

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



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

Appeal Reference Number: **AP6/2/2018**

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 **Victor & Lynda Morgan** ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to **grant** a Licence for the cultivation of Mussels using longlines and ropes at Site T05/590A ("**the Site**") on the foreshore at Dunmanus Bay, Co. Cork to Dunmanus Bay Mussels Ltd ("**the Applicant**")

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the notices issued by the Board pursuant to section 47(1) of the Act to Dunmanus Bay Mussels Ltd and their response, namely the "Suitability of Mussel Production Site, Dunmanus Bay, County Cork" report dated September 2021 produced by AQUAFAC International Services Ltd ("**the AQUAFAC Report**"), the notice issued by the Board pursuant to section 47(1) of the Act to National Parks & Wildlife Service and their responses, the technical advisor's report submitted to the Board by RPS Consultants dated April 2019 ("**the RPS TA Report**"), the Marine Institute's reports regarding "Appropriate Assessment Screening for Aquaculture Activity in Dunmanus Bay" dated October 2015, July 2017, July 2020 and June 2022, the report submitted to the Board by MERC Consultants dated September 2022 ("**the MERC Report**") and Supplementary Technical Advisor's Report of the Board's Technical Advisor dated 18 November 2022 ("**the Supplemental Report**"), 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 05 June 2018, 12 June 2018, 28 August 2018, 09 October 2018, 14 November 2018, 11 December 2018, 22 January 2019, 26 March 2019, 30 April 2019, 15 May 2019, 25 June 2019, 09 October 2019, 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2022, 22 April 2020, 10 September 2020, 08 October 2020, 05 November 2011, 10 December 2020, 12 January 2021, 02 March 2021, 1 April 2021, 29 April 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, 14 April 2022, 12 May 2022, 14 July 2022, 25 August 2022, 06 October 2022 and 17 November 2022.

GROUNDS OF APPEALS

The grounds of this appeal are summarised as follows:

- The Appellant claimed that the proposed development was likely to have negative impacts on the locality due to a combination of biodeposition and low flushing rates of the proposed development at the Site.
- The Appellant expressed concerns regarding the potential negative impacts of this development on local amenities in the area.

- The Appellant claimed that requirements under Appropriate Assessment had not been fulfilled.
- The Appellant claimed the period of public consultation was insufficient.
- The Appellant claimed the development at the Site would result in negative odours which had not been considered.

A further description of the grounds for appeal are given in the the RPS TA Report.

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, under these requirements, the project did not require an Environmental Impact Assessment and was not likely to have significant effects on the environment by virtue of its size, nature or location.

Therefore, the Board is satisfied that the project was not likely to have significant direct or indirect effects 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.

The Board has concluded that the proposed project is unlikely 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 and the EIA Directive (2011/92/EU).

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 the Marine Institute's "Appropriate Assessment Screening

for Aquaculture Activity in Dunmanus Bay” of October 2015, July 2017, July 2020 and June 2022 and adopted same.

The Board noted there was no equivalent Appropriate Assessment Screening available for Aquaculture Activities in Dunmanus Bay in relation to Special Protected Areas (“SPA”) outside of a 15 km limit.

Having regard to all of the foregoing, the Board found that, at this time, the proposed activity at the Site had not been sufficiently screened under the Appropriate Assessment requirements in regard to potential impacts, and as such, it was not possible to rule out the potential for significant effects on SCI species or conservation objectives for any SPA sites yet to be included in an assessment.

Therefore, the Board cannot rule out the potential for the Site to cause a significant deleterious effect, either individually, or in combination with other plans or projects, on SCI species or conservation objectives for any SPA sites yet to be assessed.

DETERMINATION

The Board has determined the appeal on the grounds that:

- (a) The Board finds that the evidence presented in the AQUAFACT Report, along with the findings of the MERC Report do not allow them to rule out potential negative environmental and ecological impacts at, and adjacent to the Site. Due to the potential negative impacts of the proposed development on the sensitive species recorded in the vicinity of the Site, the Board finds that **the Site is not suitable for the proposed development.**
- (b) The Board found that the AA screenings carried out did not consider all the relevant SPA sites and the Special Protected Interest species which could be potentially impacted by the proposed development. Therefore, the Board finds that **the potential for significant negative impacts on Natura 2000 sites and species has not been ruled out at this time.**
- (c) The Board finds that the evidence presented in the AQUAFACT Report, and the findings of the MERC Report do not allow them to rule out potential negative environmental and ecological impacts at, and adjacent to the Site. Therefore, the

