

An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



FISHERIES (AMENDMENT) ACT 1997 (AS AMENDED AND SUBSTITUTED)

Appeal Reference Number: **AP 1 /2021**

DETERMINATION

WHEREAS an appeal having been made to the Aquaculture Licences Appeals Board ("**the Board**") pursuant to Section 40 of the Fisheries (Amendment) Act, 1997 (as amended) ("**the Act**") by **Killian Tighe** ("**the Applicant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to **refuse the grant of** an Aquaculture Licence for the cultivation of oysters on bags and trestles on site number T05/546A ("**the Site**") on the foreshore on Spike Island, Cork Harbour, Co. Cork.

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the Notice issued by the Board pursuant to section 47(1) of the Act to the Applicant and his response; the report of the Board's technical advisor, and the matters set out at Section 61 of the Act (as amended and substituted), including the following:

- (a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,
- (b) other beneficial uses, existing or potential, of the place or waters concerned,
- (c) the statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,
- (d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,

- (e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and
- (f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on-
 - (i) on the foreshore, or
 - (ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and
- (g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

The Board considered the appeal at its meetings on the 18 May 2021, 22 July 2021, 19 August 2021, 21 September 2021, 21 October 2021, 25 November 2021, 13 January 2022, 10 February 2022, 16 March 2022 and 14 April 2022.

ENVIRONMENTAL IMPACT ASSESSMENT

The Board considered the project proposed in the Application for an Aquaculture Licence under the requirements of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 and the EIA Directive (2011/92/EU). The Board determined that the project was not likely to have significant effects on the environment by virtue of its size, nature or location and so does not require an environmental impact assessment report under the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012.

Therefore, the Board is satisfied that the direct and indirect effects of the proposed activity at the Site 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.

APPROPRIATE ASSESSMENT

The Board also considered the project proposed in the application for an Aquaculture Licence under the requirements of the European Communities (Birds and Natural Habitats) Regulations 2011 and the Habitats and Birds Directives (2009/147/EC and 92/43/EEC). The Board noted that the Site is not within either a Special Area of Conservation (SAC) or a Special Protected Area (SPA), but that the Site is potentially in the zone of influence of the Great Island Channel SAC (Site code: 001058) and the Cork Harbour SPA (Site Code: 004030). The Board had regard to the Marine Institute Report supporting Appropriate Assessment of Aquaculture in Great Island Channel SAC (Site code: 001058), the Atkins/Marine Institute Report on Cork Harbour SPA: Appropriate Assessment of Aquaculture (June 2019) and the Appropriate Assessment Conclusion Statement by Licensing Authority in support of the Appropriate Assessment of Aquaculture in Great Island SAC (Site Code 001058) and Cork Harbour SPA (Site Code: 004030), received as part of the Minister's file.

The Board determined there were no negative impacts highlighted in terms of the Site and the nearby SAC sites, however potential impacts on Special Conservation Interest Species from nearby SPA sites have not been conclusively ruled out.

The Licensing Authority concluded that from a Natura 2000 perspective, given the conclusions and recommendations of the Appropriate Assessment process, the risk of significant disturbance from the proposed aquaculture activities cannot be discounted.

Having regard to all of the foregoing, the Board was satisfied that the proposed activity at the Site, for the reasons more particularly detailed in section (a) of the Determination below, **has the potential for significant effects** and is likely to have a significant deleterious effect, either individually, or in combination with other plans or projects, on Special Conservation Interest ("SCI") species or conservation objectives for the SPA site concerned and as such, will adversely affect the integrity of the SPA site concerned either individually or in combination with other plans or projects.

DETERMINATION

- (a) The Site is **deemed unsuitable** for the proposed activity because of the potential disturbance and displacement impact on SCI species within the Cork Harbour SPA as outlined in the previous section entitled “Appropriate Assessment”. The Site overlaps with an area currently used by kayakers and other recreational users during the summer months. The development of the Site would displace these users and present a potential health and safety risk. The Island where the Site is located is currently used for a large-scale year-round tourism venture, with ferries landing at a jetty adjacent to the proposed site.
- (b) The Site would have **a potential significant adverse impact** on the other uses or users of the area as outlined in the previous section entitled “Appropriate Assessment” and in Section (a) of this Determination.
- (c) The Site would have **a potential negative impact** on the statutory status of the area, as outlined in the previous section entitled “Appropriate Assessment” and in Section (a) of this Determination.
- (d) The Site is **expected to have an adverse effect** on the economy of the area as it would have the potential to have a significant negative economic impact on the existing tourism development on Spike Island, due to the issues discussed in Section (a) of this Determination.
- (e) The Site is **expected to have a negative ecological impact** as outlined in the previous section entitled “Appropriate Assessment” and in Section (a) of this Determination.

Having considered all the foregoing, the Board determined at its meeting on 14 April 2022 pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decision of the Minister to **REFUSE** an Aquaculture Licence to the Applicant for the Site.

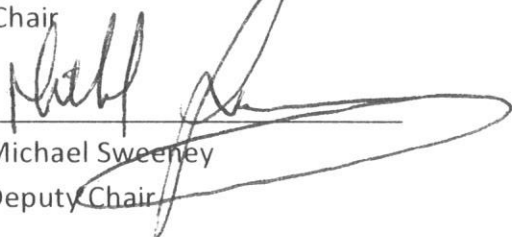
Dated this 28 April 2022

The affixing of the Seal of the
AQUACULTURE LICENCES APPEALS BOARD
was authenticated by: -



Imelda Reynolds

Chair



Michael Sweeney
Deputy Chair