

An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



FAO of Cormac Little/Eoin O'Cuilleain
William Fry Solicitors
2 Grand Canal Square
Dublin 2
D02 A342

(8) December 2019

Our Ref: AP39/2019
Site Refs: T03/030/1

Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to grant with variations an Aquaculture and Foreshore Licence to T.L Mussels Ltd., on site ref: T03/030/1 (site D) for the bottom cultivation of mussels on a site on the foreshore at Wexford Harbour, Co. Wexford

Dear Sirs,

I wish to acknowledge receipt of your notices of appeal on behalf of T.L Mussels Ltd and fee for €457.10 received in this office by hand on 16 October 2019 and your letter dated 16 October 2019.

Please note that Section 43(1) of the Fisheries (Amendment) Act, 1997 (**the Act**) requires that ALAB shall, as soon as practicable after receiving a notice of appeal, send by post to the Minister a copy of the notice. Section 42 of the Act entitles the Board, in its discretion, to treat two or more appeals as, and the appellants as parties to, a single appeal. The Board has not as yet exercised this discretion but may do so. Section 44(1) of the Act obliges the Board, as soon as practicable after receiving a notice of appeal, to give a copy to each other party to the appeal. Section 45(1) of the Act provides that a person who is not a party may make submissions or observations in writing to the Board in relation to an appeal and section 40(9) of the Act obliges the Board to publish on its website notices of appeal served on it.

The Board notes that in your letter dated 16 October 2019, it is stated that:

"The enclosed Appeals (and the annexes thereto) contain commercially sensitive information. For the purposes of section 36 of the Freedom of Information Act 2014 and Section 30 of the Act, this information should not be disclosed to any persons except for the relevant officials of ALAB on a strictly "need to know" basis."

This is inconsistent with the obligations imposed on the Board pursuant to the Act. As is apparent from the foregoing the Board is required, by virtue of section 43(1) of the Act, to send the Minister for Agriculture, Food and the Marine a copy of the notices of appeal and by virtue of section 44(2) of the Act, the Minister may make submissions or observations in writing to the Board in relation to the

appeals within a period of 30 days. The Board is also required to publish on its website the notices of appeal and a person who is not a party may make submissions or observations in writing to the Board in relation to appeals.

Furthermore, should the Board exercise its discretion to treat two or more appeals as, and the appellants as parties to, a single appeal, the Board will also be required, pursuant to section 44 (1) of the Act, to give a copy to each other party to the appeal. There are other provisions in the Act which may require that the Board circulate the appeal to other parties. And, as the appeal progresses, it may prove necessary for the Board to give the information to other parties, *e.g.* consultant or advisors or at an oral hearing. The Board also has obligations in respect of the public's right to participate under EU law (*e.g.* EIA and Habitats Directive).

In accordance with the provisions of Section 46(1)(a) of the Act, the Board hereby serves notice on you requesting you within 30 days beginning on the date of service of the notice to identify the information that is commercially sensitive and whether you require it to be redacted. It is noted that in the event that you require any information to be redacted, that redacted information will not be available to any party, including the Board, and will not be considered by the Board in the appeals.

In the alternative you may confirm that you will proceed with the appeals without any confidentiality caveat; or, you may, pursuant to section 53 of the Act, withdraw the appeals by notice in writing to the Board.

As regards making further submissions to ALAB, including submissions relating to information obtained from responses received by your FOI/AIE requests, section 41(3) of the Act provides that an appellant shall not be entitled to elaborate in writing on, or make further submissions in writing in relation to, the grounds of appeal stated in the notice of appeal or to submit further grounds of appeal, and any such elaboration, submissions or further grounds of appeal received by the Board shall not be considered by it. It should be noted, however, that this is without prejudice to section 46 of the Act which allows the Board to request a party to make submissions or observations in relation to the appeal in the interests of justice.

Yours sincerely,

Mary O'Hara

Mary O'Hara
Secretary to the Board