

## AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP43/2018**

### 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 Gerard O'Reilly ("**the Applicant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to refuse to grant an Aquaculture Licence to the Applicant, for the cultivation of Pacific Oysters using bags and trestles at Castlemaine Harbour, Co. Kerry on Site T06/392 ("**the Site**")

**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, the Applicant's response to notice issued pursuant to Section 47 of the Act, 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 14 November 2018, 11 December 2018, 22 January 2019, 26 March 2019, 30 April 2019, 15 May 2019, 25 June 2019, 26 August 2019, 9 October 2019, 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2020, 12 January 2021, 5 February 2021, and 2 March 2021 and determined at its meeting on 2 March 2021 pursuant to Section 40(4)(a) of the Act to **CONFIRM** the decision of the Minister and **REFUSE** to uphold the Appeal.

In reaching its determination on the Appeal the Board considered and determined as follows:

#### **Environmental Impact Assessment**

The Board considered the proposed aquaculture at the Site and its potential impact on human beings, flora and fauna; soil, water, air, climate and the landscape; material assets and the cultural heritage; and the interaction between these factors and having done so, determined that the proposed aquaculture is unlikely to have significant effects on the environment by virtue of inter alia, its nature, size or location and as such an environmental impact assessment in accordance with S.I. 468 of 2012 was not required.

#### **Appropriate Assessment**

The Board adopted the Castlemaine Harbour Special Area of Conservation ("**SAC**") and Castlemaine Harbour Special Protection Area ("**SPA**") Appropriate Assessments (Marine Institute, 2018 & 2019 and Niras, 2018 & 2019), the Appropriate Assessment Conclusion Statements by the Minister relating to the SAC and SPA (August 2018 & October 2019) ("**AAs**") and having done so concluded there is currently insufficient data to rule out Adverse Effects On

Site Integrity, in terms of disturbance (noise/visual) and displacement on the bird species listed as Species of Conservation Interests and from the data available, there is potential for the Site to have a significant effect on the conservation objectives of the SPA in terms of Species of Conservation Interests (waterbird) displacement and disturbance. Licensing this Site therefore has potential to negatively affect the Species of Conservation Interests population.

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

1. The Site is not suitable for the proposed application for the following reasons:
  - (a) Species of Conservation Interests for Castlemaine Harbour have potential to be negatively impacted through displacement and disturbance (both noise and visual), therefore impacting on the conservation objectives of the SPA; and
  - (b) insufficient data exists at the spatial scale of the Site to fully evaluate and understand the potential impact of oyster cultivation on waterbirds listed as Species of Conservation Interests for the SPA, some of which some undergone significant declines, as detailed in the report of the Board's technical advisor and at Annex I: Castlemaine Bird Data Report to that report.
2. The Site lies within the Castlemaine Harbour Mussel Fishery Order area. The Applicant requires the Order holder's consent to develop the Site and has not provided the Board with any such consent.
3. While the proposed development is considered to have a non-significant impact on the statutory status of the Site in terms of the SAC habitats listed as Qualifying Interests, it is considered to have potential to pose a significant adverse effect on the statutory status of the Site in terms of the SPA.
4. The proposed development is considered to pose a significant adverse effect on the birds described as being Species of Conservation Interests for the Site, which is designated as an SPA, for the following reasons:
  - (a) the Site is located within NPWS survey subsite OK469 which in 2010 was shown to have been of Moderate importance to waterbirds in general. OK469 was also classified

as being of moderate risk of disturbance from aquaculture and all associated activities. Birds which have been described as being sensitive to disturbance have potential to be present within the Site, access route to the Site and along the adjacent shoreline; and (b) recent over-wintering bird studies within the SPA have highlighted declining long-term trends in 14 of the 15 Species of Conservation Interests species and declining short-term trends for 10 of the 15 Species of Conservation Interests species, as detailed in the report of the Board's technical advisor and at Annex I: Castlemaine Bird Data Report to that report.

5. The proposed development is considered to have significant adverse effects on the possible other uses or users of the area, as the Site lies within the Castlemaine Harbour Mussel Fishery Order area. The Applicant requires the Order holder's consent to develop the Site and has not provided the Board with any such consent.
6. The proposed development is considered to have an otherwise significant positive effect on the economy of the area and no effect on the man-made heritage of value in the area as a result of the proposed operation.

Having considered all the foregoing, the Board determined at its meeting on 2 March 2021, pursuant to Section 40(4)(a) of the Act, to **CONFIRM** the decision of the Minister and **REFUSE** to uphold the Appeal.

Dated this *29th* day of *March* 2021

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



*Imelda Reynolds*  
Imelda Reynolds  
Chair

*Michael Sweeney*  
Michael Sweeney  
Deputy Chair