

1. Mr George Burke, Principal
2. Rinaí Aire

B. Burke 7/12/2010  
 Mr. Heade,  
 for your review please  
 and to advise the Minister.  
 Eddie Kern  
 Rinaí Aire 9/12

Recommended for approval  
 to grant a foreshore licence  
 subject to conditions as  
 set out.

Ref. MS 51/8/1363

### Approval of Foreshore Licence Application

**Ministerial approval sought:**

The Minister's approval is sought to grant a Foreshore Licence for a term of 10 years, subject to periodic review of the results of a monitoring programme that will be a specific condition of the licence, under Section 3 of the Foreshore Act, 1933 to BioAtlantis, Kerry Technology Park, Tralee, Co. Kerry.

The licence will permit the mechanical harvesting of seaweed within specific areas and under a specific monitoring plan in Bantry Bay.

A more detailed case summary is attached (Annex 1).

**Public Consultation:** This application was advertised on 12 December 2009 and made available locally for 21 days, there were no observations.

**Compliance with Environmental Legislation:** The site is not in an SAC or SPA, legislative checklist attached (Annex 2)

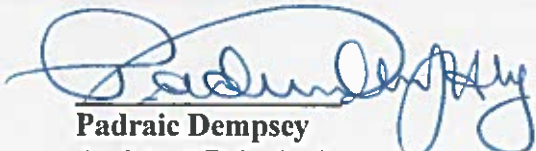
**Evaluation of the Application:** There were no objections to the development from the Department's consultees subject to the inclusion of a number of specific conditions addressing matters such as an monitoring programme, publication of a marine notice and appropriate licensing of vessels. (Annex 3). MLVC report attached (Annex 4).

There were no observation/objections from members of the public.

**Agreement of Applicant:** BioAtlantis have accepted the specific conditions to attach to the licence.

**Valuation:** Lisney's have proposed an annual rent of \_\_\_\_\_ and BioAtlantis after some discussion have agreed to this.

**Next steps:** If approval is granted by the Minister, BioAtlantis will be informed that permission has been granted and the Chief State Solicitor's Office (CSSO) will be instructed to prepare a licence for signature.

  
 Padraic Dempsey  
 Assistant Principal  
 7 December 2010

Approved  
  
 11/12/2010

99

**Foreshore Licence Application  
Case Summary**

**Applicant:** BioAtlantis Ltd

**Development Location:** Bantry Bay, Cork

**Purpose:** Mechanical Harvesting of seaweed

**Application Received:** 22 June 2009

**Public Consultation:**

Public notice concerning this application was published in the Southern Star newspaper on 12 December 2009 and the relevant documents were on display at Bantry Garda Station for a period of 21 days. No representations were received from the public.

**Planning Permission:**

Planning permission is not applicable in this case as it is an application to harvest seaweed and has no land based aspect.

**Rental Valuation:** Lisney's have proposed an annual rent of \_\_\_\_\_ and BioAtlantis after some discussion have agreed to this.

**Basis for Recommendation:**

The Department's consultees have recommended the granting of a foreshore licence for this application, subject to conditions.

One of the conditions is that the project will be subject to an agreed monitoring programme/environmental study drawn up by the Marine Institute and Inland Fisheries Ireland. This monitoring programme can be used as a foundation for developing a policy framework for the exploitation of seaweed on a sustainable basis.

**Further steps remaining:**

On approval of the application, the department will instruct the CSSO to draft the licence document setting out the terms and conditions applying to the development.

On agreement of the licence between the CSSO and the applicants legal advisors and the payment of the determined licence fee due, the licence will be presented for application of the Minister's seal.

**FORESHORE UNIT**

**Legislation Compliance Checklist**

Section of Foreshore Act	Criteria	Outcome
3(1)	<b>Public Interest</b> Is it in the public interest that the licence should be granted?	
3(1B)	<b>Consultation with DAFF</b> Has the Minister for Agriculture, Fisheries and Food been consulted on the application?	Yes, the engineering observations were provided by D.A.F.F. and area of application amended to ensure no overlap with aquaculture.
13	<b>EIS Requirements</b>	
13A(1)	<b>EIS Class Development</b> Is the development of a class requiring the submission of an environmental impact statement?	The development is not of a class requiring the submission of an environmental impact statement?
13A(2)	<b>Sub-threshold EIS Development</b>  Is the development: <ul style="list-style-type: none"> <li>(a) of a class that would require the submission of an environmental impact statement but for the fact that it is <b>sub-threshold</b> <u>and</u></li> <li>(b) likely to have significant effects on the environment?</li> </ul>	<ul style="list-style-type: none"> <li>(a) The development is not of a class requiring the submission of an environmental impact statement but for the fact that it is sub-threshold</li> <li>(b) The development is not likely to have significant effects on the environment</li> </ul>

Section of Foreshore Act	Criteria	Outcome
13A(2A)	<p><b>Sub-threshold EIS Development in a European Site</b></p> <p>Is the development:</p> <p>(a) of a class that would require the submission of an environmental impact statement but for the fact that it is <b>sub-threshold</b> <u>and</u></p> <p>(b) likely to have significant effects on the environment <u>and</u></p> <p>(c) located in a European site?</p>	<p>The development is not located within a European site.</p>
19	<p><b>Public Notice</b></p> <p>Was the application put out to public notice?</p>	<p><b>Yes.</b> A public notice concerning this application was published in the <i>Southern Star</i> newspaper on the 12th December 2009. The relevant documents were on display at Bantry Garda Station for a period of 21 days from the 12th December 2009. No submissions were received during the public consultation period.</p>

<b>European Communities (Natural Habitats) Regulations, 1997 (SI No. 94 of 1997)</b>	<b>Criteria</b>	<b>Outcome</b>
Reg. 31(1)	<b>Appropriate Assessment</b>  Is the proposed development likely to have a significant effect on European sites?	The proposed development is not likely to have a significant effect on European sites

**Extracts from the Foreshore Act 1933, as amended**

**Section 3(1)**

**Power for Minister to grant licences of foreshore**

If, in the opinion of the appropriate Minister, it is in the public interest that a licence should be granted to any person in respect of any foreshore belonging to the State authorising such person to place any material or to place or erect any articles, things, structures, or works in or on such foreshore, to remove any beach material from, or disturb any beach material in, such foreshore, to get and take any minerals in such foreshore and not more than thirty feet below the surface thereof, or to use or occupy such foreshore for any purpose, that Minister may, subject to the provisions of this Act, grant by deed under his official seal such licence to such person for such term not exceeding ninety-nine years commencing at or before the date of such licence, as that Minister shall think proper.

**Section 3(1B)**

**Requirement to Consult with the Minister for Agriculture, Fisheries and Food**

Where the Minister for Agriculture, Fisheries and Food or the Minister for the Environment, Heritage and Local Government is considering granting a licence under this section (being the appropriate Minister), then the Minister so considering shall consult with the other Minister on the matter before granting the licence.

**Section 3(3)**

**Licence of a trivial character to be granted subject to a nominal payment only**

Where, in the opinion of the appropriate Minister, a licence proposed to be granted under this section is, owing to its nature, duration, or otherwise, of a trivial character and should be granted without payment or subject to a nominal payment only, such licence may, notwithstanding anything contained in this section, be granted by way of permission in writing signed by that Minister or one of the principal officers of his Department.

**Section 13A**

**Environmental impact assessment of certain proposals relating to the foreshore**

(1) A relevant application to the appropriate Minister which proposes the undertaking of development of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any provision amending or replacing the said Article 24, shall be accompanied by a statement of the likely effects on the environment (hereinafter in this Act referred to as an "environmental impact statement") of such proposed development.

(2) Where a relevant application would involve the undertaking of development which would be of a class referred to in subsection (1) of this section but for not exceeding a quantity, area or other limit for the time being specified in relation to that class, and where the appropriate Minister considers that the said development would be likely to have significant effects on the environment, he shall require the applicant to submit an environmental impact statement in respect of such development.

(2A) Where a relevant application would involve the undertaking of development which would—

- (a) be of a class referred to in subsection (1) of this section but for not exceeding a quantity, area or other limit for the time being specified in relation to that class, and
- (b) be located on—
  - (i) a special area of conservation,

- (ii) a site notified in accordance with Regulation 4 of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997),
- (iii) an area classified pursuant to paragraph (1) or (2) of article 4 of Council Directive No. 79/409/EEC of 2 April, 1979, on the conservation of wild birds,
- (iv) a site where consultation has been initiated in accordance with article 5 of Council Directive 92/43/EEC of 21 May, 1992, on the conservation of natural habitats and of wild fauna and flora,
- (v) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act, 1976 (No. 39 of 1976),
- (vi) land designated as a refuge for fauna under section 17 of the Wildlife Act, 1976, (No. 39 of 1976),

the appropriate Minister shall decide whether the said development would or would not be likely to have significant effects on the environment.

(2B) The appropriate Minister shall, where he is deciding pursuant to this section whether a proposed development would or would not be likely to have significant effects on the environment, have regard to the criteria specified for the purposes of article 27 of the European Communities (Environmental Impact Assessment) Regulations, 1989.

(2C) Where the appropriate Minister makes a decision pursuant to subsection (2A) on whether a proposed development would or would not be likely to have significant effects on the environment, he shall make arrangements to make the said decision available for inspection by members of the public.

(3) An environmental impact statement shall contain the information for the time being specified under Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any provision amending or replacing the said Article 25.

(3A) (a) If a person, before submitting an environmental impact statement in accordance with a requirement of or under this section, so requests, the appropriate Minister shall, after consulting the person who made the request and such bodies as may be prescribed for that purpose, give a written opinion on the information to be contained in such statement.

(b) The giving of a written opinion in accordance with paragraph (a) of this subsection shall not prejudice the exercise by the appropriate Minister of his powers under this Act to require the person who made the request to furnish further information in relation to the effects on the environment of development proposed in the relevant application concerned.

(4) (a) The appropriate Minister may—

- (i) where that Minister is satisfied that exceptional circumstances so warrant, and
- (ii) where the appropriate Minister is the Minister for Agriculture, Fisheries and Food, after consultation with the Minister for the Environment, Heritage and Local Government,

exempt a relevant application or a proposed relevant application from the requirement of subsection (1) of this section.

(b) The appropriate Minister shall, in granting an exemption under paragraph (a) of this subsection—

(i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other manner, and

(ii) make available to the public—

(I) the information obtained in any assessment carried out under subparagraph (i),

(II) the information relating to any decision to exempt a relevant application under paragraph (a), and

(III) the reasons for the decision referred to in clause (II).

(c) Notice of any exemption granted under paragraph (a) of this subsection, of the reasons for granting such exemption and of any requirements applied under paragraph (b) of this subsection shall, as soon as may be, —

(i) be published in the *Iris Oifigiúil* and in one or more newspapers circulating in the district in which is situated the foreshore to which the relevant application or the proposed relevant application relates, and

(ii) be given, together with a copy of the information, if any, made available to members of the public in accordance with the said paragraph (b), to the Commission of the European Communities.

(d) An exemption shall not be granted under paragraph (a) of this subsection in respect of a relevant application or a proposed relevant application if another Member State of the European Communities, having been informed pursuant to section 19C of this Act about the proposed development and its likely effects on the environment in that State, has indicated that it intends to furnish views on the said effects.

(5) In this section and in sections 19A, 19C and 21A "relevant application" means, as the case may be—

(a) an application to the appropriate Minister for a lease under section 2 of this Act,

(b) an application to the appropriate Minister for a licence under section 3 of this Act,

(c) an application to the appropriate Minister for his approval under section 10 of this Act for maps, plans, and specifications for erection of structures on the foreshore,

(d) an application to the Minister for the Environment, Heritage and Local Government for his consent under section 13 of this Act for the deposit of material on the foreshore.

(6) In this section 'relevant application' does not include an application for an aquaculture licence (within the meaning of the Fisheries (Amendment) Act 1997) that is accompanied by an environmental impact statement.

## **Section 19**

### **Public Notice Procedure**

Whenever the appropriate Minister proposes to make an order under this Act or an application is made to the that Minister for the making of a lease or an order or the granting of a licence under this Act, that Minister, if he so thinks fit, cause notice of such proposal or application to be published at such times and in such manner as he thinks proper, and may by such notice give to all persons interested an opportunity of making to that Minister objections, and representations in respect of such order, lease, or licence (as the case may be) and may include in such notice directions as to the time, manner, and place in and at which such objections and representations may be made.



**European Communities (Natural Habitats) Regulations, 1997 (SI No. 94 of 1997)****Regulation 31(1)**

Where an operation or activity to which any of the enactments set out in Part I of the Second Schedule applies is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other operations or activities, and such operation or activity is to be undertaken by, or requires the concurrence, consent or approval (however expressed in the enactment) of any Minister of the Government, then that Minister shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.