

## AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 22 /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 Kush Seafarms Ltd., O'Shea House, New Road, Kenmare, Co Kerry ("**the Appellant**" and "**the Applicant**"), against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to refuse a Renewal Licence (and accompanying foreshore licence) for the cultivation of oysters using bags and trestles on the intertidal foreshore on Site Ref: T06/179B 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 under appeal is suitable for the intended purpose for the following reasons:
- The waters of Dunkerron Harbour where all aquaculture sites under appeal are located are relatively sheltered;
  - There is reasonable access to the sites;
  - 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 appellants have successfully grown oysters at these sites for a number of years;
  - The sites are located within designated shellfish waters;
  - The oysters grown at these sites have been regularly tested according to data from the Sea Fisheries Protection Authority monthly shellfish sampling program for a number of years and have been classified B;
  - Class B oysters are considered fit for human consumption after purification for forty eight hours;
  - The Marine Engineering Division of the Department of Food Agriculture and Marine considers the sites suitable for oyster cultivation using bags and trestles , provided that no storage of trestles or equipment to be permitted on site or in the vicinity of access to the sites and that Site boundaries are redrawn to exclude waters too deep for oyster cultivation
- (b) The renewing of aquaculture and foreshore licenses to those sites under appeal will not cause significant negative impacts on other users of the site;
- (c) The renewing of aquaculture and foreshore licenses will not cause significant negative impacts to statutory designations of the site, nearby designated sites or statutory plans including Kerry County Development Plan;
- (d) The renewing of aquaculture and foreshore licences under appeal will have a positive economic impact on the local economy;

- (e) The granting of renewal of aquaculture and foreshore licenses for the sites under review will not cause significant negative ecological impacts;
- (f) The granting of aquaculture and foreshore licenses will not cause significant negative environmental impacts;
- (g) Licensing of the application site is unlikely to give rise to significant impacts on the man-made heritage of the area.

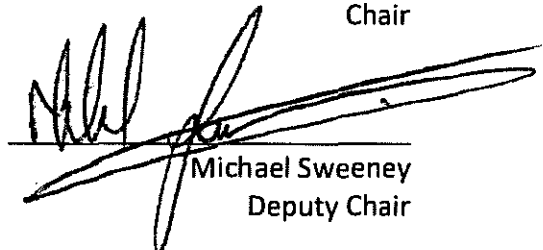
Having considered all the foregoing, the Board determined the Appeal pursuant to Section 40 (4) (b) of the Act, by determining to grant an aquaculture licence to the Applicant.

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

