of features of the landscape, such as traditional field boundaries, important for the ecological coherence of the Natura 2000 network and essential for the migration, dispersal and genetic exchange of wild species.

- County Development Plan Objective BE 15-7: Control of Invasive Alien Species Implement best practice to minimise the risk of spread of invasive alien species, on Council owned or managed land, and require the development and implementation of Invasive Alien Species Management Plans for new developments where required.

#### 3.3.4 Water Quality Status

Dunmanus Bay is recorded as having a "High" status under the 2016-2021 Water Framework Directive reporting cycle and is deemed not at risk of further deterioration during the current cycle. This designation is based on extrapolated data. Freshwater influences into the Bay are rated as having a Moderate, Good or High status under the current WFD cycle, see Section 3.1.5 for more details ([www.gis.epa.ie](http://www.gis.epa.ie)).

#### 3.3.5 Bathing Water Quality

Dooneen Pier is a recorded swimming area and bathing water quality is recorded at this site. Bathing water quality was recorded as excellent for the majority of sampling points at this swimming location from 2014 to 2023 ([beaches.ie](http://beaches.ie)).

### 3.4 Environmental/Ecological Data

Other Environmental and Ecological issues to note are the gaps found in the Appropriate Assessment (AA) Report and Conclusion Statement.

The issues relating to the Marine Institute AA Report and lack of a DAFM Conclusion Statement are discussed in Section 5 below.

### 3.5 Man-made heritage

There are no shipwrecks recorded in the immediate vicinity of Dooneen Pier or Dunmanus Bay as a whole and the only archeological features of note are the remains of two hill forts which overlook the Pier ([www.heritagemaps.ie](http://www.heritagemaps.ie), accessed on 08/04/2024).

## 4.0 Environmental Impact Assessment.

The Board's technical advisor considered the projects proposed in the Applications for Aquaculture Licences under the requirements of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 and the EIA Directive (2011/92/EU) and concluded that, under the requirements of the legislation as they are extensive aquaculture, they are exempt developments. Therefore, they were not likely to have significant effects on the environment by virtue of their size, nature or location and so do not require a screening report or an environmental impact assessment report.

Therefore, the Technical Advisor is satisfied that the direct and indirect effects of the proposed activity at the Sites on the following factors:

- (a) population and human health.
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives.
- (c) land, soil, water, air and climate.
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in points (a) to (d)

will not have significant effects on the environment, including the factors listed in (a) to (d) by virtue of, inter alia, its nature, size or location.

## 5.0 Appropriate Assessment.

The Marine Institute on behalf of the Department of Agriculture Food and Marine, produced a "Report Supporting Appropriate Assessment of Extensive Aquaculture in Dunmanus Bay, Co Cork" in June 2022, which details the conservation interests of the SACs and SPAs mentioned above. There appears to be no accompanying Appropriate Assessment Conclusion Statement from DAFM that the TA was able to find, either in the Minister's file or on the gov.ie website.

The AA Report only considered Special Protected Area (SPA) and Special Areas of Conservation sites within 15km of the proposed developments and did not consider the foraging or migrating range of Special Conservation Interest (SCI) Species or Conservation Interest species from SPA or SAC sites located at a greater distance from the sites. The technical advisor also found that there are remaining areas of concern where questions have not been resolved to the level of beyond reasonable scientific doubt, and outstanding questions were not resolved in an AA Conclusion Statement. These are outstanding questions relating to access routes, a lack of consideration of in-combination effects and of the extent of the assessment related to peregrine falcons, given some of the evidence submitted by the appellants relating to this species in other areas.

The Board's technical advisor found that the assessment did not consider all the factors necessary, meaning there are outstanding questions which have not been resolved to the level of being beyond reasonable scientific doubt, as is required under the legislation.

## 6.0 Section 61 Assessment

Section 61 (a-e) of the Act outlines the matters which the licensing authority shall take account of when an application for or an appeal regarding an aquaculture licence is being considered. This section is used to assess the impact of the proposed aquaculture development under these headings, which are listed in 6.1 – 6.7 below.

### 6.1 Site Suitability

Section 61 (a) considers the suitability of the site at or in which the aquaculture is proposed to take place.

The site itself is located on the northern shore of Dunmanus Bay, in an area which the Department's Marine Engineering Division has deemed suitably sheltered for development. Dooneen Pier is located within 300 metres of the proposed development, offering very convenient access to the proposed site. Seaweed culture involves the natural seeding of ropes with young native seaweed gametophytes which then grow through to harvest. Culture is by means of suspended culture with ropes hanging from floats deployed in subtidal areas, similar to the structures used for mussel culture. Depending on the species, the seaweed will be left to grow for months to a year before it will be harvested manually.

Visual impact was raised as a concern by a number of appellants. The area around the proposed development close by Dooneen Pier is rural in character, with the nearest village located at Kilcrohane. Evidence on the day of the site visit and an examination of aerial photography would indicate nine dwellings on the road which leads from the main road, the

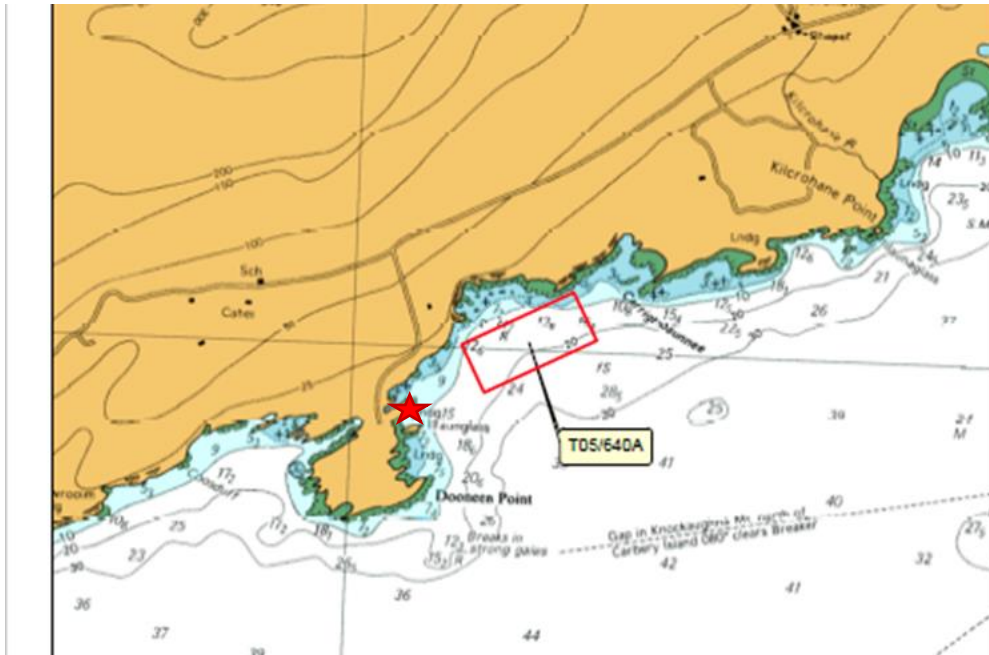
L4704, down to Dooneen Pier. One of these dwellings would appear to overlook the site of the proposed development. This single lane access road is approximately 1.5 km long and becomes very narrow within approx. 500 metres of the main road with high hedges or walls bordering it and limited areas to pull in to allow a second vehicle to pass. On the day of the site visit I encountered no traffic on the access road. The proposed site itself is not visible from the main road, a scenic route and the technical advisor only observed one dwelling which would directly overlook the site. While the site would be visible for users of Dooneen Pier, this was not considered a significant visual impact, given the pier is not a recognised viewing area.

The pier at Dooneen consists of an open pier area approx. 30 metres long by 12 metres wide at its widest part. The pier is sheltered to the north, west and partially to the south by natural cliffs. There is no slipway present and no evidence of commercial activity on the pier visible on the day of the site visit. No boats were tied up to the pier or anchored nearby on that day. No signs of aquaculture or commercial fishing activity were visible in the surrounding area of the bay.

Figures 4a and b show the location of the pier and the proposed development, which is to be located within 350 metres to the east of the pier. Figures 5 and 6 show the pier and its immediate vicinity.



**Figure 4a:** the pier area at Dooneen outlined in red, from Bing Maps 2023. The proposed development is to be located to the east, as shown in the chart in Figure 4b.



**Figure 4b:** chart showing location of proposed development, with the location of Dooneen pier also marked.



**Figure 5:** view looking south southeast from Dooneen pier.





**Figure 6:** view looking east from Dooneen pier towards location of proposed development.

The site itself appears suitable for the proposed development, however, road access to Dooneen Pier is restricted due to the narrowness of the road. While this is of note, it is not considered a significant negative impact given the level of frequency of use needed by the potential licensees. It is also a public road, and the applicant is entitled to use it, along with all other users.

## 6.2 Other uses

Section 61 (b) takes account of other beneficial uses, both in existence or future in the area and / or waters of the proposed site.

Other recognised users of the general area are commercial inshore fishermen, recreational users and shore anglers.

Shore angling from Dooneen Pier will not be negatively impacted by this development, given its distance from the pier itself. Any disturbance due to additional boat activity at the pier is within that expected when using a public pier, which are generally primarily for the use of commercial operators.

Recreational users include both swimmers and divers from Dooneen Pier itself and people using the general area for watersports such as kayaking etc. As mentioned above in relation to shore angling, any disturbance to swimmers and divers by additional boat activity at the pier would be within what was expected of public pier, given the estimated rate of one visit a week for maintenance outside of harvest season. Kayakers and other water sports participants will be excluded from the immediate area of the proposed site, which is 15.74 hectares in size. However, the use of the remaining area surrounding Dooneen Pier will not be impeded in any way.

Dooneen Pier is a designated swimming area and has a Green Coast Award from An Taisce. The locating of a seaweed aquaculture site in the vicinity of Dooneen Pier will not do anything to detract from the Pier's Green Coast status in the technical advisor's opinion, following assessment of An Taisce's requirements for granting this award.

Regarding commercial inshore fishing, both the Marine Institute and the Sea Fisheries Protection Agency, which has a local office in Castletownbere, were contacted for their observations regarding potential impacts on commercial fishing of the proposed site.

The Marine Institute response stated that "The request from ALAB relates to the provision of high spatial resolution information in relation to existing inshore fishery activity in the area of site T05-640A, in Dunmanus Bay, Co Cork. At this scale (of site T05-640A), the Marine Institute does not have these data and the MI is unsure if such data exists within other state bodies.

A very general observation can be made that there is likely lobster fishing in reef habitat and on the edges of reef, shrimp fishing in mixed sediments and on edges of reef, scallop fishing in sand and gravel sediments along the shores of Dunmanus Bay. However, we are not in a position to estimate or quantify who or how many inshore fishermen may be affected by this application."

The SFPA response stated "There are a small number of U10 & 10-12 M vessels active in this part of Dunmanus Bay fishing seasonally for crustaceans and scallops. Local vessels usually operate from the nearby Ahakista Pier. The SFPA is aware of other vessels from Bantry Bay and Roaringwater Bay also using static gear in the vicinity. Local fishermen and registered buyers were contacted, but no detailed information was provided in relation to activity specifically in the proposed licenced area." Neither of these responses from the relevant state agencies indicate to the technical advisor that the area proposed for development is particularly important as a local fishing ground.

While other users may be inconvenienced by the development of the proposed site, there is **no evidence of a significant negative impact.**

### 6.3 Statutory Status

Section 61 (c) considers the statutory status of the area under consideration including the provisions of any development plan.

The Cork County Development Plan 2022-2028 has a number of objectives that relate to the proposed development, as outlined in Section 3.3.3 above. Two of the core strategies of this development plan are: Employment and Economic Growth and Environment. In particular, the plan seeks to ensure a balance between protection of the environment including the maintenance and improvement of water quality and biodiversity and meeting the development needs of the County in accordance with relevant environmental legislation and guidance. This objective, in the technical advisor's opinion, also ties in with the obligations of ALAB under the Fisheries Act (1997) as amended, and the relevant environmental legislation the Board must adhere to. Therefore, this technical advisor's report as a whole is considering this part of the strategy.

There are objectives defined in each chapter of the development plan and the technical advisor has highlighted those she deems relevant in Section 3.3.3 above and are commented on below:

- County Development Plan Objective MCI 7-1: National and Regional Marine Planning Policy: the granting of a licence for the proposed development could support part b of this objective, which states "Support the potential of the marine environment by nurturing opportunities for innovation in the Maritime economy while ensuring that its ecosystems are managed sustainably."
- County Development Plan Objective MCI 7-2: Development in Coastal Areas: the granting of a licence for the proposed development could support part a of this objective, which states "Sustainably manage development within the coastal zone taking account of its environmental, ecological, heritage and landscape values."
- County Development Plan Objective MCI 7-5: Marine Leisure and County Development Plan Objective MCI 7-6: Coastal Amenities: the granting of a licence for the proposed development has been assessed under section 6.2 Other Users not to significantly impact these objectives negatively.
- County Development Plan Objective EC: 8-2 Employment Strategy Support Rural Areas: the granting of a licence for the proposed development has been assessed under section 6.4 Economic effects not to significantly impact these objectives negatively.
- County Development Plan Objective EC: 8-13 Rural Economy: the granting of a licence for the proposed development could support part b of this objective, which states "Strengthen rural economies through the promotion of innovation and diversification into new sectors and services including to ensure economic resilience and job creation. "
- County Development Plan Objective EC: 8-14 Business Development in Rural Areas states:

“The development of appropriate new businesses in rural areas will normally be encouraged where:

- The scale and nature of the proposed new business are appropriate to the rural area and are in areas of low environmental sensitivity.
- The development will enhance the strength and diversity of the local rural economy.
- The proposal will not adversely affect the character, appearance, and biodiversity value of the rural landscape.
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
- The proposal has a mobility plan for employees home to work transportation.
- Where possible the proposal involves the re-use of redundant or underused buildings that are of value to the rural scene.
- The provision of adequate water services infrastructure; and
- Provision of a safe access to the public road network.

The proposed aquaculture development would appear to fulfil these requirements, although the assessment at section 6.1 Site suitability did raise concerns regarding the access road to Dooneen Pier. However, these were not considered significant.

- County Development Plan Objective EC: 8-18 Fishing and Aquaculture states:
  - “a) To support the sustainable development of fishing and aquaculture industries ensuring that new development is compatible with the protection of the environment, nature conservation, heritage landscape and other planning considerations.
  - b) Support the use of existing port facilities for the catching and processing of fish as an economic activity that contributes to the food industry in the County.
  - c) Support and protect designated shellfish areas as an important economic and employment sector.
  - d) Recognise the potential of alternative sites, such as quarries, for aquaculture and commercial fisheries.
  - e) Strengthen rural economies through innovation and diversification into new sectors and services including in the marine economy.”

The proposed aquaculture development would appear to fulfil these requirements, excluding point d, which is not relevant here.

- County Development Plan Objective TO 10-2 Wild Atlantic Way and Irelands Ancient East: the proposed development is not expected to negatively impact on the Wild Atlantic Way as it is not visible from any scenic routes.
- County Development Plan Objective TO 10-4: Developing the Marine Leisure Sector: the proposed development is not expected to negatively impact on the future development of the marine leisure sector from Dooneen Pier or in the Dunmanus Bay area, please see Section 6.1 Site suitability for further details.
- County Development Plan Objective TO 10-5: Protection of Natural, Built and Cultural Features: the proposed development is not expected to negatively impact on the

future development of the protection of natural features in the area, given its expected non-significant visual impact, as discussed in Section 6.1.

- County Development Plan Objective WM 11-2: Surface Water Protection: the granting of a licence for the proposed development could support this objective, given seaweeds ability to take up nutrients from the water column.
- County Development Plan Objective GI 14-9: Landscape: the proposed development is not expected to negatively impact on the future development of the protection of natural features in the area, given its expected non-significant visual impact, as discussed in Section 6.1.
- County Development Plan Objective GI 14-12: General Views and Prospects, County Development Plan Objective GI 14-13: Scenic Routes and County Development Plan Objective GI 14-14: Development on Scenic Routes: the proposed development is not expected to negatively impact on the future development of the protection of natural features in the area, given its expected non-significant visual impact, as discussed in Section 6.1 and the fact that it would not be visible from any scenic routes.
- County Development Plan Objective BE 15-2: Protect sites, habitats and species: as discussed in Section 5 above, further work is required to clarify if there would be any impact of this proposed development on Natura 2000 sites or species.
- County Development Plan Objective BE 15-7: Control of Invasive Alien Species: the proposed development would comply with this objective under the standard licence conditions, if granted.

#### Natura 2000 sites

See section 5 for a discussion on the issues found with the Appropriate Assessment Screening carried out, and lack of evidence of an AA Conclusion Statement.

#### Other Statutory Obligations

The relevant legislation is discussed in Section 3 above and there are no outstanding areas for concern.

Currently, given the AA Screening carried out to date, **there are the potential for significant negative impacts** of this proposed development under statutory status.

#### 6.4 Economic effects

Section 61 (d) takes into account the likely effect a proposed aquaculture development (or its amendment / revocation) would have on the economy of the area in which the aquaculture is to be located.

The proposed development is likely to provide additional employment opportunities in this rural area. Therefore, it is likely to have a **non-significant positive impact** on the local economy.

## 6.5 Ecological Effects

Section 61 (e) considers the likely effect that the proposed aquaculture operation would have on wild fisheries, natural habitats and the fauna and flora of the area.

As discussed in Section 5 and Section 6.4 above, the proposed development has not yet been fully assessed under Appropriate Assessment for SPA and SAC conservation interests.

Other protected species:

Cetaceans and Pinnipeds: Although a variety of cetaceans and both seal species native to Ireland have been recorded in the vicinity of proposed development in the bay, the sightings are very infrequent, and no interactions are predicted. There is potential that the cetacean species may occur within the existing and proposed aquaculture site and thereby, interact with activities. This potential for interaction is possible if they forage inshore close to the structures. Given the relatively small footprint of the suspended aquaculture locations, the likelihood of interactions is very small. In addition, the locations of the proposed structures are relatively close to the shorelines, and as such they do not present a barrier to movement of this species. These structures are also such that echolocating species, such as dolphin, can easily avoid the structures/sites (Watson-Capps and Mann, 2005; Heinrich, 2006; Ribeiro et al., 2007), greatly reducing any entanglement risk. Overall, the proposed licensed site is **not expected to have any significant negative** impact on these species.

Otter: Although Otter is recorded in the bay no significant interactions with the proposed development is predicted. Given the location adjacent to coastline and the relatively dispersed nature of the “dropper” ropes at the sites, otter will be able to move freely among the structures. They do not present a barrier to movement. In the case of disturbance, activities at the site occur during daylight hours and will not overlap with the crepuscular foraging of otter. The proposed licensed site is **not expected to have any significant negative** impact on this species.

Other bird species: The studies of Roycroft et al (2006) on mussel farm and bird interactions in Bantry Bay found neutral/positive interactions for both cormorants and gull species from mussel farming. As seaweed farming follows a similar longline set-up to mussel farming, similar interactions can be expected. Therefore, it is expected that The proposed licensed sites will have **no significant negative** impact on this species.

Overall, there is the potential for **some significant negative ecological impact**, but this requires further investigation.

## 6.6 General Environmental Effects

Section 61 (f) considers any other effects on the environment in general that could occur in the vicinity of the area where the proposed site is to be located.

The movement of stock and equipment in and out of the water can encourage the transport of non-native and / or invasive species either through the introduction via plantlets and /or from boats /vehicles moving between sites. Careful husbandry and management along with adherence to good biosecurity practises can mitigate this risk, however. The appealed site also proposes to introduce primarily native species of seaweed.

It is considered that the proposed applications will not pose significant environmental effects within the bay or in the wider area. There are no predicted impacts from pollution sources or changes to hydrological functioning of the sites as a whole. The proposed aquaculture activities are extensive in nature, in that they do not require the addition of feedstuffs or medicinal inputs and rely wholly on the natural resources within the bay.

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed developments on the sites or surrounding areas have been found during the technical review.

## 6.7 Effect on man-made heritage

Section 61 (g) considers the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

There are no predicted impacts on known terrestrial or marine man-made heritage sites located around Dunmanus Bay due to the proposed developments. There would be **no effect on the man-made heritage** of value in the area as a result of the proposed operations.

## 6.8 Conclusions of Section 61 Assessment

Overall, the site is considered suitable for the proposed aquaculture development under other users, economic effects, environmental effects and effects on man-made heritage.

**There are outstanding concerns regarding the completeness of the Appropriate Assessment process carried out to date which raises issues under the headings of statutory status and ecological impacts.**

#### 6.9 Confirmation re Section 50 Notices

There are no matters which arise in Section 61 which the Board ought to take into account which have not been raised in the appeal documents, and it is not necessary, in the technical advisors opinion, to give notice in writing to any parties in accordance with section 50 (2) of the 1997 Act.

#### 6.10 Section 46 and Section 47 Notices

Section 46 of the Act provides for the Board to request that a party to the appeal who has already made submissions/observations to the Board make further submission /observations in relation to a matter which has arisen in the course of the appeal.

Section 47 of the Act provides for the Board to request documents, particulars or other information that it deems necessary to enable it to determine an appeal from a party who has made submissions or observations to the Board in relation to the appeal.

A number of letters were issued by the Board under Section 46 or Section 47 of the Act in relation to these appeals, which are outlined in Table 2 below. The notices and their responses can be viewed in full on the ALAB website, [www.alab.ie](http://www.alab.ie)

Appeal Ref	Document	Date of issue
07 March 2023	S47 Request to AFMD	11 April 2023
05 October 2023	S46 issued to MI	09 October 2023
05 October 2023	S46 issued to SFPA	09 October 2023
05 October 2023	S47 issued to BMRS	09 October 2023

#### 7.0 Technical Advisor's Evaluation of the Issues in Respect of Appeal and Submissions/Observations Received



General Appeal Details	Technical Advisors Response
AP1/1/2022 – Appellant: Fishermen’s Inshore Saltwater Heritage Ltd	
The appellant states the area is currently in use for inshore fishing and potting and is one of the few sheltered fishing grounds in Dunmanus Bay. They state the species being fished currently include Lobster, crab species, shrimp, scallops, pollack and mackerel.	See Section 6.1 for details of communications with relevant state agencies and the technical advisors opinion
AP1/2/2022 – Appellant: Friends of Dooneen Pier	
<ol style="list-style-type: none"> <li>1. Failure by the Minister to address impacts under Section 61 of the Fisheries (Amendment) Act 1997: The appellants state the Minister failed to properly assess the proposed development under the Act and provide examples under each heading.</li> <li>2. Failure by the Minister to carry out a suitable Appropriate Assessment under the Birds and Habitats Directive: The appellants state a number of protected species will be negatively impacted by the proposed development and associated harvesting activities which they state will occur on Dooneen Pier. They go on to outline perceived deficiencies in the screening carried out and the application of the relevant legislation.</li> <li>3. Legal issues relating to burden of proof and availability of documents from the Minister.</li> <li>4. Issues with the Minister’s reasons for making a determination, including their contention that the Minister did not fully assess; the impact on public access to Dooneen pier, the potential for negative impacts on the economy of the area and</li> </ol>	<ol style="list-style-type: none"> <li>1. The Technical advisor has assessed the proposed development de novo in this report, see section 6 for details.</li> <li>2. The Technical advisor agrees with the lack of suitable AA, see section 5. However, before a suitable AA is carried out, it is not known if significant negative impacts could result from any proposed development.</li> <li>3. These issues fall outside of the remit of this technical report.</li> <li>4. ALAB will assess this application de novo and many of the listed issues are covered in this report.</li> </ol>

the potential for overlap with Natura 2000 sites.	
AP1/3/2022 – Appellant: Paul and Kate Brooks on behalf of Residents of Dooneen	
<p>A number of issues were outlined across a number of submissions from residents of the area, with general themes which are summarised below.</p> <ol style="list-style-type: none"> <li>1. Exposed site: the appellants state the proposed site and pier at Dooneen are exposed to extreme weather conditions, especially from Easterly winds.</li> <li>2. Insufficient AA work carried out: the appellants are concerned by the potential impacts of the proposed development on species in a nearby SPA site.</li> <li>3. Ecological impacts: the appellants are concerned about the potential impacts on marine mammals and other bird species using the area.</li> <li>4. Access: concern regarding the suitability of the access road to Dooneen Pier from the main road as the lane is very narrow.</li> <li>5. Impact on other users: the appellants have concerns regarding the use of the pier for harvesting and transporting of seaweed and the impacts this will have on existing users. The appellants also discuss the use of the area proposed for development by local fishermen and recreational users, as well as Dooneen pier being a popular area for swimmers and diving.</li> <li>6. Green Coast Award: the appellants are concerned the proposed development will impact on the recognition of the pier under the Green Coast Awards scheme.</li> </ol>	<ol style="list-style-type: none"> <li>1. The TA agrees with the assessment of the Marine Engineering Division.</li> <li>2. The Technical advisor agrees with the lack of suitable AA, see section 5. However, before a suitable AA is carried out, it is not known if significant negative impacts could result from any proposed development.</li> <li>3. See section 6.4 above.</li> <li>4. See section 6.1 above.</li> <li>5. See section 6.2 above.</li> <li>6. See section 6.2 above.</li> </ol>

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<b>Applicant Response to appeal issues</b>	<b>Technical Advisors Response</b>
<p>Response to AP1/1/2022:</p> <ul style="list-style-type: none"> <li>the applicant states it will facilitate continued access for inshore fishing vessels that use the area for potting. They also state that seaweed farms can result in an increase in fish and shellfish production in an area and that aquaculture and fishing can co-exist.</li> </ul>	<p>The increase in local biomass has been observed in other jurisdictions, but local fishermen will generally not risk their gear by potting close to an aquaculture installation so a loss of area will still be experienced by other users.</p>
<p>Response to AP1/2/2022:</p> <ul style="list-style-type: none"> <li>There are no plans to harvest seaweed on Dooneen Pier as stated in this appeal as harvesting will occur onboard a boat.</li> <li>The applicant is willing to land, and transport harvested seaweed via another pier in Dunmanus Bay.</li> <li>The applicant does not accept that the AA screening as carried out was defective and raises the point that neither Birdwatch Ireland or the NPWS raised any objections to the development. They also dispute the claim that additional road traffic from the proposed development will negatively impact on the SPA.</li> <li>The applicant outlines the potential economic impact it states the development would create and feed in to.</li> <li>The applicant outlines the wider benefits to society of seaweed production.</li> <li>The applicant states the visual impact will be mitigated by the use of grey buoys.</li> <li>The applicant states that the proposed development is likely to improve water</li> </ul>	<p>The harvesting will occur on a boat, but some of the concerns relate to transport from the pier of this harvested seaweed, This may be something to consider during harvest periods.</p> <p>The TA does not agree, the AA was defective in their opinion, and a conclusion statement was not produced.</p> <p>The TA agrees there would likely be a positive economic impact.</p> <p>The TA has no comment in relation to this as it is not relevant to the assessment. The TA agrees.</p> <p>The TA concurs there is a possibility that water quality generally will improve.</p>

<p>quality and therefore be of benefit to the Green Coat Award criteria.</p> <ul style="list-style-type: none"> <li>• The applicant does not find that the proposed development and use of the pier will impede tourists or walkers using the area.</li> </ul>	<p>The TA agrees this is unlikely given the planned frequency of use of the pier.</p>
<p>Response to AP1/3/2022:</p> <ul style="list-style-type: none"> <li>• The applicant states they complied with all requirements for public consultation and attended a public meeting arranged by the local community council.</li> <li>• The applicant states their willingness to use an alternative pier during periods of intensive work.</li> <li>• They note that the appellants for AP1/1/2020 note the site is sheltered as do other reports, and also note that the site has been designed to withstand the predicted elements.</li> <li>• The applicant notes that no environmental group or NGO submitted their own appeal, even after being made aware of the development by local interests.</li> <li>• The applicant notes that the Marine Institute did not note any significant negative impacts during their Appropriate Assessment work.</li> <li>• The applicant does not feel that the proposed development will have a significant impact on other users of the pier and local walking or cycling routes.</li> <li>• The applicant notes some photographs used showing Gearahies pier and activities on it do not involve them or the proposed development.</li> </ul>	<p>This agrees with what was noted in the file received from the Minister.</p> <p>There is also evidence of this in the Ministers file.</p> <p>This agrees with the finding of the MED and the TA</p> <p>This is correct.</p> <p>This is correct, although the TA has noted issues with the AA process.</p> <p>This agrees with the Tas assessment, it is a public pier and a public access road.</p> <p>The TA has no comment on this as it cannot be verified.</p>

<ul style="list-style-type: none"> <li>The applicant then goes on to outline their status as a marine research business.</li> </ul>	This is not directly relevant to this report.
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Observations Received	Technical Advisors Response
<p>4. Observations were received by one Appellant, Friends of Dooneen Pier (AP1/2/2022), referring to new points are outlined below. Their submission also included reference to points raised in their original submission which are not repeated here:</p> <p>Friends of Dooneen Pier:</p> <ul style="list-style-type: none"> <li>The wrong Cork County Development Plan was considered by the Minister as the 2022-2028 version had come into effect on 6 June 2022, before the Minister's Determination was made.</li> <li>They dispute BMRS's assertion in their submission to the Minister that no objection was made by the local Community Council</li> <li>They dispute BMRS's claim in their submission to the Minister that harvesting will occur at sea and seaweed could be landed at another pier, stating that this is not what is granted in the licence or what was assessed under the Marine Institute's Appropriate Assessment report of June 2022.</li> <li>They raise concerns that this new suggested method of collection has not undergone public consultation or proper assessment under the Birds and Habitats Directives.</li> </ul>	<p>This appears to be correct, however, the TA has used the correct County Development Plan when carrying out this assessment.</p> <p>This appears to be correct.</p> <p>While it is possible to land seaweed at another pier, the licence was granted with the access route via Dooneen Pier.</p> <p>This is correct, but the appeals process will remedy these concerns.</p>
<p>5. A submission was also received from Kate Brooks, as an individual. She is also a member of the "Residents of Dooneen" group who are appellants in AP1/3/2022.</p>	

<p>The points she raised below are in response to and in dispute of the BRMS submission to the Minister and are outlined below:</p> <ul style="list-style-type: none"> <li>• The submission states that BRMS in their submission appear to agree that their proposal would impact health and safety and that the suggested change now renders the initial application and environmental assessment invalid.</li> <li>• That the visual impact of the development is related to visual dissonance and not colours of buoys used.</li> <li>• The risk to the Green Coast Award due to the development.</li> <li>• The submission raises a complaint that BMRS have only done the minimum required in terms of public consultation.</li> <li>• Notes that there will be no direct economic benefit in terms of employment from the development.</li> </ul> <p>Kate Brooks also raised issues relating to the Ministers assessment of the development, outlined below:</p> <ul style="list-style-type: none"> <li>• She states that she believes the Marine Engineering Division's (MED) conclusions around the Cork County Development Plan were not based on the correct guidelines.</li> <li>• She disputes the MED's assertion that views of the site are obscured and limited from scenic routes.</li> <li>• She states the area is used by inshore fishermen for potting.</li> <li>• She highlights the SFPA response which raises the issue that the proposed</li> </ul>	<p>The suggested change wasn't actually granted in the licence issued by the Minister and this topic is now under assessment as part of the appeals process.</p> <p>Visual impact has been reassessed in this report, as well as being assessed by the Departments Marine Engineering Division.</p> <p>According to criteria submitted by An Taisce, the seaweed aquaculture development will not negatively impact the awarding or otherwise of a Green Coast award.</p> <p>BMRS have done the required amount in terms of public consultation under the legislation.</p> <p>The TA has found there will be an economic benefit for the region from the development.</p> <p>This appears to be correct but has been remedied in this report.</p> <p>The TA agrees with the finding of the MED, the site is not visible from any scenic routes or designated viewpoints.</p> <p>See section 6.2 Other users.</p> <p>See Section 6.2 Other users.</p>
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development may reduce fishing opportunities. • She states that leisure interests were not consulted as recommended by the Irish Lights submission to the Minister.	This is correct but not a legal requirement.
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## 8.0 Oral Hearing Assessment

No appellants in these appeals requested an oral hearing. The technical advisor is of the opinion that this is not required as it would not aid in clarifying any issues or concerns relating to this appeal.

## 9.0 Interim Recommendation of Technical Advisor

The outstanding issues before a recommendation can be made for this appeal relate to the deficiencies in the Appropriate Assessment Screening and the lack of an Appropriate Assessment Conclusion Statement. Both these issues can be remedied by the Board in the technical advisors opinion. This means I am not in a position to make a final recommendation to the Board at this time.

Outside of the AA issues, the technical advisor at this time, does not find any other factor which would cause a significant negative impact on any of the headings assessed under Section 61 of the Act.

I would, however, suggest that the option to use the second pier at Durrus for access be considered for deployment and harvesting periods from a practical perspective due to the narrow nature of the access road to Dooneen Pier. Realistically, I cannot see a way for a boat of a size suitable for deploying enough lines and buoys for a 15 hectare site, or harvesting seaweed could possibly be launched from Dooneen Pier. On a purely practical front, it would have to come from another, larger pier. This second access route could be included as an option within the updated AA Screening that is now required before being further considered by the Board.

**Technical Advisor:** Dr Ciar O'Toole

**Date:** 10 April 2024