

## AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 20/2019**

### 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 and substituted) ("**the Act**") by BioAtlantis Aquamarine Ltd., Clash Industrial Estate, Tralee, Co. Kerry ("**the Appellant**" and "**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 mussels using longlines on the subtidal foreshore on Site Ref: T06/326A at Illauneagh Island, Sneem, Kenmare Bay, Co Kerry ("**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 and the matters set out at Section 61 of the Act, 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 2019, 10 December 2019, 31 January 2020, 26 February 2020, 22 April 2020, 15 May 2020 and 11 June 2020.

The Board noted and accepted the opinion of its Technical Advisor that the proposed aquaculture at the Site and its operation was unlikely to have significant effects on the environment by virtue of *inter alia*, its nature, size or location, and also that in-combination effects were unlikely. Accordingly the Board concluded that an environmental impact assessment in accordance with S.I. 468 of 2012 was not required.

The Board also noted the Appropriate Assessment carried out by Marine Institute in respect of the Kenmare River SAC dated March 2019 and the Appropriate Assessment Conclusion Statement of the Minister dated September 2019. The Board also noted the opinion of its own Technical Advisor with reference to Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) within a 15 km radius of the Site, and concluded that due to the distance of the Site from the relevant SACs and SPAs and the type of aquaculture proposed at the Site, there was no potential for impact on the features of interest or conservation objectives of the relevant Natura sites, alone or in combination with other projects or plans and accordingly no further Appropriate Assessment was required.

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

- (a) The Site is **not suitable** for the harvest of mussel seed and on-growing of mussel seed. While the Board noted the Site is in many respects, suitable for the cultivation of mussel seed, the Board noted the Applicant had applied for an Aquaculture Licence pursuant to section 7 of the Act, and not a Trial Licence pursuant to section 9 of the Act. The Board noted that the Site is directly exposed to south westerly swell waves from the Atlantic Ocean and is situated in significant water depths, and the combination of these factors would allow severe swell waves to enter the Site. The Board considered there is significant uncertainty regarding the ability of the proposed cultivation technique to

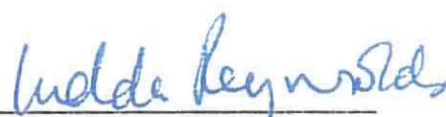
withstand the wave environment at the Site, which is likely to be subject to occasional extremes of ocean swell height and wave periods as well as large and potentially damaging swells on a more regular basis. That being the case, the Board determined that the Site is not suitable for the aquaculture activity proposed;

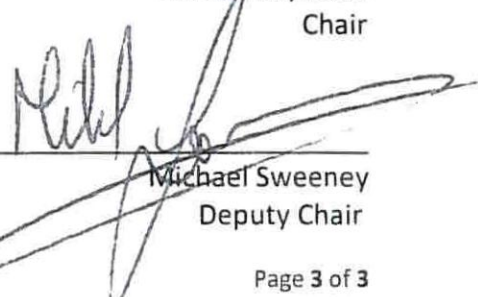
- (b) The proposed development would have no significant effect on other users of the area;
- (c) The proposed development would have no impact on the statutory status of the area;
- (d) The proposed development would have a non-significant effect on the local economy, and may have a positive effect on the local and wider economy;
- (e) The proposed development would have no significant effect on the ecology of the area;
- (f) No significant additional general environmental effects are considered likely to arise as a result of the proposed development; and
- (g) There would be no impact on the man-made heritage of value in the area.

Having considered all the foregoing, the Board determined at its meeting of 11 June 2020 pursuant to Section 40(4)(a) of the Act, to **CONFIRM** the decision of the Minister to **REFUSE** to grant an aquaculture licence to the Applicant for the Site.

Dated this 3<sup>rd</sup> day of JULY 2020

The affixing of the Seal of the  
**AQUACULTURE LICENCES APPEALS BOARD**  
was authenticated by: -

  
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Imelda Reynolds  
Chair

  
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Michael Sweeney  
Deputy Chair