

Aquaculture Licences Appeals Board

Technical Advisor's Report – Shellfish Appeals

Appeal Ref No. **AP1/2021**

Appeal description:

Appeal of the Minister's refusal to grant an application for an Aquaculture Licence for Killian Tighe, Cobh, Co. Cork. The application is for the cultivation of Oysters using bags and trestles on Site T05/546A (6.015 hectares) on the foreshore in Cork Harbour, Co Cork.

Technical Advisor: Dr Ciar O'Toole

Date of site inspection: 5 February 2022

Version No: Final

Contents

1.0	General Matters / Appeal Details.....	4
1.1	Licence Application	4
1.2	Appeal Details	4
1.3	Name of Appellant:	4
1.4	Name of Observer (s)	4
1.5	Grounds for Appeal.....	4
1.6	Minister's submission	5
1.7	Applicant response	6
2.0	Minister's file.....	6
3.0	Context of the Area.....	7
3.1	Physical descriptions	7
3.2	Resource Users	10
3.3	Statutory Status	13
3.5	Man-made heritage.....	17
4.0	Screening for Environmental Impact Assessment.	17
5.0	Appropriate Assessment	18
6.0	Section 61 Assessment.....	19
6.1	Site Suitability	20
6.2	Other uses	20
6.3	Statutory Status	21
6.4	Economic effects	21
6.5	Ecological Effects	21
6.6	General Environmental Effects	22
6.7	Effect on man-made heritage	22
6.8	Section 61 Assessment Conclusions	22
6.9	Confirmation re Section 50 Notices	23
6.10	Section 46 and Section 47 Notices	23
7.0	Technical Advisor's Evaluation of the Issues in Respect of Appeal and Submissions/Observations Received	24
8.0	Oral Hearing Assessment.....	25
9.0	Recommendation of Technical Advisor with Reasons and Considerations	26
	References.....	27

Appendices.....	28
Appendix I -EIA Pre-screening form.....	28
Appendix II – Section 47 Notice	32

1.0 General Matters / Appeal Details

1.1 Licence Application

Department Ref No:	T05/546A
Applicant:	Killian Tighe, 8 Orilia Terrace, Cobh, Co. Cork.
Minister's Decision:	The Minister refused to grant an application for Aquaculture Licences from Killian Tighe, 8 Orilia Terrace, Cobh, Co. Cork. The application is for the cultivation of Oysters using bags and trestles on Site T05/546A (6.015 hectares), on the foreshore in Cork Harbour, Co Cork.

1.2 Appeal Details

Date Appeal Received:	16 April 2021
Location of Site Appealed:	Foreshore on Spike Island, Cork Harbour, Co. Cork

1.3 Name of Appellant:

Killian Tighe, 8 Orilia Terrace., Cobh, Co. Cork

1.4 Name of Observer (s)

Not Applicable

1.5 Grounds for Appeal

The Appellant, who is also the Applicant in this case, submitted a detailed letter with his appeal submission. The points raised in this submission are outlined below:

1. Time taken to assess the application

The Appellant claims it took an excessive amount of time to process his application, having applied for this Site in September 2009. He did not receive a decision from the Minister until March 2021, a period of 11.5 years. The applicant feels the appeal process was deliberately protracted in his case.

2. Lack of adherence to standard procedure during processing of the application

The Appellant claims he was informed by email that his application could not be progressed further in 2011, having not gone through the full assessment procedure in his opinion. In 2017 he was informed his application was still active and being considered. The applicant claims the application was not considered under the relevant statutory provisions in the period between 2011 and 2017.

3. Visual Impact assessment

The Appellant disagrees with the Minister's first ground for refusal which found that the landscape and visual impacts of the application were of substantial impact significance.

4. Failte Ireland's concerns regarding the impact of the Site on other users

The Appellant questions Failte Ireland's objections and opinions expressed in relation to the Site and states his opinion that his proposed development and tourism development can co-exist and enhance each other. He then goes on to say that he applied for this proposed development before tourism had been developed on the Spike Island site, so it was not considered in his initial application

1.6 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 submission was made by the Minister in relation to this appeal

1.7 Applicant response

Not Applicable

2.0 Minister's file

Details of the file received by ALAB from the Minister requested under Section 43 are listed here in chronological order. Copies of the following items were received:

- Application forms, maps, and drawings
- Submissions from Statutory and Technical consultations
- Submission from the Aquaculture and Foreshore Management Division to the Minister
- Cork Harbour Appropriate Assessment Report on Special Protected Areas
- Cork Harbour Appropriate Assessment Report on Special Areas of Conservation
- Screening matrix for Appropriate Assessment of Aquaculture Activities within
- Notification of Minister's decision to the applicant
- Location map of the surrounding area including
 - Sites under application
 - Licenced sites
 - Lapsed sites
 - Sites currently under appeal

2.1 Minister's Reasons for Decision

The Minister's file states that: "The Minister for Agriculture, Food and the Marine has determined that it is not in the public interest to grant the licences sought. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to refuse the licences sought: -

- The Visual Impact Assessment carried out in respect of sites T05/546A and T05/546C found that the landscape and visual impacts of the application are of substantial impact significance and refusal was recommended.
- The concerns expressed by Fáilte Ireland regarding the effect on the surrounding environment and visual amenities of the area, on other marine users, on leisure activities particularly due to accessibility issues, and its proximity to Spike Island, a national monument and tourist attraction.

3.0 Context of the Area

3.1 Physical descriptions

3.1.1 Site Location

Cork Harbour is a large estuary with a surface area of roughly 181 square km. It is a working port and has in the past been a defensive hub and the location of several heavy industries. Cork Harbour is still an important area for shipping, energy generation, oil refining and pharmaceuticals.

There are several islands throughout Cork Harbour, including Spike Island, where the proposed development is located (Figures 1 and 2). Littoral rock/mixed sediment shore occupies most of the Spike Island shoreline. Areas of muddy sand occur in the lower part of the intertidal zone and the site occupies the most extensive such area in the bay to the east of the pier.

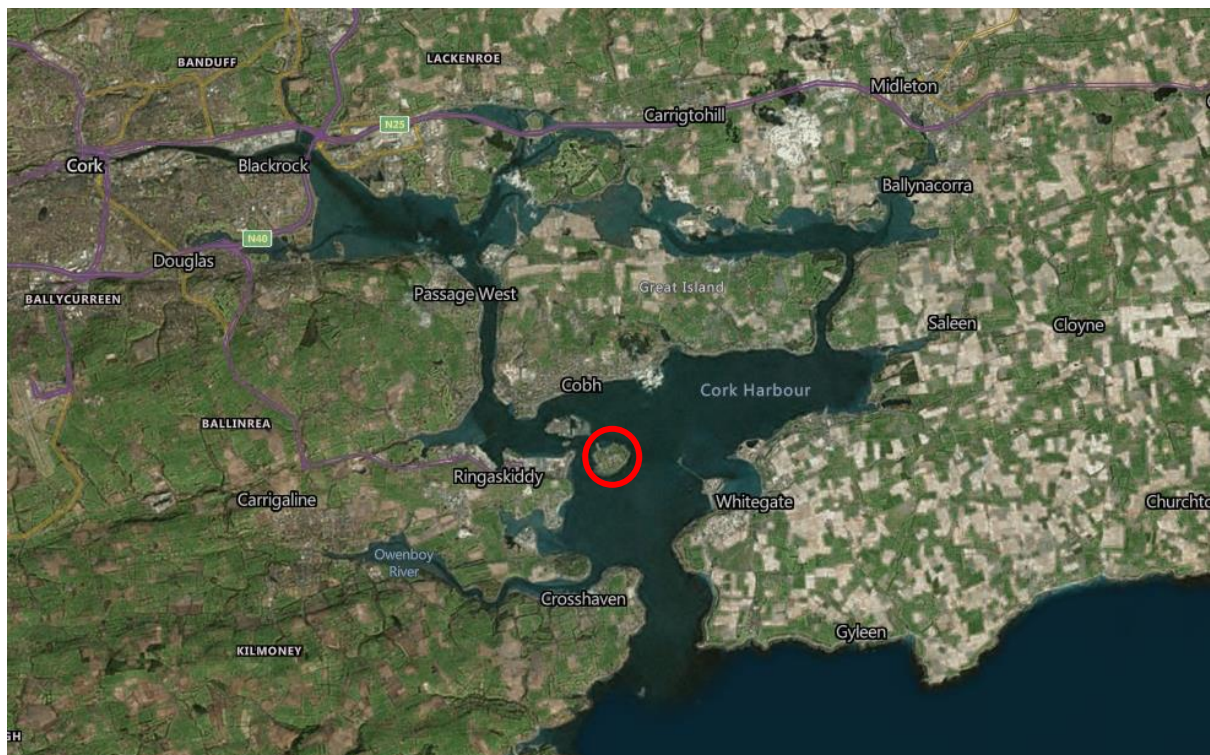


Figure 1: showing Cork Harbour, Co. Cork with Spike Island highlighted in red. Source: Bing Maps.



Figure 2: showing an aerial view of Spike Island, Cork Harbour, Co. Cork. Source: Google Maps.

3.1.2 Physical Characteristics

Cork Harbour is a flooded river valley (or ria) as a result of post-glacial sea level rise. The surrounding topography has sandstones forming uplands and softer limestone dominating the east-west trending valleys. The Harbour is fed principally by the River Lee (flowing through Cork City). Several islands exist in the Harbour, the largest being Great Island which hosts Cobh. Despite the extent of water in the Harbour, most of the Harbour is shallows of only a few metres deep. A deep navigable channel runs from the Harbour Mouth north to east of Cobh where it heads west to Monkstown before turning again north through Passage West and on up to the City.

Spike Island is a 42-hectare island in Cork Harbour which has previously been the site of a monastic settlement, a fortress and a prison. It is currently dominated by an 18th Century bastion fort known as Fort Mitchel. The island is currently developed as a heritage tourist attraction, with 81,000 visitors during 2019.

3.1.3 Meteorological Conditions

Cork Harbour is situated on the Southern coast of Ireland. The Gulf Stream North Atlantic Current influences the southern coastline resulting in generally mild temperatures. The long-term average monthly rainfall recorded by Met Éireann at the Roches Point Observatory (located on the entrance to Cork Harbour) was 97.6 cm.

3.1.4 Local Population

The largest settlement proximate to Cork Harbour is Cork City, which had a population of 125,657 during the 2016 census. Other considerable settlements include Cobh, Ballincollig, Carrigaline and Ringaskiddy. The Cobh municipal district had a population of 56,722 during the 2016 census. The Ballincollig-Carrigaline Municipal district, which includes Ringaskiddy, had a population of 74,422 during the 2016 census (Census 2016, www.cso.maps.arcgis.com, accessed on the 30/03/2022). This indicates over a quarter of a million people live in the Cork Harbour region, making it a densely populated area, with knock on impacts for land use and run-off into the Cork Harbour area.

3.1.5 Land Use

Most of the land use directly adjacent to Cork Harbour is residential, commercial, or industrial. The wider catchment area is used for agriculture, as can be seen from the aerial view in Figure 1. This land is a mixture of pasture and arable land. The nature and extent of agricultural activity across County Cork is relatively intense, with the Census of Agriculture 2020 (cso.ie), indicating a high percentage of agricultural land, over 27%, was in use for dairy farming. Intensive agriculture of this nature can be responsible for a significant proportion of freshwater and estuarine pollution.

3.1.6 Freshwater influence

The main freshwater influence into Cork Harbour comes from the River Lee flowing through Cork City, along with the Owennacurra River that flows through Middleton and the Owenabue River that flows through Carrigaline. A number of smaller rivers and streams also flow into Cork Harbour.

The EPA does not monitor River Q values along the Cork City stretch of the River Lee, but the results from Middleton and Carrigaline stations range from Moderate to Poor. This result indicates that the relevant proportion of pollution sensitive to pollution tolerant macroinvertebrates found at these sites lean more towards the pollution tolerant species, indicating a river which is in unsatisfactory condition.

3.1.7 Wastewater Treatment

According to the most recent EPA report on Urban Wastewater Treatment (EPA 2021), Cork City, Cobh and Ringaskiddy-Crosshaven-Carrigaline failed to meet wastewater treatment standards set out under the Urban Waste Water treatment Directive for large urban areas. The Cobh and Whitegate-Aghada areas actually continue to discharge raw sewage into Cork Harbour. This practice poses an ongoing risk to surface water quality and human health. The EPA has highlighted Cork Harbour as one area prioritized to protect surface waters (EPA, 2021). Irish Water is also due to complete overdue assessments on the impacts of wastewater discharges on the existing designated shellfish waters in Cork Harbour.

3.2 Resource Users

3.2.1 Aquaculture Activity

A total of six aquaculture sites, covering a total area of 922 ha, occur within Cork Harbour. These include two sites in the North Channel with a total area of 11 ha, and four application sites in the lower harbour with a total area of 911 ha. Five of the six sites are small (circa 17.5 ha combined) sites where suspended oyster cultivation using the bag and trestle method (oyster trestle cultivation) currently takes place or is proposed. The sixth site is a very large site covering most of the East Harbour zone and bottom mussel cultivation is proposed for this site. Around 20% of this site is within the Cork Harbour SPA. In addition to the aquaculture sites, there are four areas within Cork Harbour covered by Fishery Orders (Figure 3).

3.2.2 Angling Activity

Shore angling is possible throughout Cork Harbour from various piers, beaches and rocks which can yield a wide range of species such as wrasse, conger, bass, ray, codling, dogfish, mullet, mackerel, dabs, plaice, flounder, and whiting. Bass fishing is possible in small boats during the summer months. Deep sea angling boats also operate out of Cork Harbour.

Locations for shore angling in Cork Harbour include: Ballybranigan, Inch, Roches Point, White Bay, Aghada Pier, Gold Point, Brown's Island, Lynch's Quay, Deepwater Quay and Monkstown. Spike Island is not a recognised shore angling area.

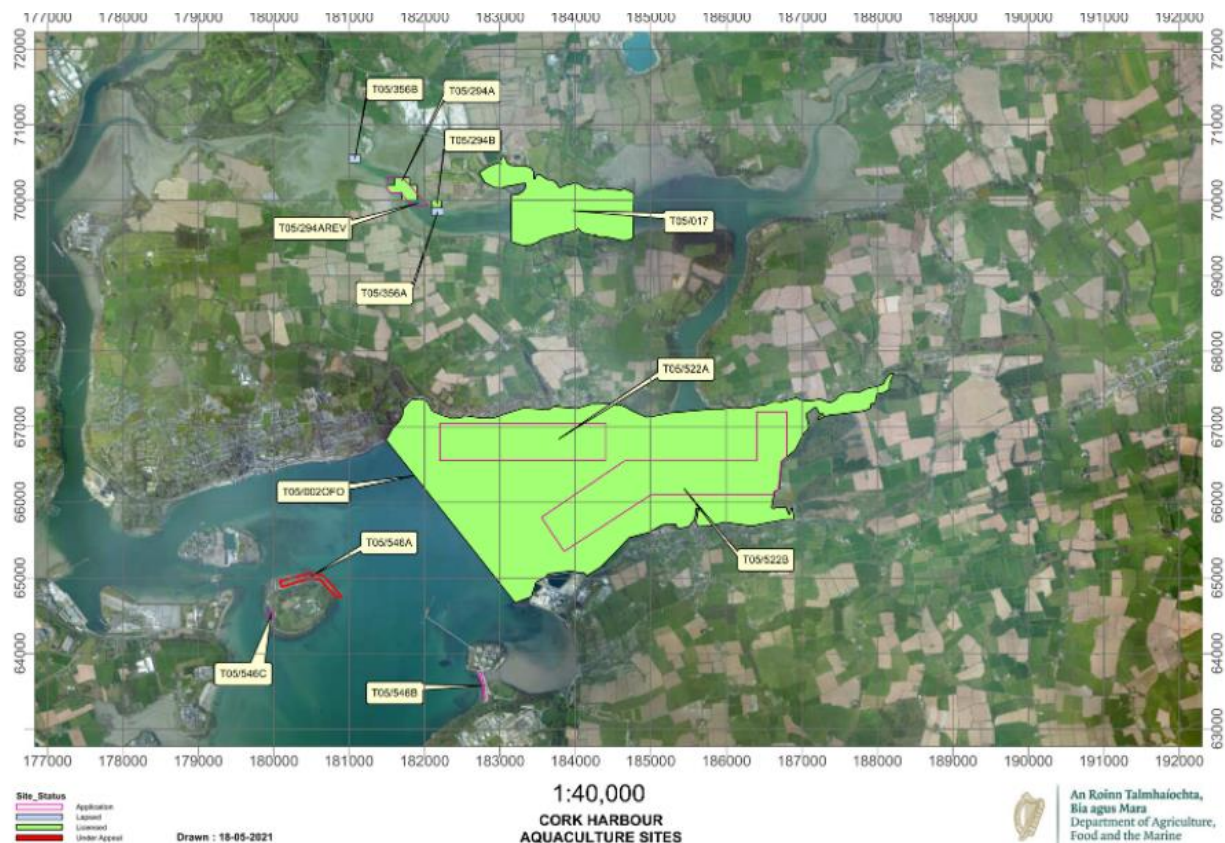


Figure 3: Map showing existing and proposed aquaculture sites within Cork Harbour. Source: DAFM.

3.2.3 Tourism

The south west region (Cork/Kerry) is a very popular tourist and holiday destination. Approximately 4.7 million tourists (domestic and overseas) travelled to the region in 2019 (Fáilte Ireland, 2019).

County Cork is one of the leading tourism destinations in Ireland, the County is dependent on tourism, and it is known for strong maritime, sporting and traditional music and language traditions (CCC, 2014). Cork City attracts many visitors throughout the year.

Cork Harbour also attracts a number of cruise ships each year which dock at the dedicated cruise berth in Cobh. 88 cruise ships are due to visit Cobh and the wider Cork area during the 2022 season.

Spike Island was opened in 2016 as a visitor attraction after capital investment of over 7 million euro. 81,000 people visited the attraction in 2019 and further growth is projected. The attraction was the winner of Europe's leading tourist attraction in 2017 and was shortlisted in the world's best attraction category at the 2019 International Travel and Tourism Awards (ITTA). The site is accessed year-round by a dedicated ferry that runs from nearby Cobh and

docks at a dedicated floating jetty attached to a pier on the island. The bastion fort contains most of the attractions, but several scenic walks around the island have been developed in recent years (Figure 4), with future plans expected to include the further development of now-derelict buildings across the island.



Figure 4: showing an information sign on Spike island which indicates the walking routes and points of interest around the island.

3.2.4 Leisure Users

Cork Harbour is used extensively for marine leisure activity including sailing, rowing and kayaking. Several boat clubs exist in the Harbour, including the Cobh Sailing Club, the Shandon Boat Club, Monkstown Sailing Club, Cork Boat Club, Royal Cork Yacht Club, Lee Rowing Club, Blackrock Rowing Club, Passage West Rowing Club and the Cork Harbour Marina. Sightseeing cruises of Cork Harbour and private boat hire are also available.

3.2.5 Inshore Fishing Activity

Inshore commercial pot fishing occurs throughout the lower reaches of Cork Harbour and some periwinkle harvesting occurs mainly on the Eastern shore (Ireland's Marine Atlas, www.marine.ie accessed 30/03/2022). There is a significant active pot fishery active in the waters around Spike Island fished by a small fleet operating from Cobh and Crosshaven.

3.2.6 Industrial Activity

Cork Harbour is no longer home to the high number of heavy industries it used to contain during the 20th century. However, a number of pharmaceutical manufacturing sites, an oil refinery, an electricity generating station and several other industries still operate in and around Cork Harbour. The EPA has a number of Chemical Monitoring Points located throughout Cork Harbour itself to monitor levels of heavy metals, polychlorinated biphenyls and other toxic chemicals in the water column.

3.3 Statutory Status

3.3.1 Nature Conservation Designations

Great Island Special Area of Conservation (SAC, Site Code 001058) and Cork Harbour Special Protected Area (SPA, Site Code: 004030) are located within Cork Harbour. There are several other SAC and SPA sites proximate to Cork Harbour (Figure 5).

An Article 6 (Habitats) Assessment and, specifically, Appropriate Assessment reports relating to aquaculture on habitats in the Great Island SAC and in relation to bird species in the Cork Harbour SPA have been prepared by the Marine Institute and Atkins on behalf of the Department of Agriculture, Food and the Marine (DAFM). The Appropriate Assessment Reports considered the potential ecological impacts of aquaculture activities on Natura features in the SAC and SPA.

Full details on the qualifying interests of the SAC and SPA sites can be found in these reports and the accompanying Appropriate Assessment Conclusion Statement for Aquaculture Activities in Cork Harbour. These reports also considered potential impacts on proximate SAC and SPA sites and their protected species.

The proposed site is not located within either a SAC or SPA site but does have the potential to impact on Special Conservation Interest (SCI) species from nearby SPAs.

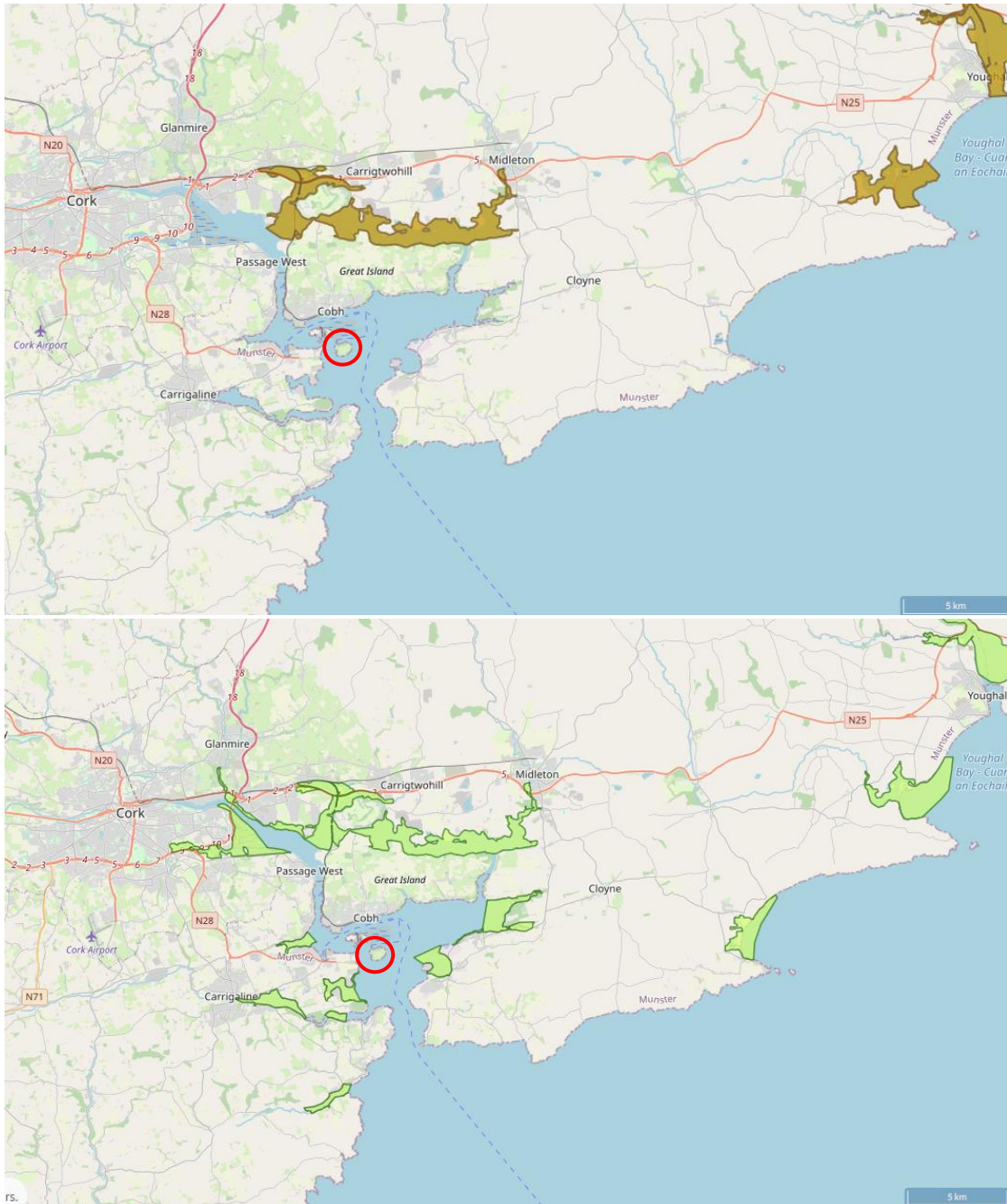


Figure 5: showing the locations of a) SAC sites, in orange and b) SPA sites in green, located in and around Cork Harbour. Spike Island is highlighted in red. Source: EPA Maps

3.3.2 Protected Species

There are a range of protected species recorded in the Harbour, based on records from Biodiversity Ireland in the last ten years (www.biodiversityireland.ie, accessed on 30/3/2022), these include birds listed as Special Conservation Interests for the Cork Harbour SPA, along with Basking shark (*Cetorhinus maximus*), Bottlenose dolphin (*Tursiops truncatus*), Common

dolphin (*Delphinus delphis*), Common porpoise (*Phocoena phocoena*), Grey Seal (*Halichoerus grypus*) Common Seal (*Phoca vitulina*) and European Otter (*Lutra lutra*).

3.3.3 Statutory Plans

Cork County Development Plan

The Cork County Development Plan 2014-2020 was adopted by the members of Cork County Council on the 8th of December 2014, the Plan sets out an overall strategy for the proper planning and sustainable development of Cork County for a 6-year period (CCC, 2014a), but is still in effect. Cork County Council is currently finalising the preparation of a new County Development Plan for the period of 2022-2028. The 2022 plan will come into effect on 6th June 2022.

A Landscape Character Assessment (LCA) was carried out on the landscapes of County Cork in 2007. This LCA established 76 landscape character areas, which were amalgamated into 16 Landscape Character Types based on similarities. Landscape Character Types which have a very high or high landscape value and high or very high landscape sensitivity and are of county or national importance are considered to be the Counties most valuable landscapes and are designated as High Value Landscapes (HVL) (CCC, 2014a).

Spike Island is designated as a High Value Landscape under the 2014 Cork County Council Development Plan (CCC, 2014).

The overall planning policies relating to landscape in County Cork are set out in Chapter 13 Green Infrastructure & Environment (Volume 1). The specific policies relating to general views and prospects/scenic routes are set out Para 13.7.1 to 13.7.3 and development plan objectives GI 7-1 “General Views and Prospects”, GI 7-2 “Scenic Routes” and GI 7-3 Development along Scenic Routes”.

GI 7-1 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.

GI 7-2 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 Chapter 5 Scenic Routes of this plan.

GI 7-3 Development Along Scenic Routes - 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.

The Plan, in Chapter 6 subsection 11: Fishing and Aquaculture, recognises that commercial fishing and aquaculture represent important economic activity in rural coastal areas. The Plan states that *“Cork County Council will continue to support the sustainable development of the aquaculture industry in order to maximise its contribution to employment and the economic wellbeing of rural coastal communities and recognises the important role aquaculture can play in the diversification of these rural areas”*.

3.3.4 Water Quality Status

Water quality in Cork Harbour is monitored as part of the Water Framework Directive (WFD) Monitoring Programme. The latest round of monitoring results (2018-2020) (EPA, 2022) indicate that Cork harbour has been classified as having “Intermediate” water quality.

3.3.5 Bathing Water Quality

Spike Island is not monitored for Bathing Water Quality. The nearest monitored site is Fountainstown, outside of the Cork Harbour area, which was recorded as having Excellent Bathing Water Quality in 2020 (EPA, 2022).

3.3.6 Shellfish Designated Areas

Parts of Cork Harbour have been designated as a Shellfish Designated Area under Directive 2006/113/EC, which sets out physical, chemical and microbiological parameters and regulations for the designation and sampling of Shellfish Designated Waters to protect or improve these waters in order to support shellfish (bi-valve and gastropod molluscs) life and growth, and also provides for the establishment of pollution reduction programmes for designated waters and thus, contribute to the high quality of shellfish products directly edible by humans.

The proposed site does not fall within a Shellfish Designated Area.

3.3.7 Shellfish Classified Areas

Parts of Cork Harbour are Classified Bivalve Mollusc Production Areas which are monitored by the Sea Fisheries Protection Agency and the Marine Institute. These areas are all located in the northern part of the Harbour and have a year-round “B” classification. A “B” classification indicates that the shellfish must undergo relaying, heat treatment or depuration before they are suitable for human consumption.

The proposed site does not fall within a Shellfish Designated Area.

3.5 Man-made heritage

A search of the Historic Environment Viewer (Archaeological Survey of Ireland <https://webgis.archaeology.ie/historicenvironment/>, accessed on 30/03/2022) shows numerous historical sites and monuments in the Cork Harbour region. Two are located on Spike Island itself, the National monument at Fort Mitchel and a burial ground recorded to the west of the island. The description below is taken from the Historical Environment Viewer:

“CO087-065003- Fort Mitchel

Description: Large star-shaped artillery fortification with glacis, occupying over half of Spike island, in Cork Harbour. Fort replaced a battery erected 1779 but abandoned by 1783 (Brunicardi 1982, 39). Work on new fortifications designed by Charles Vallancey began 1791; original plan for small irregular fort (MacCarthy 1970, 161-2), but structure built described as 'extensive artillery barracks' (Lewis 1837, vol. 2, 572). Barracks erected 1806 (Windele 1844, 193) and by 1811 ordnance depot established. From 1847-1883 fort used as convict prison. Described by Kerrigan (1978, 147) as of 'irregular outline consisting of six bastions connected by ramparts and surrounded by a broad dry ditch'; inside are ranges of barrack buildings arranged around a large parade ground. Fort previously used as civilian prison. According to Hurley (1980, 63), island 'identifiable with the early ecclesiastical site of Inispicht' of which there are no visible surface traces; map of 1625 appears to show ruined church on island. “

4.0 Screening for Environmental Impact Assessment.

There is no evidence from the Minister’s file that this site was pre-screened for the environmental impact of the proposed development.

A pre-screening assessment was carried out by the ALAB Technical Advisor (Appendix I). This found that this proposed 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.

Therefore, the Technical Advisor 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.

5.0 Appropriate Assessment

The Marine Institute on the behalf of the Department of Agriculture, Food and the Marine (DAFM) produced in June 2019, a Report supporting Appropriate Assessment of Aquaculture in Great Island Channel SAC (Site code: 001058) and Atkins/Marine Institute have produced a Report on Cork Harbour SPA: Appropriate Assessment of Aquaculture. DAFM subsequently produced an 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).

There were no negative impacts highlighted in terms of the proposed site and the nearby SAC sites. However, potential impacts on Special Conservation Interest Species from nearby SPA sites have not been conclusively ruled out, as described in the extract below from Atkins, 2019:

“Common Tern roosts may occur on the Spike Island shoreline during the spring and post breeding/autumn migration period and these roosts may occur at low tide. Terns routinely roost on artificial structures in Cork Harbour (such as the naval college slipway and the jetty at Ballybricken Point, so the presence of the trestles would not necessarily deter terns from roosting on the Spike Island shoreline. However, husbandry activity would be likely to flush the terns. Common Tern tend to roost in large concentrations in a small number of sites, so, unlike Cormorant, disturbance to a single roost site has the potential to cause significant impacts.

*There are several alternative roost sites available nearby, although these are all probably subject to higher levels of disturbance than the Spike Island roost sites. Overall, due to the small size of the aquaculture sites on Spike Island, and the presumed low intensity of husbandry activity, it seems unlikely that development of these aquaculture sites would cause significant disturbance impact to roosting Common Terns during the post breeding/autumn migration period. **However, further information about the usage of the Spike Island shoreline by roosting Common Tern (particularly the northern shoreline) and about the intensity of husbandry activity that would result from the development of the aquaculture sites, would be required to definitively assess this potential impact.***

*No information has been provided about the routes that would be used to access the aquaculture sites. We presume that the sites will have to be accessed by boat. Any such access routes would have the potential to cause disturbance to Redbreasted Mergansers, Cormorants and Great Crested Grebes. Redbreasted Mergansers are currently rare during the day in the East Harbour and West Harbour zones, while their night-time roost sites occur away from any likely access routes. However, in the event of a recovery of the Redbreasted Merganser population, boat disturbance in the East Harbour and West Harbour zones may become a significant factor limiting their usage of these areas. Cormorants and Great Crested Grebes are generally not very sensitive to boat disturbance while foraging, and the Great Crested Grebe roost sites occur away from any likely access routes. Overall, due to the presumed low intensity of husbandry activity associated with these aquaculture sites, it seems unlikely that boat access to the sites would cause significant disturbance impacts to the Cork Harbour Redbreasted Merganser, Cormorant and Great Crested Grebe populations. **However, further information about the intensity of husbandry activity would be required to definitively assess these potential impacts.***

The Licensing Authority concluded that in general 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.

Therefore, the Technical Advisor finds that the proposed activity at the Site may have **potential for significant effects** and it may have a significant deleterious effect, either individually, or in combination with other plans or projects, on SCI species or conservation objectives for any SPA concerned and as such, could adversely affect the integrity of any SPA sites concerned either individually or in combination with other plans or projects.

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.

This site is suitable for proposed development for the following reasons:

1. Technical advice is to the effect that there will be no significant impact on the immediate marine environment from this proposed development.
2. The area is suitable for the type of aquaculture proposed in that the substrate is suitable, access is possible, and rate of flow and tidal flushing appear adequate.

This site is not suitable for proposed development for the following reasons:

1. The possibility of negative impact on SCI species on nearby SPA sites from the proposed development has not been ruled out.
2. The island where the site is located is currently used for a year-round tourism venture, with ferries landing at a jetty adjacent to the proposed site.
3. The proposed site overlaps with an area used by kayakers and other recreational users during the summer months. The development of this site would displace these users and present a potential health and safety risk.

The site under appeal is therefore **considered not suitable** for the intended purpose.

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.

The proposed development could potentially have a positive impact on other uses or users of the area for the following reason:

1. As the appellant suggests, the site could potentially be incorporated into the existing tourism development on Spike Island, although the site would have to be significantly modified and greatly reduced to reduce the health and safety impacts for other water users and allow current use of the foreshore adjacent to the pier to continue. It would also require a much higher level of site marking than is standard to ensure other water users know to avoid the area, this may still not entirely mitigate the risk to recreational users who are unfamiliar to the area i.e., trainee dingy sailors, kayakers. There is also

no evidence that the current owners and operators of Spike Island would welcome this.

The proposed development could potentially have a significant adverse impact on other uses or users of the area for the following reason:

1. The proposed site overlaps with an area used by kayakers and other recreational users during the summer months. The site has supposedly been used previously for children's dingy sailing courses and is a popular area for kayakers to draw up their kayaks onto the beach after circumnavigating the island. Visitors to the Spike Island attraction are also known to utilize the foreshore for recreational purposes. The development of this site would displace these users and present a potentially significant health and safety risk.

The proposed development would have **a significant adverse impact** on the possible other uses or users of the area.

6.3 Statutory Status

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

The proposed development has the potential for **a significant adverse impact** on the statutory status of the area as outlined in Section 5 Appropriate Assessment.

6.4 Economic effects

Section 61 (d) considers 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.

While the proposed development would have a positive economic effect for the Appellant, there is the risk that the proposed development would have a significant negative economic impact on the existing tourism development on Spike Island, due to the issues discussed in Sections 6.1 and 6.2.

There is the potential for **a significant adverse effect** on the economy of the area due to the proposed development going ahead.

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.

While the site is unlikely to cause a significant negative impact on ecology of the immediate area, the outcomes of the Appropriate Assessment reports outlined in Section 5 above highlight the potential negative impact on SCI species of nearby SPA sites, specifically common tern nesting sites.

There is a **significant potential adverse effect** on the fauna of the area as a result of the proposed operation.

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.

Notwithstanding the outcome of Section 6.5 above, **no significant environmental effects** of the proposed development on the site or surrounding areas have been found during the technical review.

6.7 Effect on man-made heritage

The fort on Spike Island is registered as a National Monument and is currently a tourist attraction. The proposed development on the foreshore of Spike Island would not overlap with the fort area itself.

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed operation.

6.8 Section 61 Assessment Conclusions

In conclusion, the Section 61 assessment finds that **this site is deemed unsuitable for the proposed development** on the grounds of site suitability, other users, statutory status, ecological effects and economic impact as:

1. The possibility of negative impact on SCI species on nearby SPA sites from the proposed development has not been ruled out.
2. The island where the site is located is currently used for a large-scale year-round tourism venture, therefore, there is the potential for conflict of use with existing owners of the pier and tourism venue and the applicant/appellant on accessing and using the Island.

3. The proposed site overlaps with an area used by kayakers and other recreational users during the summer months. The development of this site would displace these users and present a potential health and safety risk.
4. The risk that the proposed development would have a significant potential negative economic impact on the existing tourism development on Spike Island.

6.9 Confirmation re Section 50 Notices

Under Section 50 of the Fisheries (Amendment) Act the Board has the power to consider any issues other than those raised in the appeal documents if they are matters to which under section 61, the Board may have regard. However, the same section also obliges the Board, if it does intend to take into account such other issues apart from those raised in the appeal documents, to give notice in writing to the parties and to persons who made submissions and observations, in accordance with section 50 (2) of the 1997 Act.

The Technical Advisor is of the opinion that there are not 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 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.

Following on from the technical Advisors site visit of 5 February 2022, a Section 47 notice was sent to the Appellant on the 21 February 2022 requesting details on proposed access to the site to include access for initial set up, transport across and within the site and storage location of any equipment required.

A response was received from the Appellant on the 15th March 2022. The Appellant stated that the site will be accessed by boat directly to the shore, not via the existing pier structure. Access across and within the site and for initial set up would be by boat. The Appellant also states he has the use of the site located at Fota Oyster Farm Ltd., at Rossleague, Cobh for the storage of any equipment required.

A copy of the notice that was sent is in Appendix II of this report.

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

7.1 Appeal issues

Appeal Issue	Technical Advisor's Response
<p>1. Time taken to assess the application</p> <p>The Appellant claims it took an excessive amount of time to process his application, having applied for this Site in September 2009. He did not receive a decision from the Minister until March 2021, a period of 11.5 years. The applicant feels the appeal process was deliberately protracted in his case.</p>	<p>While the time taken to assess the appeal does seem excessively protracted in the Technical Advisor's opinion, this report can only focus on the suitability of the site as proposed, given the current conditions. It is beyond the scope of this report to comment on the time taken by the Department in processing appeals or on any allegations relating to the protracted nature of the decision making.</p>
<p>2. Lack of adherence to standard procedure during processing of the application</p> <p>The Appellant claims he was informed by email that his application could not be progressed further in 2011, having not gone through the full assessment procedure in his opinion. In 2017 he was informed his application was still active and being considered. The applicant claims the application was not considered under the relevant statutory provisions in the period between 2011 and 2017.</p>	<p>The allegations made by the Appellant regarding the process undertaken by DAFM in processing and assessing his application are beyond the scope of this report to comment on.</p>
<p>3. Visual Impact assessment</p> <p>The Appellant disagrees with the Minister's first ground for refusal which found that the landscape and visual impacts of the application were of substantial impact significance.</p>	<p>The Technical Advisor agrees with the Appellant regarding the issue of visual impact of the site. Following a site visit, I am of the opinion that the proposed development would not have a substantial impact on the landscape and would not constitute a significant negative visual impact, being covered by water except at</p>

	low tide and being of a dark colour similar to the foreshore on which the structures would be located.
<p>4. Failte Ireland's concerns regarding the impact of the Site on other users</p> <p>The Appellant questions Failte Ireland's objections and opinions expressed in relation to the Site and states his opinion that his proposed development and tourism development can co-exist and enhance each other. He then goes on to say that he applied for this proposed development before tourism had been developed on the Spike Island site, so it was not considered in his initial application.</p>	<p>The Appellant is fully entitled to his personal opinions on Failte Ireland. However, this do not take away from Failte Ireland's right as a statutory body to make relevant submissions.</p> <p>The Appellant's point that he applied for the site before tourism was developed on the site is not relevant in this appeal as the proposal must be considered "de novo", that is, based on the facts and circumstances as they pertain at the time of the Board's determination.</p> <p>Regarding the Appellant's claim that he believes the two ventures can co-exist, there is currently no evidence that the owners and operators of Spike Island concur with this view.</p>

It should be noted that the consideration and determination of an appeal by the Board is considered to be "de novo", which means that it is generally based on the facts and circumstances as they pertain at the time of the Board's determination. The Technical Advisor has taken this under consideration when assessing this Appeal.

7.2 Submissions/Observations received

No additional submissions or Observations were received during the course of this appeal process.

8.0 Oral Hearing Assessment

In line with Section 49 of the Fisheries Amendment Act 1997 an oral hearing may be conducted by the ALAB regarding the licence appeals.

At this time an oral hearing has not been requested by the appellant.

It is considered, by the advisor, that an Oral Hearing is not required for this application where there is no outstanding conflicting technical information on relevant and significant aspects of the appeal which have not been resolved.

9.0 Recommendation of Technical Advisor with Reasons and Considerations

It is the recommendation of the Technical Advisor to uphold the Minister's decision and refuse the granting of an Aquaculture Licence for Site T05/546A at Spike Island, Cork Harbour, Co. Cork for the reasons outlined in Section 6.8 and 7.1 above. That is:

That the Site is deemed unsuitable for the proposed development on the grounds of site suitability, other users, statutory status, ecological effects and economic impact as:

1. The possibility of negative impact on SCI species on nearby SPA sites from the proposed development has not been ruled out.
2. The island where the site is located is currently used for a large-scale year-round tourism venture, therefore, there is the potential for conflict of use with existing owners of the pier and tourism venue and the applicant/appellant on accessing and using the Island.
3. The proposed site overlaps with an area used by kayakers and other recreational users during the summer months. The development of this site would displace these users and present a potential health and safety risk.
4. There is the risk that the proposed development would have a significant negative economic impact on the existing tourism development on Spike Island.

And, that the appeal issues raised, as outlined in Section 7.1, do not provide sufficient grounds to overturn the existing decision, notwithstanding the issues highlighted in Section 6.

Technical Advisor: Dr Ciar O'Toole

Date: 14 April 2022

References

Atkins, 2019. Cork Harbour: Appropriate Assessment of Aquaculture. A Report prepared on behalf of the Marine Institute. June 2019.

DAFM, 2019. 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)

CCC, 2014. Cork County Development Plan 2014-2020, Volume 1 Main Policy Material. Cork County Council.

EPA, 2021. Urban Waste Water Treatment in 2020. A Report of the Environmental protection Agency, November 2021.

EPA, 2022. Water Quality in Ireland 2018-2020. www.maps.epa.ie Accessed 30/03/2022

Failte Ireland (2021). Key Tourism Facts 2019. Report by Failte Ireland, March 2021.

Marine Institute 2019. Report on the Appropriate Assessment of Aquaculture in Great Island SAC. June 2019

Appendices

Appendix I -EIA Pre-screening form

An Bord Achomharc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



Environmental Impact Assessment Pre -Screening Report

The Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. No. 468/2012) and the Planning and Development Regulations 2001 to 2020 require an Environmental Impact Assessment (EIA) to be carried out above a certain threshold of aquaculture activity, with sub-threshold projects to be assessed on a case-by-case basis. This requires a preliminary examination to be carried out by the competent authority.

Table 1 outlines this preliminary examination carried out on behalf of the Aquaculture Licences Appeals Board by their technical advisor.

Table 1:

1. Name of Project	Licences for the culture of Pacific oysters at site T05/546A in Cork Harbour, Co. Cork
2. Is this project above the thresholds set out in The Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. No. 468/2012) and the Planning and Development Regulations 2001 to 2020?	No, these projects are sub-threshold
3. Description of Project	
(a) a description of the physical characteristics of the whole proposed development	Steel trestles and plastic mesh oyster bags containing Pacific oysters (<i>Crassostrea gigas</i>) of various sizes and ages laid out in rows on a 6-hectare site on the foreshore of Spike island, Cork harbour.

<p>(b) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected</p>	<p>Foreshore adjacent to the pier on Spike Island, running in an Easterly direction. The substrate is a mix of sand, gravel and rocks with a covering of mainly furoid algae on the lower intertidal. The site and the habitats it contain are not considered environmentally sensitive, it is not a Natura 2000 protected site and is in a location close to shipping and naval activity along with a number of industries. Spike Island itself is a tourist destination and a National Monument.</p>
<p>4. A description of the aspects of the environment likely to be significantly affected by the proposed development</p>	<p>The placement of the trestles will cause some level of increased shading to any species present and oyster farming can cause an increase in sedimentary deposition directly underneath the trestle structures. These sedimentary effects are highly localised and would be mitigated by local current flow. Shading is a very minor impact on these types of shore given the level of algal cover already present.</p>
<p>5. A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from:</p>	
<p>(a) the expected residues and emissions and the production of waste, where relevant</p>	<p>As mentioned in 4 above, the only expected residue, emission or produced waste of this proposed development is an increase in sedimentation directly under the trestle structures. This is caused by the placing of a structure in a location with a high sedimentation rate, which does not appear to be the case here, given the mainly gravel and rock-based substrate.</p> <p>Excreted waste from the oysters can built up directly underneath trestles in areas of low current flow, something that would not be expected to be an issue at this site given the tidal flow in the area.</p>

	No significant effects are predicted on the environment as a result of expected residues and emissions and the production of waste.
(b) the use of natural resources, in particular soil, land, water and biodiversity.	<p>Land use relates to the foreshore, both for trestle placement and access by boat. Any potential negative impacts of land use are discussed above in 5(a), with no significant effects predicted.</p> <p>Water use would involve the use of nutrients from the water column as a food source by the oysters. This is not expected to have a negative impact on other species given the relative sizes of the development and Cork Harbour.</p> <p>No other resources would be used as part of this proposed development.</p> <p>No significant effects are predicted on the environment as a result of the use of natural resources, in particular soil, land, water and biodiversity.</p>
(c) any other potential effects	No significant effects are predicted on the environment as a result of any other potential effects.

Conclusion:

It is considered that the proposed project is **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 or formal EIA screening report.

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

- (f) population and human health;
- (g) biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives;
- (h) land, soil, water, air and climate;
- (i) material assets, cultural heritage and the landscape; and
- (j) 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.

Assessment carried out by:

Dr Ciar O'Toole, Technical Advisor for the Aquaculture Licences Appeals Board.

04 April 2022.

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



Killian Tighe
8 Orilia Terrace
Cobh
Co Cork
P24 EY43
By Post & Email: killiantighe2@gmail.com

21 February 2022

Our Ref: AP1/2021
Site Ref: T05/546A

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to refuse an Aquaculture licence for the cultivation of oysters on bags and trestles at Site T05/546A on the foreshore in Cork Harbour.

Dear Mr Tighe

I refer to the above Appeal.

Pursuant to **Section 47(1)(a)** of the Fisheries (Amendment) Act, 1997, as amended, ("the Act"), where the Board is of the opinion that any document, particulars or other information is or are necessary for the purposes of enabling the Board to determine the Appeal, it may serve a notice on a party requiring that party to submit to the Board such documents, particulars or other information as are specified in the Notice.

Having considered the appeal and the information provided to it, the Board has determined that further documents are necessary for the purposes of enabling the Board to determine the Appeal.

The Board hereby requires you to provide the following:

Details on proposed access to the site to include access for initial set up, transport across and within the site and storage location of any equipment required. The Board requests that you accompany this information with a map showing your proposed access route to the site.

Should you require any clarification in terms of this request for additional information, please contact Dr Ciar O'Toole, Technical Advisor to the ALAB Board on ciar.otoole@alab.ie or 087-4097160.

In accordance with section 47 (1) (a) of the Act, the Board requires this information within **30 days** of receipt of this letter. Please note that if the documents, particulars or other information specified above are not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

Please also note that a person who refuses or fails to comply with a requirement under section 47 (1)(a) shall be guilty of an offence.

Yours sincerely,



Antoinette Conroy
Secretary to the Board