

Ms Mary O'Hara
Secretary
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
County Laois
R32 DTW5
By Registered Post
By Email info@alab.ie



10.01.2020

RINMORE

Appeal against determination of the Minister for Agriculture, Food and the Marine made on 12 April 2019

Your Ref: AP1 / 2019

Site Ref: T5 / 233

Dear Ms O'Hara,

Many thanks for your letter of 16 December 2019 regarding our appeal against the Determination of the Minister dated 12 April 2019 discontinuing our entitlement to continue aquaculture operations pursuant to section 19A(4) of the Fisheries (Amendment) Act 1997 (as amended) (the "**Determination**").

As ALAB is aware, in our appeal we raised objections regarding the entitlement of the Minister to make the Determination. As ALAB is also aware, we issued judicial review proceedings challenging the Determination, in addition to the appeal submitted to ALAB. We sought and obtained a stay on ALAB's consideration and determination of our appeal in circumstances where our judicial review proceedings raised bona fide concerns regarding the jurisdiction of ALAB to determine the appeal.

Following receipt of the Minister's Opposition Papers – in which he asserted that ALAB does have jurisdiction to entertain and determine the appeal – and following discussions between the Minister's and our legal representatives, it was agreed that the stay should be lifted to enable ALAB to consider and determine the appeal in accordance with law. For ALAB's information, we enclose the terms upon which it was agreed with the Minister that the judicial review proceedings would be adjourned.

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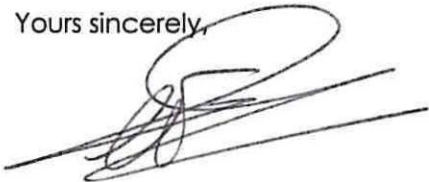


In determining the appeal and the question of its own jurisdiction, ALAB will no doubt have regard to all relevant matters, including the position adopted by the Minister in the judicial review proceedings to which you have already referred. In our view, it is a matter for ALAB, in the first instance, to decide for itself on its jurisdiction to entertain and determine our appeal against the Determination. For the avoidance of doubt, however, we confirm that, having vacated the stay granted in the judicial review proceedings for the purpose of enabling ALAB to consider our appeal, we could not dispute any decision by ALAB that it did have jurisdiction to consider and determine this particular appeal (whether by way of judicial review or otherwise).

We trust that the above is of assistance. We look forward to assisting in any way we can with the processing of the appeal and to having an opportunity to comment on any submissions which ALAB may receive with regard to the appeal, and, in particular, to providing further information received in response to Freedom of Information Act requests received after the appeal was submitted.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jan Feenstra', written over a horizontal line.

Jan Feenstra
MANAGING DIRECTOR

THE HIGH COURT
JUDICIAL REVIEW

RECORD No. 2019 / 292 JR

BETWEEN

SILVER KING SEAFOODS LIMITED
trading as MOWI IRELAND

Applicant

AND

MINISTER FOR AGRICULTURE, FOOD AND THE MARINE

Respondent

AND

AQUACULTURE LICENCE APPEAL BOARD

First Named Notice Party

AND

GLOBAL TRUST CERTIFICATION LIMITED
trading as SAI GLOBAL

Second Named Notice Party

AGREED TERMS

- 1 That the proceedings be adjourned generally with liberty to apply, including liberty to apply in relation to the stay provided for in paragraph 2 of the order of Mr Justice Noonan of 20 May 2019.
- 2 The stay on the Applicant's prosecution of its appeal of 3 May 2019 to the First Named Notice Party, the Aquaculture Licence Appeal Board ("ALAB"), imposed at paragraph 3 of the order of Mr Justice Noonan of 20 May 2019, is to be

discharged on consent to enable the Applicant to pursue that appeal, which it will do with all due expedition.

- 3 That in the event that ALAB determines that it has jurisdiction to entertain and determine the appeal (whether by way of a preliminary decision or in its substantive determination of the appeal, whichever is first in time), the Applicant agrees that its judicial review proceedings bearing Record No. 2019/292JR after the expiration of five months (representing two months more than the three month period prescribed under section 73 of the Fisheries (Amendment) Act 1997 for challenging a determination of ALAB by way of judicial review) from the date of the making of such determination by ALAB will be struck out with costs, to include any reserved costs, in favour of the Respondent to be taxed or adjudicated upon in default of agreement, save that it is agreed, in the event that judicial review proceedings are instituted within that period by a third party that entail a challenge to the jurisdiction of ALAB to entertain and determine the Applicant's appeal, it is agreed that the Applicant's judicial review proceedings will not be struck out pending the final determination of those judicial review proceedings. In the event that any such challenge to the jurisdiction of ALAB to entertain the Applicant's appeal is not successful, these judicial review proceedings will be struck out on the terms referred to above.
- 4 It is agreed that no further step will be taken in the proceedings pending the determination by ALAB that it has (or has not) jurisdiction to entertain and determine the appeal of the Applicant lodged on 3 May 2019, or the outcome of any third party judicial review proceedings challenging the jurisdiction of ALAB to entertain and determine the Applicant's appeal.