

IN THE MATTER OF:

APPLICATIONS FOR LICENCES FOR SEAWEED FARMS AT PORT QUIN BAY

MLA/2023/00308 AND MLA/2023/00307

FURTHER LEGAL SUBMISSIONS

A. INTRODUCTION

1. I have been instructed to review the “*Legal Principles Submission*” dated 8 March 2024 authored by Ms Anjoli Foster of counsel and provide further submissions as to any further matters arising following the submission of additional information in relation to the above applications. This additional information has been provided in response requests from the Marine Maritime Organisation (“**MMO**”) referred to as “**FIR 1**” and “**FIR 2**” respectively and is contained in a report, dated September 2024 (“**the Report**”).

B. APPLICABLE LEGAL PRINCIPLES

2. I have reviewed the submissions drafted by Ms Foster and can confirm that the legal principles set out therein remain valid and up to date. Ms Foster’s conclusion was as follows:

In conclusion, for the reasons set out above, the proposals conflict with the South West Marine Plan, when considered as a whole. Pursuant to section 58(1) of the [Marine and Coastal Access] 2009 Act, the decision in accordance with the appropriate marine policy documents would be to refuse the applications, and material considerations do not indicate otherwise. Further, having regard to the need to protect the environment, the need to protect human health, and the need to prevent interference with legitimate uses of the sea (see section 69 of the 2009 Act), these issues also further support refusal of the applications. In particular, given the lack of information and reasonable scientific doubt, the MMO cannot safely reach a conclusion that the proposed seaweed farms will not have a likely significant effect on protected sites and species (as per regulation 63 of the [Conservation of Species and] Habitats Regulations[2017]).

C. SUBMISSIONS ON THE REPORT

3. I note that those instructing me have prepared a public consultation submission in response to the Further Information Document submitted by Biome Algae and Camel

Fish. I do not repeat the matters set out in these assessments, but make the following short submissions based on them:

- a. The Report is authored by the applicants and therefore falls short of the “*independent external review*” which the MMO’s “*Process for evidence quality assurance*” document states will be required to add confidence.
 - b. On the contrary, the Report exhibits clear indication of bias and subjectivity, thereby falling short of the “*objective information*” required to assess risks to European Sites, pursuant to reg.63 of the Conservation of Species and Habitats Regulations 2017: see *Waddenzee* [2005] 2 CLR 31.
 - c. The information contained in the Report is inaccurate and misleading in several respects. It therefore does not amount to “*complete, precise and definitive findings and conclusions capable of dispelling all scientific doubt as to the effects of the proposed works on the protected area concerned*”: cf *Grace and Sweetman*, C-164/17, EU:C:2018:593, July 2018.
 - d. By way of example only, the Report significantly understates the extent of the physical infrastructure which will be provided. Unless the full extent of the project is considered (and made clear to consultees) it is obviously impossible to reach any reliable conclusions as to its effects – let alone conclusions beyond scientific doubt.
 - e. The Report does not provide any evidence of the selection criteria which were used for these sites or explain why a more appropriate (and less ecologically sensitive) site could not have been selected. The proposals therefore conflict with numerous policies in the South West Marine Plan as they fail to demonstrate that they will, in this order, avoid, minimise or mitigate impacts.
 - f. The MMO’s attention is drawn to the report by Ecospan Environmental Ltd “*Review of Seaweed Farm Marine Licence Applications: Port Quinn*” which remains valid and must be considered in full.
4. In conclusion, for the reasons set out above and in Ms Foster’s submissions, it remains the case that the proposals conflict with the South West Marine Plan, when considered as a whole. Pursuant to section 58(1) of the 2009 Act, the decision in accordance with the appropriate marine policy documents would be to refuse the applications, and material

considerations do not indicate otherwise. Further, having regard to the need to protect the environment, the need to protect human health, and the need to prevent interference with legitimate uses of the sea (see section 69 of the 2009 Act), these issues also further support refusal of the applications. In particular, given the lack of information and/or the subjective and inaccurate nature of the information provided, the MMO cannot safely reach a conclusion that the proposed seaweed farms will not have a likely significant effect on protected sites and species (as per regulation 63 of the Habitats Regulations).

BEN FULLBROOK
LANDMARK CHAMBERS
21 November 2024