

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 10/2019**

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) ("**the Act**") by Mr. Pat Moran, The Mount, Cheekpoint, Co. Waterford ("**the Appellant**" and "**the Applicant**"), against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to refuse an application for the renewal of an Aquaculture Licence for the cultivation of Pacific Oysters using bags and trestles on the intertidal foreshore on Site Ref: T06/386A in Bunaclugga Bay, Shannon Estuary, 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 (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 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2020, 22 April 2020, 15 May 2020, 11 June 2020, 9 July 2020, 6 August 2020 and determined at its meeting on 6 August 2020, pursuant to Section 40(4)(a) of the Act, to **CONFIRM** the decision of the Minister to **REFUSE** an aquaculture licence to the Applicant.

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

- That the aquaculture proposed at the Site would depend on natural processes for production and supply of feed and accordingly the Board determined that an EIA Screening was not required.
- The Board had regard to (1) the River Shannon and Fergus Estuaries SPA: Appropriate Assessment of Aquaculture dated May 2019 prepared by Atkins and (2) Report supporting Appropriate Assessment of Aquaculture in Lower River Shannon SAC dated August 2019 and having done so determined that it would adopt both.

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

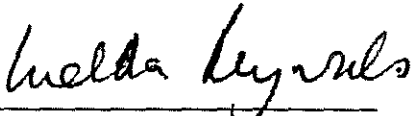
The Site is considered unsuitable for the intended purpose for the following reason:

1. The Appropriate Assessment of aquaculture activities within the Special Protection Area (SPA) concluded there was moderate potential for the development of the Site to cause significant displacement impacts to a Special Conservation Interest ("SCI") species, namely the Ringed Plover.
2. The situation of the Site on the preferred habitat of this SCI species (dry Intertidal sandy shore) and its location within an area considered to be of very high importance for Ringed Plover (Ballylongford/ Bunaclugga Bay) together with the lack of continuous up to date monitoring indicates that there is potential for significant displacement effects if the license were to be approved.
3. There is insufficient data to show that the Site would not have a detrimental effect on the distribution of Ringed Plover within Bunaclugga Bay and the wider River Shannon & Fergus Estuaries SPAs. Bunaclugga Bay has been shown to be extremely important for this species in the context of the overall SPA, with 54.45% of all Ringed Plover, within the SPA, recorded in this subsite during the 2010/2011 National Parks and Wildlife Waterbird Survey Programme surveys.
4. Adopting the precautionary principle, as it cannot be shown there is no scientific doubt that the proposed development at the Site will not have a negative impact on the Conservation Objectives of the SPA.

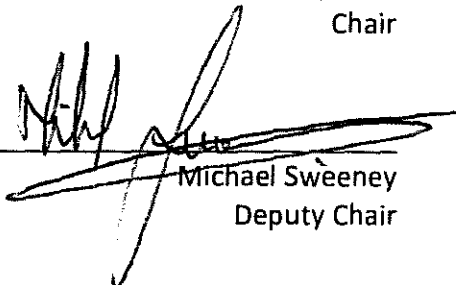
Having considered the foregoing, the Board determined the Appeal pursuant to Section 40(4)(a) of the Act, by determining to **CONFIRM** the decision of the Minister to **REFUSE** an aquaculture licence to the Applicant.

Dated this 22 day of September 2020

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



Imelda Reynolds
Chair



Michael Sweeney
Deputy Chair