

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 19 /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 Rosemary Purcell, 28 Main Street, Kenmare, Co Kerry ("**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 oysters using bags and trestles on the inter-tidal foreshore on site reference T06/201 within Dunkerron Harbour, Upper 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 (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 and 11 June 2020 and determined at its meeting on 11 June 2020, pursuant to Section 40(4)(b) of the Act, to **GRANT** an Aquaculture Licence to the Applicant.

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

Environmental Impact Assessment

The Board considered the aquaculture taking place at the Site and its potential impact on (a) human beings, flora and fauna; (b) soil, water, air, climate and the landscape; (c) material assets and the cultural heritage, and (d) the interaction between the factors mentioned at (a), (b) and (c) above.. Having done so, the Board concluded that the Site and its operation is unlikely to have significant effects on the environment by virtue of

inter alia, its nature, scale, size or location and also concluded that in-combination effects are unlikely. Therefore, the Board determined that an environmental impact assessment in accordance with S.I. 468 of 2012 is not required.

Appropriate Assessment

The Board noted that an Appropriate Assessment had been carried out for the Site by the Marine Institute on behalf of Department of Agriculture, Food and the Marine ("**the AA**"). This assessment concluded that there was no potential for the Site to impact the conservation objectives of Kenmare River SAC given that overlap of the Site with qualifying interests in the SAC is very low. The Board determined that the AA is adequate and that the production of Pacific oysters at the Sites, individually or in combination with other plans or projects, is not likely to have a significant effect on the conservation objectives Kenmare Bay SAC. The Board also had regard to its Technical Advisor's report noting that they had also examined all Natura 2000 sites within a 15km radius of the Site and the opinion of its Technical Advisor that due to the distance from the Site and the location of features of conservation interest as well as the type of aquaculture taking place at the Site, that there is no potential for significant impact on the features of qualifying interests or conservation objectives of any of these Natura 2000 sites, alone or in combination with other projects or plans. Therefore, the Board determined that no further Appropriate Assessment was required.

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

- (a) The Site is suitable for the intended purpose for the following reasons:
- The waters of Dunkerron Harbour where the Site is located are relatively sheltered and there is reasonable access to the Site;
 - The majority of the Site is flat and relatively hard with a mixture of mud and gravel;
 - The tidal regime at the Site is suitable for intertidal oyster growing;

- The Site is located within designated shellfish waters and the Appellant has successfully grown oysters at the Sites for a number of years;
 - The oysters grown at the Site are regularly tested according to data from the Sea Fisheries Protection Authority ("SFPA") monthly shellfish sampling programme and undergo purification as required prior to human consumption. There is no evidence from the monthly testing results provided by the SFPA that there is an issue with sewage discharges from the Kenmare wastewater treatment plant impacting shellfish at the Site.
- (b) The renewal of the Aquaculture Licenses at the Site will not cause significant negative impacts on other users of the Site;
- (c) The renewal of the Aquaculture License at the Site will not cause significant negative impacts to the statutory designation of the Site, to nearby designated sites or statutory plans including Kerry County Development Plan;
- (d) The renewal of the Aquaculture License at the Site will have a positive economic impact on the local economy;
- (e) The renewal of the Aquaculture License at the Site will not cause significant negative ecological impacts. The Aquaculture Licence shall include conditions as follows:
- That sterile triploid oyster seed only be used on the Site;
 - Requiring the Applicant to agree with the Department of Aquaculture Food and the Marine a contingency plan which shall identify, *inter alia*, methods for the removal from the Site of any invasive non-native species introduced as a result of operations at the Site; and
 - That the access route over the intertidal habitat be strictly adhered to, in order to minimise habitat disturbance.

- (f) The renewal of the Aquaculture License at the Site will not cause significant negative environmental impacts;
- (g) The renewal of the Aquaculture License at the Site will not give rise to significant impacts on the man-made heritage of the area.

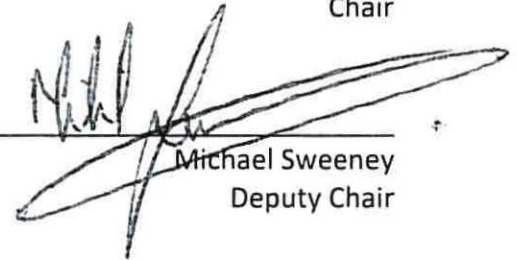
Having considered all the foregoing, the Board determined the Appeal pursuant to Section 40(4)(b) of the Act, by determining **TO GRANT** an Aquaculture Licence to the Applicant.

Dated this 14 day of August 2020

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



Imelda Reynolds
Chair



Michael Sweeney
Deputy Chair