

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP8/2018**

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 AG Oysters Ltd ("the Applicant") against the decision of the Minister for Agriculture, Food and the Marine ("the Minister") to refuse to grant an Aquaculture Licence (and accompanying foreshore licence) to the Applicant for the cultivation of pacific oysters at site reference on site reference T3/96 in Bannow Bay, Co. Wexford.

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, 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 particular 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 9 October 2018, 14 November 2018, 11 December 2018, 22 January 2019, 26 March 2019, 30 April 2019 and 15 May 2019.

In reaching its determination on the appeal the Board noted and had regard to the following:

- the recommendation of its technical advisors that the proposed aquaculture site and its operation is unlikely to have significant effects on the environment by virtue of inter alia, its nature, size or location and that in-combination effects are also unlikely. Therefore an environmental impact assessment in accordance with S.I. 468 of 2012 is not required. The Board noted this recommendation and determined that no environmental impact assessment is required; and
- The Appropriate Assessment Conclusion Statement by the Minister which reflects the reports of November 2017 and March 2018. The Board determined the Conclusion Statement is adequate in terms of its assessment of the impacts of aquaculture activities to sensitive habitats, species and birds within Bannow Bay.

The Board determined the appeal on the basis of the following:

- (a) that the site is **not suitable** for the proposed development for the following reasons:
 - The application sites are located within Bannow Bay Special Protection Area and Bannow Bay Special Area of Conservation. Bannow Bay SPA is of international

importance for non-breeding/wintering birds and is designated for a range of bird species;

- Licensing of further sites for the intertidal culture of oysters is likely to cause significant displacement levels for a range of protected bird species that regularly use Bannow Bay to be exceeded. Where there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of specific shorebirds, the site is not considered suitable for licensing of further production units;
- The site has a significant sub-tidal component and straddles the navigable Channel;
- Some trestles will remain covered at low water, making regular husbandry difficult and presenting additional environmental and/or safety risks;
- The development will infringe on the approaches to New Quay and will create access difficulties for inshore and rescue vessels;
- The proposed site is located outside of the SUMS area;
- The gradient of the foreshore and the immersion regime of sections of the proposed site make it unsuitable for this type of aquaculture;
- Development of the site will require a new access point onto the foreshore and the impacts of this are undetermined;
- There may be potential for issues to arise relating to the carrying capacity of the site in terms of oyster production volumes, were this site to be licensed;

(b) The proposed development would have a **significant adverse impact** on some beneficial users of Bannow Bay for the following reasons:

- Displacement of shorebirds could impact populations of wintering birds and reduce the ecological value of the area and hence affect tourism and nature conservation interests.
- Restrictions on access to other users of the site will arise as a consequence of licensing of the new site, which will be outside of the SUMS area and straddles the navigable channel.

- Due to its location, the proposed development is highly likely to affect the recreational and amenity value of the site for a wide range of other users including watersports, anglers, leisure boaters and general navigation interests.
- (c) The proposed development would have a **significant adverse impact** on the statutory status of the area for the following reasons:
- The licensing of new aquaculture sites (in addition to existing and trial sites) in Bannow Bay is predicted to have significant displacement effects (i.e. loss of habitat leading to a predicted decline in population) for five species for which Bannow Bay is designated a Special Protection Area for birds (Grey Plover, Black-tailed Godwit, Bar-tailed Godwit, Knot and Dunlin);
 - The conservation objective for Bannow Bay is to maintain the favourable conservation condition of the SCI species, as defined by the attributes: population trend and distribution. Significant displacement effects relate to the attribute distribution where the target is that there should be no significant decrease in range, timing or intensity of areas used by the bird species listed, other than occurring from natural patterns of variation. The AA considered that where aquaculture was assessed as causing less than a 5% decrease in the Bannow Bay population of an SCI species, this was not considered to be significant;
 - The licensing of aquaculture for existing, trial and new sites in Bannow Bay would lead to displacement effects of between 13% and 16% for the species listed. The level of displacement was predicted to be less than significant only with the renewal of existing licenses. New aquaculture sites in Bannow Bay include that which is the subject of this Appeal;
 - Adverse impacts on bird species and/or populations could affect the designation of the site as a Wildfowl sanctuary;
- (d) The proposed development would have a **significant beneficial impact** on the economy of the area for the following reasons:

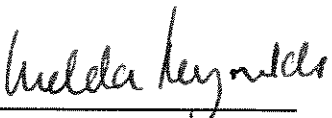
- In granting the additional licence additional local employment opportunities would likely be created with an associated benefit to the local economy
- (e) The proposed development would have a **significant adverse impact** on the ecology of the area for the following reasons:
- It is likely that significant adverse effects on the avi-fauna of the area would arise as a consequence of the proposed licensing of an additional aquaculture site due to significant displacement effects (i.e. disturbance and loss of habitat leading to a decline in population) that are predicted for five species for which Bannow Bay is designated a Special Protection Area for birds (Grey Plover, Black-tailed Godwit, Bar-tailed Godwit, Knot and Dunlin);
 - The licensing of aquaculture for existing, trial and new sites in Bannow Bay would lead to displacement effects of between 13% and 16% for the species listed. The AA predicted that the level of displacement was less than significant only with the renewal of existing aquaculture licenses. The aquaculture site which is the subject of this appeal is a new site. Displacement effects are predicted to be greatest with the licensing of existing, trial and new sites. The existing and trial sites relate to existing in situ trestles. New application sites relate to the placement of new trestles on intertidal habitat;
- (f) The development would lead to **significant adverse general environmental effects** as a result of the proposed development for the following reasons:
- Erosion of the adjacent shoreline by vehicular traffic accessing the site;
 - Compaction over soft sediments as a result of vehicular traffic accessing the trestles;
- (g) There would be **no impact** on the man-made heritage of value in the area as a result of licensing of the proposed site for the following reasons:

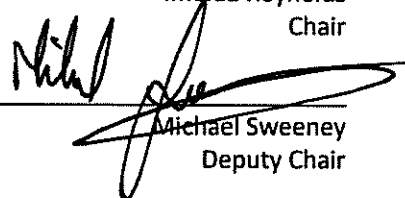
- The absence of any protected structures or recorded monuments in the area of the proposed aquaculture licence applications as indicated by the Record of Monuments and Places.

Having considered all the foregoing, the Board determined at its meeting on 15 May 2019, pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decision of the Minister made on 25 July 2018 to refuse to grant an aquaculture licence to the Applicant for the above site.

Dated this 18 day of June 2019

PRESENT when the Common Seal of the
AQUACULTURE LICENCES APPEALS BOARD
was affixed hereto:-


Imelda Reynolds
Chair


Michael Sweeney
Deputy Chair

