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| Agenda Item | |
| Report No | |

HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 17 April 2018

Report Title: 17/04749/FUL: Organic Sea Harvest
Site 1335M East Of Seaforth, Culnacnoc

Report By: Area Planning Manager – North

Purpose/Executive Summary

Description: New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge

Ward: 10 - Eilean A' Cheò

Development category: N08C - Marine Finfish Farming Local (with EIA)

Reason referred to Committee: Objections from statutory consultee and the number of objections from third parties

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to Grant as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 The proposal is for a new Marine Fish Farm consisting of 12 x 120m circumference circular cages, 5m high top nets and snorkel tube nets, each in an 80m mooring grid consisting of grey marker buoys, with associated 350 tonne feedbarge (note the LVIA & specification states 320t). The location is on the eastern coast of the Trotternish peninsula, Isle of Skye.
- 1.2 There is no history of fish farming along this section of coast but a concurrent application is being considered for an adjacent site at Invertote (17/04735/FUL).
- 1.3 Pre Application Consultation: 16/05501/PREAPP Site 1
Key considerations would be impacts on landscape and biodiversity. As the proposal outlined information on additional sites proposed nearby, the cumulative effects on landscape, SAC features, protected species and habitats required careful consideration. The advice concluded that whilst in principal, the development would be acceptable, it could not be assumed that the other sites would also be supported.
- 1.4 Supporting Information: An EIA, including an LVIA, outlined the key environmental information for the proposal.
- 1.5 Variations: Confirmation that 5m high top nets would be used.

2. SITE DESCRIPTION

- 2.1 The proposal is for a new Marine Fish Farm consisting of 12 x 120m circumference circular cages, each in an 80m matrix grid and associated feedbarge. The location is just north of Invertote and just south of Brother's Point on the mid-east coast of the Trotternish peninsula, Isle of Skye. The coastline west of the site is dominated by the main road from Portree to Staffin (A855), with associated key viewpoints at Invertote and Brother's Point and the Culnacnoc settlement. Note an adjacent fish farm is also being considered at this committee, as detailed below.

3. PLANNING HISTORY

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| 3.1 | 14/03/2017 | 16/05501/PREAPP Site 1(Culnacnoc) | n/a |
| 3.2 | 19/06/2017 | 17/02310/SCOP (Culnacnoc) | n/a |
| 3.3 | 14/03/20017 | 16/05501/PREAPP Site 2 (Invertote) | n/a |
| 3.4 | 19/06/2017 | 17/02312/SCOP (Invertote) | n/a |
| 3.5 | Pending | 17/04735/FUL: Invertote site, c. 1.8km to the south being considered concurrently for the same equipment (i.e. New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge) by the same applicant and is before members for | Pending |

consideration

4. PUBLIC PARTICIPATION

4.1 Advertised: Environmental Impact Assessment Regulations 2017 and Unknown neighbour

Date Advertised: 24/11/2017 & 02/03/2018

Edinburgh Gazette - Environmental Statement 28 Days

West Highland Free Press - Environmental Statement 28Days

Representation deadline : 24 December 2017 & 1 April 2018

Timeous representations : 81 (includes multiple submissions from the same people and/or households, as detailed in appendix 1)

Late representations : Due to re-consultation, last representations listed with above. In total there were 53 objections, 24 in support and 4 neutral.

4.2 Material considerations raised are summarised as follows:

- a) Landscape: impacts on the landscape: e.g. light pollution, impact on iconic views and designated sites.
- b) Noise: Potential for increased noise levels from operating the proposal.
- c) Biodiversity: the impacts on cetaceans due to noise and entanglement; impacts on wild salmonids due to sea lice and escapes, particularly in such an exposed site; impacts on the seabed, marine pollution, including chemical inputs; impacts on protected species including seals, sea eagles and freshwater pearl mussels; unsustainable use of cleaner fish.
- d) Tourism/Amenity impacts: perceived negative impacts on the tourist industry around Skye, including the Skye Trail, dark skies, and tourist accommodation, along with impacts on individual and community residential amenity; impacts on transport infrastructure.
- e) Fishing: Impacts on commercial fisheries.
- f) Cumulative impacts: the cumulative impacts of all the above.

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

5.1 Historic Environment Team: no objection

5.2 Landscape Officer: no response

5.3 Harbours: no objection

5.4 Environmental Health: no objection; noise condition provided

5.5 SEPA: no objection: CAR application not yet submitted

5.6 MSS: required further information; no objection

- 5.7 SNH: no objection; details provided on landscape, biodiversity and confidential annexes regarding key species.
- 5.8 Skye District Salmon Fishery Board: no objection but requested baseline wild salmonid surveys prior to determination
- 5.9 MOD: no response
- 5.10 Transport Scotland: no objection
- 5.11 Historic Environment Scotland: no objection
- 5.12 Northern Lighthouse Board: no objection

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application.

6.1 Highland Wide Local Development Plan 2012

28 Sustainable Design
30 Physical Constraints
49 Coastal Development
50 Aquaculture
57 Natural, Built & Cultural Heritage
58 Protected Species
59 Other Important Species
60 Other Important Habitats
61 Landscape
63 Water Environment

6.2 West Highland and Islands Local Plan (2012) (as continued in force)

No specific policies apply

7. OTHER MATERIAL CONSIDERATIONS

7.1 Highland Council Supplementary Planning Policy Guidance

Highland Historic Environment Strategy (Jan 2013)
Highland's Statutorily Protected Species (March 2013)
Special Landscape Area Citations (June 2011)

7.2 Scottish Government Planning Policy and Guidance

Scottish Planning Policy (The Scottish Government, June 2014)
National Marine Plan (2015)

7.3 Other

Highland Aquaculture Planning Guidance (2016)
Highland Coastal Development Strategy (2010)

8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) any other material considerations.

Development plan/other planning policy

Consideration a)

- 8.4 Policy 50 (Aquaculture) within the Highland-wide Local Development Plan (HwLDP) states that the Council will support the sustainable development of finfish and shellfish farming subject to there being no significant adverse effect, directly, indirectly or cumulatively on the natural, built and cultural heritage and existing activity. As discussed in the report below, the proposal would have an acceptable impact on the landscape and natural heritage. The proposal would therefore comply with this policy.
- 8.5 Policy 28 (Sustainable Design) includes, among other things, the requirement to assess proposals on the extent to which they have an impact on:
- individual and community residential amenity;
 - including pollution and discharges, particularly within designated areas, species, marine systems and landscape.

As the proposal lies either within or close to the:

- Trotternish National Scenic Area (NSA);
- Trotternish and Tianavaig Special Landscape Area (SLA);
- Raasay and Rona SLA;
- Inner Hebrides and the Minches candidate Special Area of Conservation (SAC);
- Various Priority Marine Features,

careful consideration will be required of the likely impacts.

- 8.6 Policy 57 (Natural, Built and Cultural Heritage) requires all development proposals to be assessed taking into account features of:
- **local/regional importance:** there are a number of amenity and cultural heritages resources in the vicinity of the proposal, as well as the Trotternish

and Tianavaig/ Raasay and Rona SLAs;

- **national importance:** Trotternish NSA; we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resources;
- **international importance:** the proposal lies within the Inner Hebrides and the Minches candidate SAC. For features of international importance, developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to appropriate assessment (see Appendix 2).

From a broad planning perspective, it would appear that the impacts on the above designations can be accommodated in terms of policies 28 and 57.

8.7 Policy 59 (Other Important Species): this policy requires the council to have regard to the presence of, and any adverse effect of development proposals, either individually and/or cumulatively, on the Other Important Species ... if these are not already protected by other legislation or by nature conservation site designations. Thus, as the multi-sea-winter component of the Atlantic salmon population is included in the UK Biodiversity Action Plan Priority Species List, and this species is also a Priority Marine Feature, for the reasons outlined above, the proposal is also acceptable with regard to this policy.

8.8 Policy 61(Landscape) states, among other things, that the council would wish to encourage those undertaking development to include measures to enhance the landscape characteristics of the area. This will apply particularly where the condition of the landscape characteristics has deteriorated to such an extent that there has been a loss of landscape quality or distinctive sense of place. The proposal lies close to the Trotternish NSA. Given the location, nature and scale of the proposal, it is considered acceptable with regard to this policy, as discussed below.

Other material considerations

Consideration b)

8.9 National Marine Plan (2015): The principle of sustainable development and consideration of other coastal and marine interests is one of the key themes of the National Marine Plan. It notes that aquaculture development consents “are determined in accordance with the Local Development Plans and now with this Plan”.

8.10 The Highland Council Aquaculture Planning Guidance (2016) outlines a spatial strategy and six development criteria that outline the key considerations for marine fish farm applications. Whilst this entire document is relevant, Development Criterion 1 (DC1: Landscape, Seascape, Siting and Design), 3 (DC3: Biodiversity) and 5 (DC5: Other marine users) are particularly important.

8.11 Highland Coastal Development Strategy (2010) The strategy identifies the coast adjacent to the proposal as ‘undeveloped’. The undeveloped coast should generally be considered for development only where:

- The proposal can be expected to yield social and economic benefits sufficient to outweigh any potentially detrimental impact on the coastal environment and;
- There are no feasible alternative sites within existing settlements or on previously developed land [in planning terms this includes marine fish farm sites].

Material Considerations

- 8.12 This application is for the operation of an organic fin fish farm. However, throughout the submission, whilst this is the applicant's desire, the operator reserves the option to operate the farm in a conventional manner if the various organic status requirements cannot be met. Therefore in line with EIA requirements, it will be assessed at the 'worst case scenario' i.e. as if it were a conventional marine fish farm.
- 8.13 The main elements of this proposal can be considered under three main elements: 1. Landscape; 2. Biodiversity (which is broken down into two sub- elements: (ii) and (iii) below) and 3. Other considerations.

The various aspects of each will be considered under the following four sub-divisions that require detailed assessment:

- i. Landscape, Seascape and Visual impacts, including noise, lighting and historic environment assets;
- ii. Biodiversity: impacts on the seabed, water column and on the SAC, particularly the impact of Acoustic Deterrent Devices and other protected species including sea eagle;
- iii. Biodiversity: impacts of sea lice on wild salmonids and freshwater pearl mussel and
- iv. Other considerations including operational issues not covered above.

The cumulative impacts of factors i.- iii. above in relation to the concurrent proposed adjacent marine fish farm at Invertote (17/4735/FUL) will also be considered. Each issue will be considered in turn in relation to this Culnacnoc proposal, taking the various individual aspects of the proposal on its merits, followed by the cumulative impacts of each of these preceding three aspects (i-iii) respectively in the relevant section.

i) Landscape Impact:

- 8.14 The proposal lies c. 580m from the Trotternish National Scenic Area (NSA) boundary and is within the Trotternish and Tianavaig Special Landscape Area (SLA), which abuts the NSA, and is c. 5.7km from the Raasay and Rona SLA. Given the distance and lack of receptors, any impacts on the Raasay and Rona SLA will not be considered further.
- 8.15 The special qualities of the Trotternish NSA include spectacular scenery of landslip topography with the fascination of columnar basaltic rock structures. On the seaward side, the whole landscape drops suddenly into the sea in cliffs of varying height, made up of regular columnar formations of basalt. SNH advise that the proposal will have limited visibility from within the NSA. They therefore advise that

it would not have an adverse effect on the integrity of the NSA or the qualities for which it has been designated, either alone or in combination with the proposed Invertote proposal.

- 8.16 The assessment defining the Trotternish and Tianavaig SLA notes it comprises an extensive and important part of one of the most spectacular landscapes in Britain. The area is characterised by a well-defined ridge crest, including the pinnacles set away from the main escarpment. Of these, the Old Man of Storr forms a key element of this spine, which offers prominent views along the coast. The LVIA notes the coast of the Trotternish Peninsular is exposed and expansive in character, levelling out from the extrusion of the iconic ridgeline, becoming gentler and flatter as it nears the cliffs which line the coast.
- 8.17 The layout of the 120m circumference cages and feedbarge generally conforms to SNH's siting and design guidance. The feedbarge would be a dominant feature of the proposal. The LVIA notes a slightly smaller 320 tonne feedbarge to the rest of the application. The ES states it would not exceed 30m x 10m x 4m un-laden and the application form states a 350 tonne barge. A diagram provided notes "possible design of feedbarge"; clarification was sought but not provided therefore a 350 tonne barge is assessed here. A condition is recommended to ensure the final feedbarge is no larger than that which has been assessed.
- 8.18 A number of top net configurations are proposed at different stages of the development, along with the use of sealice skirts and snorkel tubes, thus the actual detailed manifestation of the proposal could alter depending on the configuration of nets at any one time. The assessment has therefore been based on the worst case scenario i.e. 5m high top-nets, snorkel tubes (visible in the centre of the pen) and sealice skirts secured around the pen handrails.
- 8.19 The LVIA highlights that the proposal will have a significant impact from a limited number of key receptors. However, the site has been carefully chosen to minimize impacts on residential properties and other main receptors. As such, it would be largely shielded from view, with occasional glimpses along the A855. Key views/receptors would be from Brother's Point (VP5) and the core path that leads to it. The proposal would form a distinct feature within the view at only c.300m from the headland; the cages would be a further c. 400m from the planning boundary.
- 8.20 SNH note the landscape impacts and advise the proposal will not have an adverse effect on the integrity of the NSA or the qualities for which it has been designated, either alone or in combination with the Invertote proposals (ref 17/04735/FUL). With regard to the SLA, it is acknowledged there will be some localised impact on it, as it has the potential to erode the special landscape characteristics and particular views. However, these impacts are largely restricted to Brother's Point and the core path leading to it, as discussed below.

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| VP1: A855 layby | Whilst the proposed Invertote fish farm (ref 17/04735/FUL) is much more dominant at this point, the Culnacnoc site is visible as an off-set site, due to the misalignment of the two sites, in comparison to the Invertote site i.e. the Culnacnoc site is not in a straight line with the Invertote site. |
| VP2: A855 main road | Both fish farms not visible. |

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| near Rigg House | |
| VP3: Invertote/ Lealt | Small portion of farm visible c. 1.5km away but the majority of site obscured by cliff faces. |
| VP4: Lealt path to viewpoint | Both fish farms not visible. |
| VP5: Brother's Point | This is the key receptor. Brother's Point is a popular headland, lying largely within the NSA. The cages and feedbarge would dominate the view. The adjacent proposed Invertote fish farm is a distant low-lying feature. |
| VP6: The Storr | Fish farm fully visible at c 8.2km; given the distance, it does not dominate the view and is only visible as a distant low-lying feature within a vast landscape. The adjacent proposed Invertote fish farm (ref 17/04735/FUL). is c. 5.6 km away and also does not dominate the view. |

Some residential properties may experience some localized impacts but the shielding from the cliffs and the noise condition outlined below minimises these impacts. Thus, for those driving, only occasional glimpses of this and the adjacent fish farm will be seen for a brief period among the wider landscape, given the speed, terrain and landforms. For those experiencing the area at key viewpoints, the experience will be somewhat different as the cliffs and landform falls away spectacularly, thus the effects more marked due to the size, scale, more static views and the cumulative impacts. The latter issue is addressed in section 8.26 below.

- 8.21 Noise: The pre-application advice given noted the nearest residents would be less than 1km away and therefore a noise assessment was requested. This request was repeated in the scoping opinion. However, the submitted ES only outlines some likely sources of noise along with potential mitigation. No assessment of actual likely noise levels has been done; this is possibly because none of the details of most of the equipment appears to have been finalised. To ensure that noise does not become a nuisance to local communities, a condition limiting the noise levels is recommended. This condition will also help to minimise any cumulative impacts with the proposed Invertote (ref 17/04735/FUL). site.
- 8.22 The applicant helpfully engaged in pre-submission discussions with the MOD; the latter noted that they required no activity to take place on the fish farm between 18.00 – 0600 hours daily to ensure total silence in order to ensure any noise would not degrade the MODs operational asset within Raasay. A condition limiting operational hours of the proposal to 06.00 – 18.00 hours is therefore recommended. For clarification, subsequent information from the applicant notes that any underwater lighting (see below) required would be battery operated therefore not have any noise signature.
- 8.23 Lighting: An assessment of the underwater lighting is briefly discussed in the LVIA (Tables 9 & 10); the impacts are assessed as moderate to major. The effects are described as increased by elevated views but viewing opportunities would remain minimal due to the local of viewpoints. The requested photomontages were

subsequently provided highlight the introduction of a glow that is incongruous in the current landscape compared to traditional marine traffic. These lights may be used during the winter months to alter fish maturation rates. The use of underwater lights would add to the visual impact, as highlighted by the photomontage. However, given the relatively few receptors, are deemed acceptable in this instance.

8.24 Topside lighting would include navigational lighting as required by the Northern Lighthouse Board, which is outwith planning control, and external lighting on the feedbarge/workboats etc. The applicant has confirmed that work lights would be extinguished at the end of the working day; it is recommended that this is secured by condition.

8.25 Historic Environment Scotland noted the assessment provided of impacts on the setting of the scheduled monuments known as Rubha Nam Brathairean, Dun Hasa and the quern quarry. Whilst they concur that the proposed development will have an impact on the setting, they are content that the impacts will not affect the integrity of the setting of the monument therefore the proposal does not raise issues of national significance for their remit. The local archaeological team confirmed they also have no concerns regarding Historic Environment Assets. This issue does not therefore need to be considered any further.

8.26 Cumulative impacts:

- The misalignment with the Invertote site (ref 17/04735/FUL). , as discussed in section 8.20 above, does slightly draw further attention to the site when viewed in combination with the Invertote proposal, but given the current lack of development in the area, whether is it aligned or not does make it a significant issue when seen from VPs1, 3, 5 or 6.
- To a lesser extent compared to Brother's Point, the proposal would be visible from the viewpoint at Invertote (VP3), along with the Invertote proposal. SNH advise that the careful siting of the two farms either side of the of Invertote/Lealt Gorge means that only a small part of each farm would be visible on the edge of a wide panorama. Both farms would not be seen simultaneously due to the wide angle of the view.
- In addition, distant views of the site, along with the adjacent Invertote proposal, would be visible from the Storr (VP6). Given the distances involved, the fish farms would be a noticeable but not dominant feature of the wild landscape views.
- All the impacts above include night-time glow from the intermittent use of underwater lighting; however the number of receptors at night would be relatively few, as discussed above.

Given the mitigation outlined above, the cumulative landscape impacts are deemed acceptable.

8.27 Landscape conclusion: The LVIA and SNH conclude that whilst the proposal has the potential to erode the special landscape characteristics and particular views of the area, the scope of the areas affected are restricted. Due to careful positioning, most of the development would not been seen for most of the time from the land i.e. the main receptors. All the equipment, other than that required for

safety/navigational markers, will be low profile, except the feedbarge, and will be of dark, matt colours, which will help minimize the visual impacts. Given the relative lack of receptors, except from one or two specific areas, the impacts are not significant. The cumulative impacts on key receptors for this proposal are also not significant. The proposal is therefore deemed acceptable in relation to landscape aspects of Policy 28 and is acceptable in relation to Policy 61.

ii) Biodiversity: Seabed, water column and SAC

- 8.28 For clarity, some impacts on biodiversity relating to the fish in the cages are considered by SEPA and MSS in relation to the benthic impacts due to fish faeces and the chemicals used to try and control sea lice.

Marine Scotland also issue marine licences covering:

- navigation issues and deposits in the marine environment, including discharges from well boats;
- consents for an Aquaculture Production Authorisation;
- European Protected Species (EPS) licences (where an EPS may be disturbed by the activity/proposal) and
- licences to shoot seals.

SNH provide advice on most aspects of biodiversity but do not comment on sea lice impacts on wild salmonids outwith any SACs designated for salmon or freshwater pearl mussel; this is left to MSS. Note MSS, whilst a statutory consultee, have made it clear that they provide advice only; they will not state objection or support for an application. Whilst all these agencies have a biodiversity duty, it is left to the planning authority to determine the likely impacts of sea lice on wild salmonids, along with any impacts on designated sites and other protected species, as discussed below.

- 8.29 SEPA provided comments on the benthic and water column impact, as summarised. They note that a CAR application has not been received but from the information available, advise that the proposed development is potentially capable of being consented, but the maximum sustainable biomass and chemical usage would be determined once the application is submitted and assessed. This planning application will therefore be assessed on the maximum biomass applied for i.e. 2,500 tonnes. Regarding the benthic impacts, a baseline visual survey noted a muddy seabed with a variety of epifauna but no habitats or species of natural heritage interest were noted. The baseline benthic survey information supplied indicated normal communities but modelling is yet to be confirmed by SEPA. SNH advise that whilst there are a number of Priority Marine Features at this site, significant impacts are unlikely. The key feature is burrowed mud, which is a widespread habitat in Scotland. Overall, the benthic impacts are deemed acceptable.
- 8.30 With regard to water column impacts, SEPA note that it is unlikely that nutrient inputs from the proposed biomass into the Sound of Raasay would result in a downgrade of the “Good” ecological status of the water body under the Water Framework Directive. Overall, they have no objections to the proposal.

- 8.31 Following re-consultation of the proposal due to missing information regarding various equipment, modelling, biomass and operational issues, MSS note that for most aspects, the information is “satisfactory as far as reasonably can be foreseen.” The proposed biomass should not result in unacceptable impacts to the water column, either at the site or cumulatively within the wider water body. Outstanding information remained on the availability of lumpfish and information relating to the applicant’s assessment of the location and its suitability for cleaner fish. This can be addressed via a condition (contained within the EMP condition) to ensure these issues are appropriately discharged prior to commencement.

Natura sites:

- 8.32 The proposal lies within the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC). The qualifying interest for which the site is proposed to be designated is porpoise. As the proposal aims to use Acoustic Deterrent Devices (ADDs), an Appropriate Assessment (see Appendix 2) is needed to conform to the Habitats Regulation requirements, as the proposal is likely to have a significant effect on the porpoises.
- 8.33 There are also a number of cetacean species found in the waters of the proposal. These include Minke Whale, Short-beaked Common Dolphin, Killer Whale; all are European Protected Species. Furthermore, the Nature Conservation (Scotland) Act makes it an offence to disturb deliberately or recklessly or to harass any cetaceans.
- 8.34 The ES highlights that Marine Scotland is of the view that there could be a risk to the conservation objectives of the cSAC as a result of the cumulative effects of ADD use within the cSAC. This is also a growing concern for the Planning Authority, given the increasing number of fin fish farms in the cSAC, particularly between the Sound of Mull up to and including all the waters around Skye. In the more constrained areas, the cumulative impacts are approaching levels where there is effectively potential for a ‘chain of noise’ across large stretches of water around Skye.
- 8.35 To avoid excessive duplication, the main details regarding the potential impacts of the cSAC are considered in the Appropriate Assessment (see Appendix 2), based on advice from SNH. A summary of the findings shows, that, with appropriate mitigation, including the use of alternative predator control measures where possible and the ADDs to be only switched on if there was evidence of seal attack, their use is acceptable. Their use will be recorded and the cumulative impacts assessed. These data will be made available to the Highland Council and SNH, as appropriate, in accordance with the recommended condition.

iii) Biodiversity: impacts of sea lice on wild salmonids and freshwater pearl mussel

- 8.36 Sea lice: The key sea louse species of concern is *Lepeophtheirus salmonis*. These are parasites found in the wild, which can infect farmed salmon. They feed on the fish mucus and flesh. Given the high numbers of fish in fin fish cages, the population of the lice can rapidly increase and affect both the farmed fish and infect/re-infect the wild population. In addition, numerous studies have shown that

sea lice in the receiving environment tend to be higher during second years of production of a fish farm and therefore pose a greater risk to wild salmonids at that time. For clarity, marine fish farms tend to operate on two year production cycles, then all remaining fish are harvested out and the site is left fallow for several weeks or months prior to re-stocking. Once re-stocked, the lice levels are generally low for at least the first few months; then if there is a sea lice issue in the area, the numbers can build up as the farmed fish grow bigger. The volumes of fish proposed for this application (data on actual numbers are not available), in combination with nearby proposal, can therefore act as additional hosts for sea lice.

- 8.37 Wild salmonids: i.e. salmon and trout, are protected species. Among other designations, the Atlantic salmon is listed on Appendix III of the Bern Convention and Annex II and V of the EC Habitats & Species Directive and are listed on Schedule 3 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) whilst in freshwater. The multi-sea-winter component of the Atlantic salmon population is included in the UK Biodiversity Action Plan Priority Species List. This species is also a Priority Marine Feature. Trout (*Salmo trutta*) are on the UK Biodiversity Action Plan Priority Species List and received some protection within the fisheries acts relating to the protection of 'salmon'. The Council also has a Biodiversity Duty under the Conservation of Nature (Scotland) Act 2004 to protect them. In addition, due to the decline of salmonids, the Conservation of Salmon (Scotland) Regulations 2016 aims to protect the killing of wild salmon in coastal waters and many rivers.
- 8.38 The Freshwater Pearl Mussel (FWPM) is a protected species that requires salmonids as the host for the larval stage. The nearest designated FWPM river is the Kerry SAC in Wester Ross, some 31km away. SNH note that salmonids would not be expected to interact with sea lice emanating from the proposed farm location. However, a further material consideration for the planning authority in this case is that there is a FWPM river nearer the proposal but which is not an SAC designated river for this species. As SNH generally only provide detailed comment and/or objections on designated areas, in this case the River Kerry SAC, detailed guidance for the Skye river is limited. SNH note it would fall to Marine Scotland (MS) and/or the local fishery trust or board to lead on advice. In view of this, MS were asked to provide additional comment on this aspect but were unable to provide specific comment. However, to aid assessment of this application, SNH have helpfully provided a confidential annex (Appendix 3) to help ensure existing threats to the species are not exacerbated. It is considered that the potential impacts of the development on this river require to be addressed directly through the use of the recommended EMP condition.
- 8.39 Sea lice data in relation to fish farms are published by the Scottish Salmon Producers Organisation (SSPO). These are not site-specific data but are based on Farm Management Areas (FMAs), which are located within named Reporting Regions. These areas adopt similar farming practices such as stocking the same year class of fish and synchronised fallowing of farms at the end of a production cycle. The current proposal lies within the Skye and Small Isles North reporting region and contains two FMAs: M-26 Loch Portree and M-28 Loch Ainort.
- 8.40 Lice levels in the reporting region over the last few cycles, from 2004-2017, show average adult female lice to range from 0 to 14.3. Whilst there may be much

variation within these data, they do provide at least an indication of the current ability to control sea lice levels in the area. Since August 2014 when levels were 14.3, the general trend year on year has been downward within the range of 0-3.98. MSS note however that adherence to the suggested criteria for treatment of sealice stipulated in the industry Code of Good Practice (CoGP) may not necessarily prevent release of substantial numbers of lice from aquaculture installations. Thus the key consideration is whether this proposal would add significantly to the existing sea lice burden and the potential knock-of effects on wild salmonids and the freshwater pearl mussel. For clarity, the impacts of maximum biomass of a full standard i.e. non-organic, production, in combination with the Invertote site, are assessed; thus the cumulative impacts, along with the Portree and Portree Outer sites, are also taken into consideration.

- 8.41 MSS have provided its standard generic guidance relating to wild salmonids and have not given any indication of specific concerns regarding this proposal. They have not responded to a specific request regarding the likely impacts on wild salmonids and the related potential impacts on the Freshwater Pearl Mussel. SNH reviewed the additional documents submitted by the applicant and concluded that they do not materially change the proposals that they assessed previously. However, they did note the additional information provided in the 'Draft Management Statement for South Farm Management Area (Incorporating Invertote and Culnacnoc Sites) Sea lice Control Strategy Overview' and welcomed the commitments to surveying/monitoring wild salmonids and making farm sea lice data publically available.
- 8.42 MSS note that sea trout are present in these inshore waters all year round therefore strict sea lice control should be practiced throughout the year. At the pre-application and the scoping stage, SNH recommended that a survey be carried out to determine the host species in respect of the FWPM rivers and the results used to inform the sea lice management plan. However, the applicant chose not to do so. However, it is considered appropriate to assume the worst case scenario and assume that trout are the main host i.e. are present all year round and build this element into an Environmental Management Plan (EMP) condition. This EMP condition will require monitoring of wild salmonids in nearby rivers. The DSFB acknowledge that due to its geomorphology, the River Lealt is unlikely to provide spawning location for salmon or sea trout. Therefore pre-monitoring would not be required to determine the likely hosts i.e. salmon or trout, for this river anyway.
- 8.43 Proposed sea lice mitigation: Information supplied by the applicant of methods to manage sea lice impacts includes:
- a) Fallow periods; communication with other producers; good husbandry practices; single year class stocking/production areas; lice exclusion and avoidance strategies (lice skirts and snorkel nets); lice counts; coordinated treatments between neighbouring farms; national treatment strategy; regional health managers; site-specific veterinary health plan.
 - b) Biological control: use of cleaner fish
 - c) Mechanical/Thermic Control: Hydrolicers and Thermolicers
 - d) Freshwater treatments

- e) Medicinal control
- f) Hydrogen peroxide

Whilst none of the above equipment outlined has yet been purchased (or rented), the applicant confirmed all the equipment and methods would be available for the proposal. A concern remains however on the availability of some of these methods. In particular, there is an existing high demand for sustainable (i.e. hatchery-grown) clearer fish i.e. both wrasse and lumpsuckers, therefore obtaining sufficient supplies may be a challenge and therefore have implications on the site's ability to manage sea lice. The information provided also notes other practices such as maintaining low stocking densities and stocking to harvest. However, if the site reverts to 'conventional' fish farming rather than organic standards, or the planning permission is sold on to another company, these methods may not apply.

- 8.44 The Skye District Salmon Fisheries Board (DSFB) originally objected to the application but this was later identified an error of terminology. It was subsequently clarified that whilst they did not formally object to the proposal, they requested pre-surveys to be done. Following discussion the DSFB, it was determined that such surveys would not provide anything significantly more that the EMP condition currently proposed.
- 8.45 The above highlights some significant sea lice concerns, including cumulative impacts. However, as clear data and information are not available on the likely impacts, one option would be to deploy the precautionary principle. In this case however, there is insufficient expert advice from any of the statutory agencies to reasonably apply this. The use of an EMP, along with the mitigation proposed, can allow the development to go ahead as it would allow a measure of monitoring and control on any significant impacts on both wild salmonids and the FWPM. It is acknowledged that the appropriate monitoring and interpretation of the data from wild salmonid surveys would be difficult. However, in the absence of any other agency taking responsibility for this issue, the EMP currently remains the only viable option. It is for the developer to demonstrate what can be done to address these issues.
- 8.46 Disease Management Areas (DMA): Once the Portree Outer site (16/03352/FUL) is operational, likely to be in summer 2018, and if the adjacent Invertote site is granted permission, these sites would share the same disease management area (Area 11b), as determined by Marine Scotland. These are areas based on tidal excursions around active farms. Farms with overlapping tidal excursions will usually be within the same management area. They are applied to help minimize disease transfer between fish farms. All operators in the area would have to be covered by a Farm Management Agreement. If the Invertote site (17/04735/FUL) is not granted permission, the Culnacnoc site would create a new disease management area and a Farm Management Statement would be required.
- 8.47 MSS note that whilst the extension of the DMA in this order is not prohibited, an extended DMA may present challenges to fish health management, particularly for sites wishing to operate to organic standards which may have fewer desirable options available. Whilst the health of the farmed fish is considered by the Fish Health Inspectorate, as there could be corresponding wild fish implications, this issue also needs to be considered as part of this planning application. This is

linked to the sea lice issue discussed above and can be addressed by the EMP condition.

- 8.48 Golden Eagle (*Aquila chrysaetos*) is known to be found in the general area and its importance was cited by some of the respondents. From the advice provided by SNH, it can be reasonably determined that the impacts on this species would not be significant.

iv) Other Considerations

- 8.49 No shore base had been identified at this stage; OSH will operate a mobile welfare van. Day to day access to the site will be from Staffin Jetty using workboats. Transport Scotland have not provided any objections to the access requirements for the transport of fish from the jetty. Should a shore base be subsequently necessary, appropriate planning permissions are likely to be required. No details have been supplied on the processing facility.
- 8.50 The ES notes that the proposal will create seven full time equivalent jobs and associated opportunities for contract work. The Trotternish Peninsula is identified at a Fragile Area, which are characterised by declining population, among other things. The proposal could therefore help retain, or create further, employment in the area.
- 8.51 The Scottish White Fish Producers Association in combination with the Mallaig & North-west Fishermen's' Association objected to the granting of a licence for the proposed fish farm. Whilst the planning authority do not issue the associated licences, this response is taken as an objection to the planning permission. They note the area is used by trawling and creel vessels and advise that income may be lost, particularly through loss of nephrops ground. From the maps provided, the bulk of fishing activity takes place to the east of the proposal therefore that area will still be available for the various fishing activities. The respondents also note that fishing vessels use the area to shelter; whilst navigational issues are dealt with by Marine Scotland, there appear to be no marked anchorages within the vicinity.

Non-material considerations

- 8.52
- The issue of the use of closed containment aquaculture is not a material planning consideration as that is not what the current application is based on.
 - Lack of third party consultation by Staffin Trust on Staffin residents.

Matters to be secured by Section 75 Agreement

- 8.53 a) None

9. CONCLUSION

- 9.1 As this proposal raises a number of concerns regarding availability and use of novel and existing equipment, a number of conditions are required to ensure there are no remaining landscape and biodiversity issues. This will enable the Council to meet its various statutory requirements for these habitats and species.

9.2 The key considerations for this application are landscape and visual impacts and biodiversity impacts. The latter relate mainly to SAC qualifying features, Priority Marine Features, potential impacts on wild salmonids and freshwater pearl mussel, along with wider biodiversity impacts. Due to sensitive siting of the proposal away from the bulk of receptors and outwith the NSA, the proposal is acceptable in landscape terms. With regard to biodiversity, most aspects are addressed in the report above and in the Appropriate Assessment (Appendix 2). However, a level of concern remains regarding potential sealice impacts which can be addressed via an Environmental Management Plan condition, as discussed above. Thus, following the advice from the various statutory consultees, it can be concluded the proposal is acceptable subject to a number of conditions.

9.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

10.1 Resource: Not applicable

10.2 Legal: Not applicable

10.3 Community (Equality, Poverty and Rural): Not applicable

10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

11. RECOMMENDATION

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| Action required before decision issued | N |
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| Notification to Scottish Ministers | N |
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| Conclusion of Section 75 Obligation | N |
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| Revocation of previous permission | N |
|-----------------------------------|---|

Subject to the above, it is recommended that planning permission be **GRANTED**, subject to the following:

Conditions and Reasons

1. For the avoidance of doubt, the development shall not be carried out other than using a SM320 Comfort feedbarge unless agreed in writing with the Planning Authority.

Reason: to minimise the visual impact and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special

Landscape Area.

2. All plant, machinery and equipment associated with this development shall be so installed, maintained and operated such that the following standard is met: -

The operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty at any noise-sensitive premises. Terms and measurements to be in accordance with BS 4142: 2014 Methods for Rating Industrial & Commercial Sound.

For the purposes of this condition, “noise-sensitive premises” includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

3. No deployment or use of any acoustic deterrent device (ADD) shall take place until an ADD Deployment and Usage Plan has been submitted to and approved in writing by the planning authority. This plan shall include the following information;

- i. full technical details of the sound output of the devices to be used including source level and their operating frequency(s),
- ii. how many of these devices are to be deployed and in what locations,
- iii. confirmation that they will only be triggered in the presence of predators - manually or by sensor - and that this triggering will only result in a single finite operation of the device, details of which shall be submitted, with no continuous or auto-intermittent operation possible,
- iv. confirmation that a log will be kept recording the exact dates when the devices were operated, how often they were operated on that date, for what duration and what the cue for their manual or auto-sensor operation was,
- v. details of any predation events by seals and any predation measures, including ADD deployment, in use at that time should be logged,
- vi. details of the person or persons responsible for maintaining the log,
- vii. an undertaking that a regular meeting (at least annually) will be held with the Planning Authority and SNH to review the log and the ADD Deployment and Usage Plan and adopt a revised Plan if deemed necessary by the Planning Authority.

No deployment or use of any ADD on the site shall take place unless it is in strict accordance with the provisions of the ADD Deployment and Usage Plan as may be approved.

Reason: In recognition of the legal responsibilities of both the applicant and the planning authority in respect of the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC) selected for its harbour porpoise.

4. No operations shall take place at the site outwith the hours of 06.00 – 18.00 hours.

Reason: to comply with MOD requirements.

5. All surface equipment, with the exception of navigational markers and safety equipment, shall be finished in a dark, matt neutral colour. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

6. All lighting above the water surface and not required for safe navigation purposes should be directed downwards by shielding. It should be extinguished when not required for the purpose for which it has been installed. If lighting is required for security purposes, infra-red lights and cameras should be used.

Reason: To minimise the visual impact of the installation; to ensure that lights left on in the daytime do not draw the eye towards the site and at night do not present unnecessary sources of light pollution.

7. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the Planning Authority and should include adequate details to address how compliance can be assessed. This should also detail equipment and methods available, triggers/thresholds and associated actions in order to secure that any risks to local wild fish populations and freshwater pearl mussel are minimised. Upon commencement the development and ongoing operation of the site must be carried out in accordance with the EMP as approved.

The EMP shall be prepared as a single, stand alone document, which shall include the following:

(1). Sea Lice Management in relation to impact on wild fish

a) A method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling and an assessment and monitoring of associated impacts on Freshwater Pearl Mussel;

b) details of site specific operational practices that will be carried out

following the stocking of the site in order to manage sea lice and minimise the risks to the local wild fish population;

c) details of site specific operational practices that will be carried out in order to manage the incidence of sea lice being shed to the wider environment through routine farming operations such as mort removal, harvesting, grading, sea lice bath treatments and well boat operations, along with an assessment of the availability and suitability of the site for cleaner fish;

d) details of the specification and methodology of a programme for the monitoring, recording, and auditing of sea lice numbers on the farmed fish;

e) details of the person or persons responsible for all monitoring activities;

f) an undertaking to provide site specific summary trends from the above monitoring to the Planning Authority on a specified, regular basis;

g) details of the form in which such summary data will be provided;

h) details of how and where raw data obtained from such monitoring will be retained by whom and for how long, and in what form;

i) an undertaking to provide such raw data to the Planning Authority on request and to meet with the planning authority at agreed intervals to discuss the data and monitoring results;

j) details of the site specific trigger levels for treatment with sea lice medicines. This shall include a specific threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;

k) details of the site specific criteria that need to be met in order for the treatment to be considered successful;

l) details of who will be notified in the event that treatment is not successful;

m) details of what action will be taken during a production cycle in the event that a specified number of sea lice treatments are not successful;

n) details of what action will be taken during the next and subsequent production cycles in the event that sea lice treatment is not successful.

o) details of where records of sea lice counts will be made publically available to view in as close to real time as is practicable.

(2). Escape Management to minimise interaction with wild fish

a) details of how escapes will be managed during each production cycle;

b) details of the counting technology or counting method used for calculating stocking and harvest numbers;

c) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;

d) details of an escape prevention plan. This shall include:

- net strength testing;
- details of net mesh size;
- net traceability;
- system robustness;
- predator management; and
- record-keeping methodologies for reporting of risk events. Risk events may include but are not limited to holes, infrastructure issues, handling errors and follow-up of escape events; and

e) details of worker training including frequency of such training and the provision of induction training on escape prevention and counting technologies.

(3). Procedure in event of a breach or potential breach.

a) A statement of responsibility to "stop the job/activity" if a breach or potential breach of the mitigation / procedures set out in the EMP or legislation occurs. This should include a notification procedure with associated provision for the halt of activities in consultation with the relevant regulatory and consultation authorities in the event that monitoring demonstrates a significant and consequent impact on wild fish populations or Fresh Water Pearl Mussel as a result, direct or otherwise of such a breach.

(4). Requirement for update and review

a) The development and operation of the site shall be carried out in accordance with the approved EMP unless changes to the operation of the site dictate that the EMP requires amendment. In such an eventuality, a revised EMP will require to be submitted to, and approved in writing by the Planning Authority beforehand. In addition, a revised EMP shall be submitted to and approved in writing by the Planning Authority every 5 years, as a minimum, following the start date, to ensure it remains up to date and in line with good practice.

Reason: To ensure that good practice is followed to mitigate the potential impacts of sea lice loading in the marine environment in general and on wild salmonids and Freshwater Pearl Mussels in particular; in accordance with the Planning Authority's biodiversity duty.

8. No anti-predator netting shall be installed on the farm hereby approved.

Reason: To minimize impacts on biodiversity.

9. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the site operator shall carry out or make suitable arrangements for the carrying out of all measures necessary for lighting, buoying, raising, repairing, moving or destroying, as appropriate, the whole or any part of the equipment so as to remove the obstruction or danger to navigation.

Reason: In the interests of amenity and navigational safety.

10. At least three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to and agreed in writing with the Planning Authority. Upon cessation the approved scheme shall be implemented.

Reason: To ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of

Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities: You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place

outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Lighting and Licences: The development should be lit in accordance with Northern Lighthouse Board requirements and obtain any marine licences as required.

| | |
|--------------------|---|
| Signature: | [Redacted] |
| Designation: | Area Planning Manager – North |
| Author: | Dr Shona Turnbull |
| Background Papers: | Documents referred to in report and in case file. |
| Relevant Plans: | Plan 1 - Location Plan Plan 2 - Site plan with surface equipment Plan 3 - Site layout Plan 4 - Site matrix and co-ordinates Plan 5 - Feedbarge Plan 6 - Cages Plan 7 - Top Nets |

Appendix 1: Letters of Representation – removed for data protection purposes

Appendix 2: Appropriate Assessment

New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge

17/04749/FUL Culnacnoc

CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES

The status of the **Inner Hebrides and the Minches candidate Special Area of Conservation** under the EC Directive 92/43/EEC, the 'Habitats Directive' means that the Conservation (Natural Habitats, etc.) Regulations 1994 (as amended), apply, as Scottish Planning Policy 2014 (para 210) requires candidate SACs to have the same level of protection as designated ones.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on that site, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the area has been designated. The need for Appropriate Assessment extends to plans or projects out with the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case and there are not alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required. The proposed fish farm and its incorporation of acoustic deterrent devices has the potential to have a likely significant effect on the qualifying interests. The Council is therefore required to undertake an Appropriate Assessment of the implications of the proposal for the Inner Hebrides and the Minches candidate SAC in view of the site's conservation objectives.

APPROPRIATE ASSESSMENT

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the

information submitted from other agencies. In this case, the Appropriate Assessment is informed by information supplied by SNH.

Appraisal

In its response to the Council SNH has advised that in their view this proposal will not adversely affect the integrity of the site when proposed mitigating conditions are applied. The council has undertaken an appraisal assisted by the information supplied.

Decision

On the basis of this appraisal, it can be concluded that the proposal will not adversely affect the integrity of Inner Hebrides and the Minches proposed SAC.

HIGHLAND COUNCIL APPRAISAL OF THE PROPOSAL

- The proposal is not directly connected with or necessary to site management for conservation;
- The proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; therefore;
- An Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives is provided below.

Interests of European Importance – the Inner Hebrides and the Minches proposed SAC

The qualifying interest for which the site is proposed to be designated is porpoise. The cSAC is the largest protected area in Europe for harbour porpoise and covers over 13,800 km² and supports over 5000 individuals. The SAC Selection Assessment Document on the SNH websiteⁱ describes the pSAC as having the following attributes:

6. Site summary

The Inner Hebrides and the Minches site is located within the West Scotland harbour porpoise MU and is an area with high predicted and observed densities of harbour porpoise. The area included within the site covers important summer habitat, where the density of animals has been shown to be consistently above average by both Heinänen and Skov (2015) and the work from Booth *et al.* (2013). Additionally, work by Embling *et al.* (2010) and Marubini *et al.* (2009) also indicate that locations within this proposed site support high densities of harbour porpoise in summer and thus could be suitable as a protected area for the species. No modelling work was undertaken for the winter season for the West Scotland management unit because there were insufficient data available. Although there are more data from summer months, harbour porpoise are present throughout the year (Paxton *et al.* 2016), and thus the designation applies year round.

The Inner Hebrides and the Minches site comprises an area of 13801.99km². The site's northern boundary crosses the North Minch between the Point of Stoer and Tolsta Head. A simple boundary follows the coastline of the Outer Hebrides to Rubha na h-Ordaig on South Uist. From there it crosses the Sea of the Hebrides to the northern tip of Coll, and then runs from Port a' Mhùrain on the south west of Coll, down to Rubha Bhòrsa on the north coast of Islay. It has a southern boundary between the Rubha na Tràille at the southern end of Jura and the mainland coast near Ballochroy. From Ballochroy it follows the mainland coastline back to the Point of Stoer including the Sound of Mull and Kyle Rhea. It encompasses the islands of Skye, Mull, Lismore, the island group within the Firth of Lorn and Colonsay.

The Advice to Support Management document on the SNH Websiteⁱⁱ notes:

Aquaculture - finfish

In assessing likely impact, our focus has been on the equipment on site, likely vessel routes, and the use of Acoustic Deterrent Devices (ADDs) which together represent the main interactions between aquaculture developments and harbour porpoise.

There are numerous finfish farms within or immediately adjacent to the pSAC, mainly close to the shore. Map 2 shows the distribution of aquaculture developments within or close to the boundary of the pSAC.

Aquaculture farm equipment includes pens, nets, moorings and can include floating buildings. We consider that there is a low risk of entanglement for harbour porpoise from aquaculture infrastructure.

Finfish farms often use ADDs as part of their anti-predator measures, however, these may result in disturbance/habitat exclusion of harbour porpoise. The evidence of impacts on cetaceans from ADDs currently in use is varied and is dependent on many variables (e.g. noise characteristics of device, how the device is used, the topography, animal behaviour and importance of the area/habitat where the ADD is being used). We are aware there are ongoing trials and research relating to new ADDs for which noise emissions do not overlap with the most sensitive range of harbour porpoise hearing. Further research is required but these new devices may in the future provide a suitable alternative seal defence mechanism which is more compatible with the conservation objectives of the site.

The conservation objectives for the Inner Hebrides and the Minches candidate SAC are yet to be determined but are being considered in a proposed Conservation Strategyⁱⁱⁱ. SNH have advised:

In our view, this proposal is likely to have a significant effect on harbour porpoise within Inner Hebrides and the Minches cSAC. Consequently, The Highland Council is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest. To help you do this, we advise that in our view on the basis of the information provided, and if the proposal is undertaken strictly in accordance with the following changes/mitigation then the proposal will not adversely affect the integrity of the site:

- If ADDs are used which are within the hearing range of harbour porpoise they must be devices which are only triggered in the presence of predators. They should not sound continuously, or be set to intermittent unless agreed in writing by the Highland Council.
- For each device deployed, a detailed record should be kept by the operator of the cue for deployment, dates when the devices are operating, how often they sound and for what duration. Information should be provided of the noise profile of the devices when they are sounding.
- The use of ADDs should be subject to regular review by the Highland Council, in consultation with SNH, which should initially be on an annual basis. The Highland Council should have the power to amend/restrict the types of devices used and how they are used.

Further to this, discussions with SNH have advised they are content that an appropriate condition that reflects the above advice will satisfy the assessment of impacts.

Qualifying Species:

- Porpoise

Highland Council's appraisal of the effect of the proposal on species integrity

The development may directly cause negative impacts due to the individual and cumulative impacts of ADDs if used on this and the adjacent fish farm. However, scientific advice provided indicates that so long as a condition is imposed on the planning application requiring that the ADDs to be used in a limited manner to minimise the individual and cumulative effects, no adverse effect on the integrity of the candidate SAC will result.

Conclusion to scientific appraisal

The proposal is unlikely to have a significant effect of the integrity of the qualifying feature of the Inner Hebrides and the Minches candidate SAC.

ⁱ <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/2016-harbour-porpoise-consultation/>

ⁱⁱ <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/2016-harbour-porpoise-consultation/>

ⁱⁱⁱ <http://www.gov.scot/Topics/marine/marine-environment/mpanetwork/harbourporpoisesacs/conservestrat>

Appendix 3: Confidential annex

PLANNING PERMISSION

Reference No: 17/04749/FUL

To:
Organic Sea Harvest Ltd
Per: Mr Alex MacInnes
MacDonald House
Somerled Square
Portree
IV51 9FH

Per:
Lochside Associates
Per: Jim Bromham
Treetops
Loch Flemington
Inverness
IV2 7QR

Town and Country Planning (Scotland) Act 1997 (As Amended)
Planning Etc. (Scotland) Act 2006

DECISION NOTICE

New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge
Site 1335M East Of Seaforth 9 Culnacnoc Isle Of Skye

The Highland Council in exercise of its powers under the above Acts **grants planning permission** for the above development in accordance with the particulars given in the application and the following documents:

| Document Type | Document No. | Version No. | Date Received |
|------------------|--------------|-------------|---------------|
| Location Plan | FIGURE 1 | | 05.10.2017 |
| Site Layout Plan | FIGURE 3 | | 05.10.2017 |
| Site Layout Plan | FIGURE 4 | | 05.10.2017 |
| Site Layout Plan | FIGURE 5 | | 05.10.2017 |
| Site Layout Plan | FIGURE 6 | | 05.10.2017 |
| General Plan | FIGURE 7 | | 05.10.2017 |

CONDITIONS AND REASONS

This permission is granted subject to the following conditions and reasons:

1. For the avoidance of doubt, the development shall not be carried out other than using a SM320 Comfort feedbarge unless agreed in writing with the Planning Authority.

Reason: to minimise the visual impact and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

Dated: 17th April 2018

[Redacted]

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Area Planning Manager

2. All plant, machinery and equipment associated with this development shall be so installed, maintained and operated such that the following standard is met: -

The operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty at any noise-sensitive premises. Terms and measurements to be in accordance with BS 4142: 2014 Methods for Rating Industrial & Commercial Sound.

For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

3. No deployment or use of any acoustic deterrent device (ADD) shall take place until an ADD Deployment and Usage Plan has been submitted to and approved in writing by the planning authority. This plan shall include the following information;
- i. full technical details of the sound output of the devices to be used including source level and their operating frequency(s),
 - ii. how many of these devices are to be deployed and in what locations,
 - iii. confirmation that they will only be triggered in the presence of predators - manually or by sensor - and that this triggering will only result in a single finite operation of the device, details of which shall be submitted, with no continuous or auto-intermittent operation possible,
 - iv. confirmation that a log will be kept recording the exact dates when the devices were operated, how often they were operated on that date, for what duration and what the cue for their manual or auto-sensor operation was,
 - v. details of any predation events by seals and any predation measures, including ADD deployment, in use at that time should be logged,
 - vi. details of the person or persons responsible for maintaining the log,
 - vii. an undertaking that a regular meeting (at least annually) will be held with the Planning Authority and SNH to review the log and the ADD Deployment and Usage Plan and adopt a revised Plan if deemed necessary by the Planning Authority.

No deployment or use of any ADD on the site shall take place unless it is in strict accordance with the provisions of the ADD Deployment and Usage Plan as may be approved.

Reason: In recognition of the legal responsibilities of both the applicant and the planning authority in respect of the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC) selected for its harbour porpoise.

Dated: 17th April 2018

[Redacted]

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Area Planning Manager

4. No operations shall take place at the site outwith the hours of 06.00 - 18.00 hours.

Reason: to comply with MOD requirements.

5. All surface equipment, with the exception of navigational markers and safety equipment, shall be finished in a dark, matt neutral colour. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

6. All lighting above the water surface and not required for safe navigation purposes should be directed downwards by shielding. It should be extinguished when not required for the purpose for which it has been installed. If lighting is required for security purposes, infra-red lights and cameras should be used.

Reason: To minimise the visual impact of the installation; to ensure that lights left on in the daytime do not draw the eye towards the site and at night do not present unnecessary sources of light pollution.

7. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the Planning Authority and should include adequate details to address how compliance can be assessed. This should also detail equipment and methods available, triggers/thresholds and associated actions in order to secure that any risks to local wild fish populations and freshwater pearl mussel are minimised. Upon commencement the development and ongoing operation of the site must be carried out in accordance with the EMP as approved.

The EMP shall be prepared as a single, stand alone document, which shall include the following:

(1). Sea Lice Management in relation to impact on wild fish

- a) A method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling and an assessment and monitoring of associated impacts on Freshwater Pearl Mussel;
- b) details of site specific operational practices that will be carried out following the stocking of the site in order to manage sea lice and minimise the risks to the local wild fish population;
- c) details of site specific operational practices that will be carried out in order to manage the incidence of sea lice being shed to the wider environment through routine farming operations such as mort removal, harvesting, grading, sea lice bath treatments and well boat operations, along with an assessment of the availability and suitability of the

Dated: 17th April 2018

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Area Planning Manager

- site for cleaner fish;
- d) details of the specification and methodology of a programme for the monitoring, recording, and auditing of sea lice numbers on the farmed fish;
- e) details of the person or persons responsible for all monitoring activities;
- f) an undertaking to provide site specific summary trends from the above monitoring to the Planning Authority on a specified, regular basis;
- g) details of the form in which such summary data will be provided;
- h) details of how and where raw data obtained from such monitoring will be retained by whom and for how long, and in what form;
- i) an undertaking to provide such raw data to the Planning Authority on request and to meet with the planning authority at agreed intervals to discuss the data and monitoring results;
- j) details of the site specific trigger levels for treatment with sea lice medicines. This shall include a specific threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;
- k) details of the site specific criteria that need to be met in order for the treatment to be considered successful;
- l) details of who will be notified in the event that treatment is not successful;
- m) details of what action will be taken during a production cycle in the event that a specified number of sea lice treatments are not successful;
- n) details of what action will be taken during the next and subsequent production cycles in the event that sea lice treatment is not successful.
- o) details of where records of sea lice counts will be made publically available to view in as close to real time as is practicable.

(2). Escape Management to minimise interaction with wild fish

- a) details of how escapes will be managed during each production cycle;
- b) details of the counting technology or counting method used for calculating stocking and harvest numbers;
- c) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;
- d) details of an escape prevention plan. This shall include:
 - o net strength testing;
 - o details of net mesh size;
 - o net traceability;
 - o system robustness;
 - o predator management; and
 - o record-keeping methodologies for reporting of risk events. Risk events may include but are not limited to holes, infrastructure issues, handling errors and follow-up of escape events; and
- e) details of worker training including frequency of such training and the provision of induction training on escape prevention and counting technologies.

[Redacted]

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(3). Procedure in event of a breach or potential breach.

- a) A statement of responsibility to "stop the job/activity" if a breach or potential breach of the mitigation / procedures set out in the EMP or legislation occurs. This should include a notification procedure with associated provision for the halt of activities in consultation with the relevant regulatory and consultation authorities in the event that monitoring demonstrates a significant and consequent impact on wild fish populations or Fresh Water Pearl Mussel as a result, direct or otherwise of such a breach.

(4). Requirement for update and review

- a) The development and operation of the site shall be carried out in accordance with the approved EMP unless changes to the operation of the site dictate that the EMP requires amendment. In such an eventuality, a revised EMP will require to be submitted to, and approved in writing by the Planning Authority beforehand. In addition, a revised EMP shall be submitted to and approved in writing by the Planning Authority every 5 years, as a minimum, following the start date, to ensure it remains up to date and in line with good practice.

Reason: To ensure that good practice is followed to mitigate the potential impacts of sea lice loading in the marine environment in general and on wild salmonids and Freshwater Pearl Mussels in particular; in accordance with the Planning Authority's biodiversity duty.

- 8. No anti-predator netting shall be installed on the farm hereby approved.

Reason: To minimize impacts on biodiversity.

- 9. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the site operator shall carry out or make suitable arrangements for the carrying out of all measures necessary for lighting, buoying, raising, repairing, moving or destroying, as appropriate, the whole or any part of the equipment so as to remove the obstruction or danger to navigation.

Reason: In the interests of amenity and navigational safety.

- 10. At least three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to and agreed in writing with the Planning Authority. Upon cessation the approved scheme shall be implemented.

Reason: To ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

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Area Planning Manager

Variations

During the processing of the application the following variations were made to the proposal:

1. None.

Section 75 Obligation

1. None.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

IMPORTANT INFORMATIVES

Please read the following informatives and, where necessary, act upon the requirements specified:

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that [Redacted]

Dated: 17th April 2018

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Area Planning Manager

may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from: http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required,

Dated: 17th April 2018

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and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Lighting and Licences

The development should be lit in accordance with Northern Lighthouse Board requirements and obtain any marine licences as required.

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at BuildingStandards@highland.gov.uk or on 01349 886608.

Land Ownership/Planning Permission

For the avoidance of doubt, the existence of planning permission does not affect or supersede an individual's ownership or other legal rights. Please be advised that this permission does not entitle you to build on, under or over ground outwith your ownership or to enter private ground to demolish, construct or maintain your property.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Dated: 17th April 2018

[Redacted]

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1. If the applicant is aggrieved by the decision to refuse planning permission for, or approval required by a conditions in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. The notice of appeal should be addressed to:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Appeals can also be lodged online via the ePlanning Portal at:

<https://www.eplanning.scot>

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Dated: 17th April 2018

[Redacted]

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Area Planning Manager

| | |
|-------------|-------------------|
| Agenda Item | 6.11 |
| Report No | PLN/095/19 |

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 26 November 2019

Report Title: 19/03930/S42: Organic Sea Harvest
Site 1335M East of Seaforth, 9 Culnacnock, Isle of Skye

Report By: Acting Head of Development Management – Highland

1. Purpose/Executive Summary

1.1 Description: Marine Fish Farm, Atlantic Salmon, Application under Section 42 to develop the site other than in accordance with condition 1 of planning permission 17/04749/FUL by installing a feed barge of smaller dimensions than the model specified in condition.

Ward: 10 - Eilean A' Cheò

Development category: Local Development

Reason referred to Committee: Councillor Interest and number of objections.

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

2. Recommendation

2.1 Members are asked to agree the recommendation to Grant planning permission as set out in section 11 of the report.

3. PROPOSED DEVELOPMENT

3.1 The application has been submitted under Section 42 of the Planning Act and is seeking approval for the non-compliance with Condition 1 (feed barge design) of planning permission 17/04749/FUL. The 17/04749/FUL planning permission is for a Marine Fish Farm consisting of 12 x 120m circumference circular cages. This permission was granted on 17 April 2018 by the North Area Planning Committee; as such the permission is extant but has not yet been implemented.

3.2 Condition 1 of 17/04749/FUL states:

For the avoidance of doubt, the development shall not be carried out other than using a SM320 Comfort feed barge unless agreed in writing with the Planning Authority.

Reason: To minimise the visual impact and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

3.3 The applicant has requested the alteration to the condition as the specified design is no longer available to the company and they have now entered into a supply partnership with Gaelforce Marine. As such the application now proposes to use the Gaelforce SeaMate 350 concrete barge.

3.3 Pre Application Consultation: No pre-application consultation has been received

3.4 Supporting Information: Visualisations from two viewpoints have been submitted in support of this application.

3.5 Variations: No variations have been received during the course of this application.

4. SITE DESCRIPTION

4.1 The application site is located north of Invertote and just south of Brother's Point on the mid-east coast of the Trotternish peninsula, Isle of Skye. The coastline west of the site is dominated by the main road from Portree to Staffin (A855), with associated key viewpoints at Invertote and Brother's Point and the Culnacnoc settlement.

An adjacent fish farm (c1.8km to the south) was granted consent under 17/04735/FUL. There is an associated section 42 application (19/03940/S42) which is also being considered at this committee, as detailed below.

5. PLANNING HISTORY

| | | | |
|-----|------------|--|---------------------------|
| 5.1 | 14.03.2017 | 16/05501/PREAPP | Advice Issued |
| 5.2 | 19.06.2017 | 17/02310/SCOP | Scoping Opinion Issued |
| 5.3 | 17.04.2018 | 17/04749/FUL: New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge | GRANTED |

Invertote site c.1.8km to the south of this application site.

| | | | |
|-----|------------|--|--|
| 5.4 | 14.03.2017 | 16/05501/PREAP | Advice Issued |
| 5.5 | 19.06.2017 | 17/02312/SCOP | Scoping Opinion Issued |
| 5.6 | 24.04.2018 | 17/04735/FUL: Marine Fish Farm - Atlantic Salmon: New site comprising of 12 x 120m circumference circular cages an 80m mooring grid with feed barge | GRANTED |
| 5.7 | | 19/03940/S42: Marine Fish Farm, Atlantic Salmon, Application under Section 42 to develop the site other than in accordance with condition 1 of planning permission 17/04735/FUL by installing a feed barge of smaller dimensions than the model specified in condition | Pending determination – also being considered at this committee. |

6. PUBLIC PARTICIPATION

6.1 Advertised: Unknown Neighbour – 14 days

Date Advertised: 09.09.2019

Representation deadline: 27.09.2019

Timeous representations: 7 (From 5 Households)

Late representations: 0

6.2 Material considerations raised are summarised as follows:

- a) Visual impact – impact for tourists
- b) Design and scale – more visually intrusive
- c) Application is misleading in saying that the feed barge is smaller – the height and width will increase only the length will decrease.

6.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet
www.wam.highland.gov.uk/wam.

7. CONSULTATIONS

7.1 None required.

8. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

8.1 **Highland Wide Local Development Plan 2012**

28 - Sustainable Design

30 - Physical Constraints

49 - Coastal Development
50 - Aquaculture
57 - Natural, Built and Cultural Heritage
61 - Landscape

8.2 **West Highlands and Islands Local Development Plan (WestPlan), 2019**

No specific policies apply.

8.5 **Highland Council Supplementary Planning Policy Guidance**

Special Landscape Area Citations (June 2011)

9. OTHER MATERIAL POLICY CONSIDERATIONS

9.1 Scottish Government Planning Policy and Guidance

National Marine Plan (2015)

9.2 Highland Aquaculture Planning Guidance (2016)

10. PLANNING APPRAISAL

10.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

10.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

10.3 As detailed above, planning permission for the Marine Fish Farm has already been granted in April 2018 under application 17/04749/FUL and is extant although yet to be implemented. Consequentially, the principle of a Fish Farm in this location has been accepted. The assessment of this application is therefore focussed on the non-compliance with condition 1 (feed barge design). In this regard the Planning Authority consider that the only relevant material considerations are:

- a) Compliance with the development plan and other planning policy
- b) Landscape and Visual Impact
- c) Noise Emissions
- d) Conditions and Time Direction

Development plan/other planning policy

10.4 Policy 50 (Aquaculture) within the Highland-wide Local Development Plan (HwLDP) states that the Council will support the sustainable development of finfish and shellfish farming subject to there being no significant adverse effect, directly, indirectly or cumulatively on the natural, built and cultural heritage and existing

activity. As discussed in the report below, the proposed alteration to the feed barge design is not considered to have an unacceptable impact on the landscape and natural heritage, and therefore complies with this policy.

- 10.5 Policy 28 (Sustainable Design) includes, among other things, the requirement to assess proposals on the extent to which they have an impact on:

- individual and community residential amenity;

As the proposal lies either within or close to the:

- Trotternish National Scenic Area (NSA);
- Trotternish and Tianavaig Special Landscape Area (SLA);
- Raasay and Rona SLA.

- 10.6 Policy 57 (Natural, Built and Cultural Heritage) requires all development proposals to be assessed taking into account features of:

- **local/regional importance:** there are a number of amenity and cultural heritages resources in the vicinity of the proposal, as well as the Trotternish and Tianavaig/ Raasay and Rona SLAs;
- **national importance:** Trotternish NSA; we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resources;

As discussed in the report below, the proposed alteration to the feed barge design is not considered to have an unacceptable impact on the landscape and natural heritage, and therefore complies with this policy.

- 10.7 Policy 61(Landscape) states, among other things, that the council would wish to encourage those undertaking development to include measures to enhance the landscape characteristics of the area. This will apply particularly where the condition of the landscape characteristics has deteriorated to such an extent that there has been a loss of landscape quality or distinctive sense of place. The proposal lies close to the Trotternish NSA. As discussed in the report below, the proposed alteration to the feed barge design is not considered to have an unacceptable impact on the landscape and natural heritage, and therefore complies with this policy.

Other Planning Policy

- 10.8 National Marine Plan (2015): The principle of sustainable development and consideration of other coastal and marine interests is one of the key themes of the National Marine Plan. It notes that aquaculture development consents “are determined in accordance with the Local Development Plans and now with this Plan”.
- 10.9 The Highland Council Aquaculture Planning Guidance (2016) outlines a spatial strategy and six development criteria that outline the key considerations for marine fish farm applications. With regards to this section 42 application, Development Criterion 1 (DC1: Landscape, Seascape, Siting and Design) is particularly important.

Material Considerations

Visual and Landscape Impact:

- 10.10 The proposal lies c. 580m from the Trotternish National Scenic Area (NSA) boundary and is within the Trotternish and Tianavaig Special Landscape Area (SLA), which abuts the NSA, and is c. 5.7km from the Raasay and Rona SLA.
- 10.11 As part of 17/04749/FUL a diagram was provided which noted a “possible design of feed barge”; clarification was sought during the determination of the application, but nothing further was provided. Condition 1 was attached to ensure the final feed barge was no larger than that which had been assessed and referenced the model type submitted with the application.

The current application seeks to change the specified model of feed barge and install a feed barge of ‘smaller dimensions’. The applicants’ use of the term ‘smaller’ has met with a number of representations which consider this to be a misrepresentation of the proposal and the design and height will make the proposal more visually intrusive. The approx. dimensions of the approved AKVA AM320 feed barge were 28.5m x 10m x 4.5m, this equates to a sea area of 285m². The proposed Gaelforce Seamate 350 Barge is 14m x 14m x 6m, this equates to an area of 140m².

Whilst it is recognised that two of the dimensions are increasing it is considered that with the substantial reduction in length and overall scale and massing of the proposal will be reduced. Concerns have also been raised about the design, however, it is considered that the proposal still retains a boat shaped super structure and the increase in the height is not considered to be substantive and is unlikely to be discernible from wider public vantage points. It is therefore not considered that the change to the feed barge will have a greater impact upon the visual appearance of the development or undermine the integrity of the wider landscape designations.

Consequently, concerns raised by third parties about the impact of the change upon the increased visitor numbers to Brothers Point is not considered to be substantiated. Indeed this assessment is considered to be reinforced by the submission of the two visualisations which would seem to confirm a reduced visual impact when the change to the feed barge are viewed in isolation and when assessed cumulatively with the Invertote scheme approx. 1.8km to the south (19/03940/S42 and 17/04735/FUL).

However, no details of the external colour/finish have been submitted with this S42 application, it is therefore recommended that this is controlled by a planning condition.

Noise Emissions:

- 10.12 No additional noise information has been submitted with the application. To ensure that noise does not become a nuisance to local communities, a condition limiting the noise levels is recommended, this is in line with the 17/04749/FUL consent. This condition will also help to minimise any cumulative impacts with the proposed Invertote (ref 17/04735/FUL).

Condition and Time Direction:

- 10.13 The grant of permission under S42 of the Planning Act results in the issue of a fresh planning permission. Accordingly it is proposed to modify the timescale direction to reflect that relating to the extant consent. In addition, it is proposed to re-impose the planning conditions which were attached to the 17/04749/FUL consent.

Non-material considerations

- 10.14 The issue of the principle of a new fish farm in this location is not a material planning consideration - As detailed above; planning permission for the Marine Fish Farm has already been granted in April 2018 under application 17/04749/FUL and is extant although yet to be implemented. Consequentially, the principle of a Fish Farm in this location cannot be revisited as part of this application.
- 10.15 Representations have raised concerns regarding Staffin Slipway and its ability to serve the development once completed. These matters will need to be addressed by the applicant and land owners is due course. However, this is not a material planning consideration for a change in feed barge design.
- 10.16 Representations have raised concerns regarding impact of the development on the marine environment, wildlife and protected species. Whilst the proposed change to condition 1 and the feed barge design is not considered to give rise to any ecological concerns beyond those considered under the 17/04749/FUL. It is important that these matters are suitably addressed long term and as the result of a S42 application is the issuing of a fresh planning permission, the conditions attached to the 17/04749/FUL safeguarding ecological interests will again continue to be attached to this permission.

Matters to be secured by Section 75 Agreement

- 10.17 None

11. CONCLUSION

- 11.1 All relevant matters have been taken into account when appraising this application. The non-compliance with condition 1 of the extant planning permission and the change to the feed barge design does not raise any substantive visual or amenity concerns and is considered to accord with the Development Plan and is acceptable in terms of all other applicable material considerations.

12. IMPLICATIONS

- 12.1 Resource: Not applicable
- 12.2 Legal: Not applicable
- 12.3 Community (Equality, Poverty and Rural): Not applicable
- 12.4 Climate Change/Carbon Clever: Not applicable
- 12.5 Risk: Not applicable

12.6 Gaelic: Not applicable

13. RECOMMENDATION

Action required before decision issued N

It is recommended that this application for non-compliance with condition 1 is GRANTED subject to the following Conditions and Reasons

1. No development shall commence until details of the external colour and finish for the feed barge has been submitted to an approved in writing by the Planning Authority. Thereafter the development shall not be carried out other than in accordance with these details.

Reason: To minimise the visual impact and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

2. All plant, machinery and equipment associated with this development shall be so installed, maintained and operated such that the following standard is met: -

The operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty at any noise-sensitive premises. Terms and measurements to be in accordance with BS 4142: 2014 Methods for Rating Industrial and Commercial Sound.

For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels and Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

3. No deployment or use of any acoustic deterrent device (ADD) shall take place until an ADD Deployment and Usage Plan has been submitted to and approved in writing by the planning authority. This plan shall include the following information;

i. full technical details of the sound output of the devices to be used including source level and their operating frequency(s),

ii. how many of these devices are to be deployed and in what locations,

iii. confirmation that they will only be triggered in the presence of predators - manually or by sensor - and that this triggering will only result in a single finite operation of the device, details of which shall be submitted, with no continuous or auto-intermittent operation possible,

- iv. confirmation that a log will be kept recording the exact dates when the devices were operated, how often they were operated on that date, for what duration and what the cue for their manual or auto-sensor operation was,
- v. details of any predation events by seals and any predation measures, including ADD deployment, in use at that time should be logged,
- vi. details of the person or persons responsible for maintaining the log,
- vii. an undertaking that a regular meeting (at least annually) will be held with the Planning Authority and SNH to review the log and the ADD Deployment and Usage Plan and adopt a revised Plan if deemed necessary by the Planning Authority.

No deployment or use of any ADD on the site shall take place unless it is in strict accordance with the provisions of the ADD Deployment and Usage Plan as may be approved.

Reason: In recognition of the legal responsibilities of both the applicant and the planning authority in respect of the Inner Hebrides and the Minches Special Area of Conservation (SAC) selected for its harbour porpoise.

- 4. No operations shall take place at the site outwith the hours of 06.00 - 18.00 hours.

Reason: To comply with MOD requirements.

- 5. All surface equipment, with the exception of navigational markers and safety equipment, shall be finished in a dark, matt neutral colour. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

- 6. All lighting above the water surface and not required for safe navigation purposes should be directed downwards by shielding. It should be extinguished when not required for the purpose for which it has been installed. If lighting is required for security purposes, infra-red lights and cameras should be used.

Reason: To minimise the visual impact of the installation; to ensure that lights left on in the daytime do not draw the eye towards the site and at night do not present unnecessary sources of light pollution.

- 7. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the Planning Authority and should include adequate details to address how compliance can be assessed. This should also detail equipment and methods available, triggers/thresholds and associated actions in order to secure that any risks to local wild fish populations and freshwater pearl mussel are minimised. Upon commencement the development and ongoing operation of the site must be carried out in accordance with the EMP as approved.

The EMP shall be prepared as a single, stand alone document, which shall include the following:

(1). Sea Lice Management in relation to impact on wild fish

- a) A method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling and an assessment and monitoring of associated impacts on Freshwater Pearl Mussel;
- b) details of site specific operational practices that will be carried out following the stocking of the site in order to manage sea lice and minimise the risks to the local wild fish population;
- c) details of site specific operational practices that will be carried out in order to manage the incidence of sea lice being shed to the wider environment through routine farming operations such as mort removal, harvesting, grading, sea lice bath treatments and well boat operations, along with an assessment of the availability and suitability of the site for cleaner fish;
- d) details of the specification and methodology of a programme for the monitoring, recording, and auditing of sea lice numbers on the farmed fish;
- e) details of the person or persons responsible for all monitoring activities;
- f) an undertaking to provide site specific summary trends from the above monitoring to the Planning Authority on a specified, regular basis;
- g) details of the form in which such summary data will be provided;
- h) details of how and where raw data obtained from such monitoring will be retained by whom and for how long, and in what form;
- i) an undertaking to provide such raw data to the Planning Authority on request and to meet with the planning authority at agreed intervals to discuss the data and monitoring results;
- j) details of the site specific trigger levels for treatment with sea lice medicines. This shall include a specific threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;
- k) details of the site specific criteria that need to be met in order for the treatment to be considered successful;
- l) details of who will be notified in the event that treatment is not successful;
- m) details of what action will be taken during a production cycle in the event that a specified number of sea lice treatments are not successful;
- n) details of what action will be taken during the next and subsequent production cycles in the event that sea lice treatment is not successful.

o) details of where records of sea lice counts will be made publically available to view in as close to real time as is practicable.

(2). Escape Management to minimise interaction with wild fish

a) details of how escapes will be managed during each production cycle;

b) details of the counting technology or counting method used for calculating stocking and harvest numbers;

c) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;

d) details of an escape prevention plan. This shall include:

- net strength testing;
- details of net mesh size;
- net traceability;
- system robustness;
- predator management; and
- record-keeping methodologies for reporting of risk events. Risk events may include but are not limited to holes, infrastructure issues, handling errors and follow-up of escape events; and

e) details of worker training including frequency of such training and the provision of induction training on escape prevention and counting technologies.

(3). Procedure in event of a breach or potential breach.

a) A statement of responsibility to "stop the job/activity" if a breach or potential breach of the mitigation / procedures set out in the EMP or legislation occurs. This should include a notification procedure with associated provision for the halt of activities in consultation with the relevant regulatory and consultation authorities in the event that monitoring demonstrates a significant and consequent impact on wild fish populations or Fresh Water Pearl Mussel as a result, direct or otherwise of such a breach.

(4). Requirement for update and review

a) The development and operation of the site shall be carried out in accordance with the approved EMP unless changes to the operation of the site dictate that the EMP requires amendment. In such an eventuality, a revised EMP will require to be submitted to, and approved in writing by the Planning Authority beforehand. In

addition, a revised EMP shall be submitted to and approved in writing by the Planning Authority every 5 years, as a minimum, following the start date, to ensure it remains up to date and in line with good practice.

Reason: To ensure that good practice is followed to mitigate the potential impacts of sea lice loading in the marine environment in general and on wild salmonids and Freshwater Pearl Mussels in particular; in accordance with the Planning Authority's biodiversity duty.

8. No anti-predator netting shall be installed on the farm hereby approved.

Reason: To minimise impacts on biodiversity.

9. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the site operator shall carry out or make suitable arrangements for the carrying out of all measures necessary for lighting, buoying, raising, repairing, moving or destroying, as appropriate, the whole or any part of the equipment so as to remove the obstruction or danger to navigation.

Reason: In the interests of amenity and navigational safety.

10. At least three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to and agreed in writing with the Planning Authority. Upon cessation the approved scheme shall be implemented.

Reason: To ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence by 17th April 2021. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.

2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans and Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud and Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities: You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice

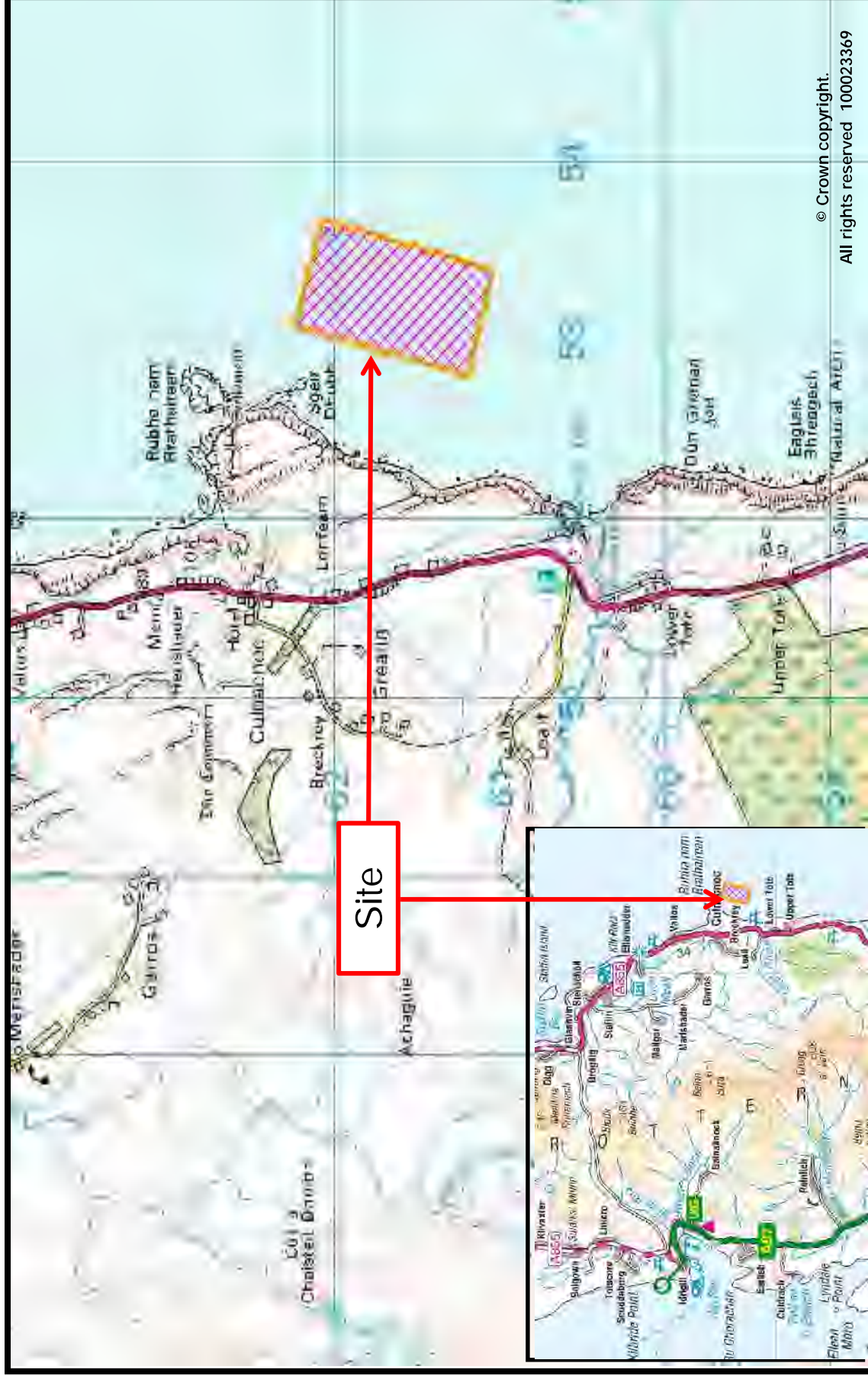
under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action. If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species - Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Lighting and Licences: The development should be lit in accordance with Northern Lighthouse Board requirements and obtain any marine licences as required.

| | |
|--------------------|---|
| Designation: | Acting Head of Development Management – Highland |
| Author: | Mark Harvey |
| Background Papers: | Documents referred to in report and in case file. |
| Relevant Plans: | Plan 1 - FIGURE 3 - SITE LAYOUT PLAN Plan 2 - FIGURE 4 – SITE LAYOUT PLAN Plan 3 - FIGURE 6 - SITE LAYOUT PLAN BARGE KEY POSITIONS Plan 4 - GFE_SM_SSC_350_GA_00001 REV A SHEET 1 of 3 FEED BARGE DESIGN Plan 5 - GFE_SM_SSC_350_GA_00001 REV A SHEET 2 of 3 FEED BARGE DESIGN Plan 6 - GFE_SM_SSC_350_GA_00001 REV A SHEET 3 of 3 FEED BARGE DESIGN |



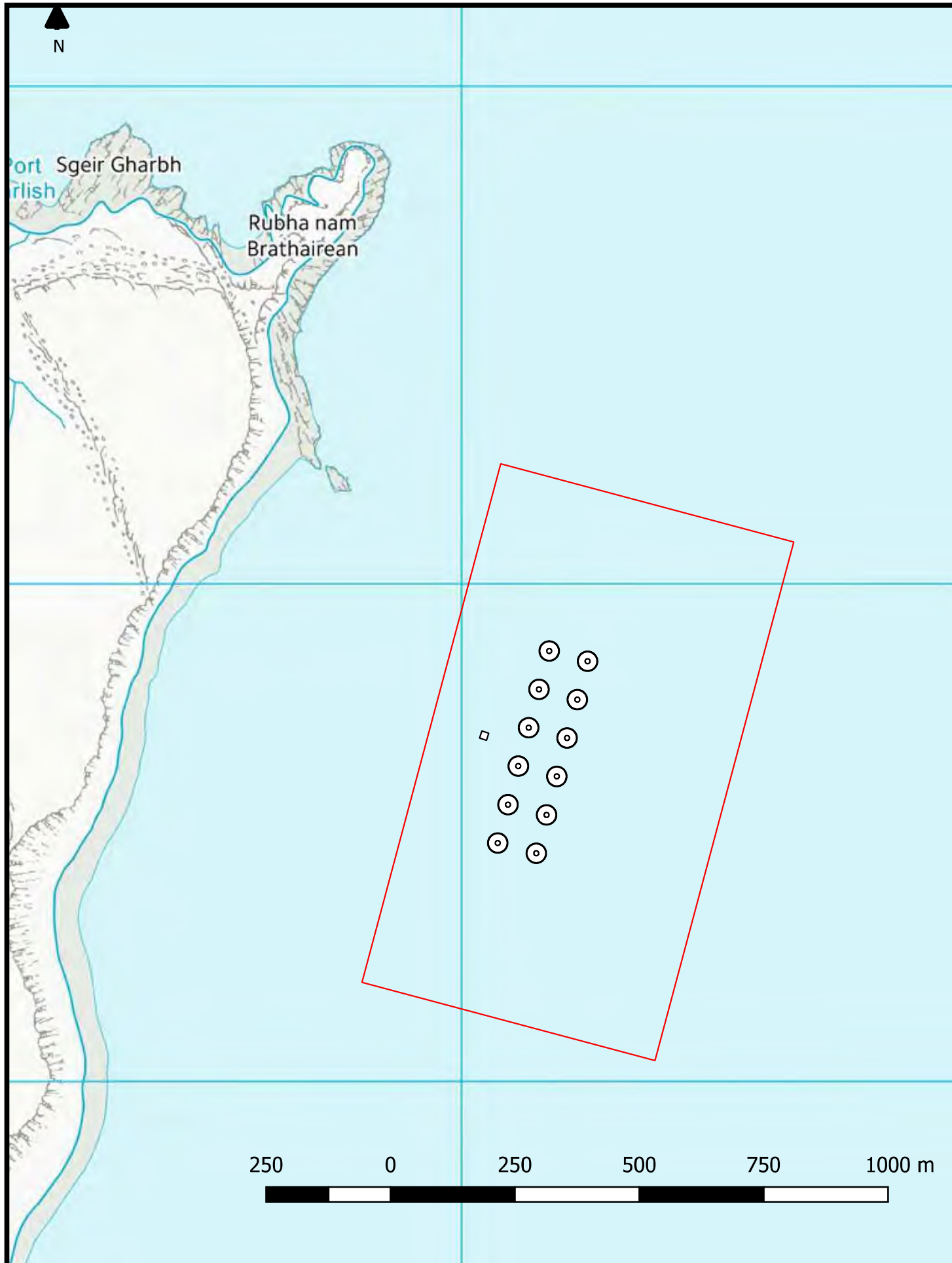
Planning and
Development Service

Location Plan
19/03930/S42

MARINE FISH FARM- Marine Fish Farm, Atlantic Salmon, Application under Section 42 to develop the site other than in accordance with condition 1 of planning permission 17/04749/FUL by installing a feed barge of smaller dimensions than the model specified in condition.

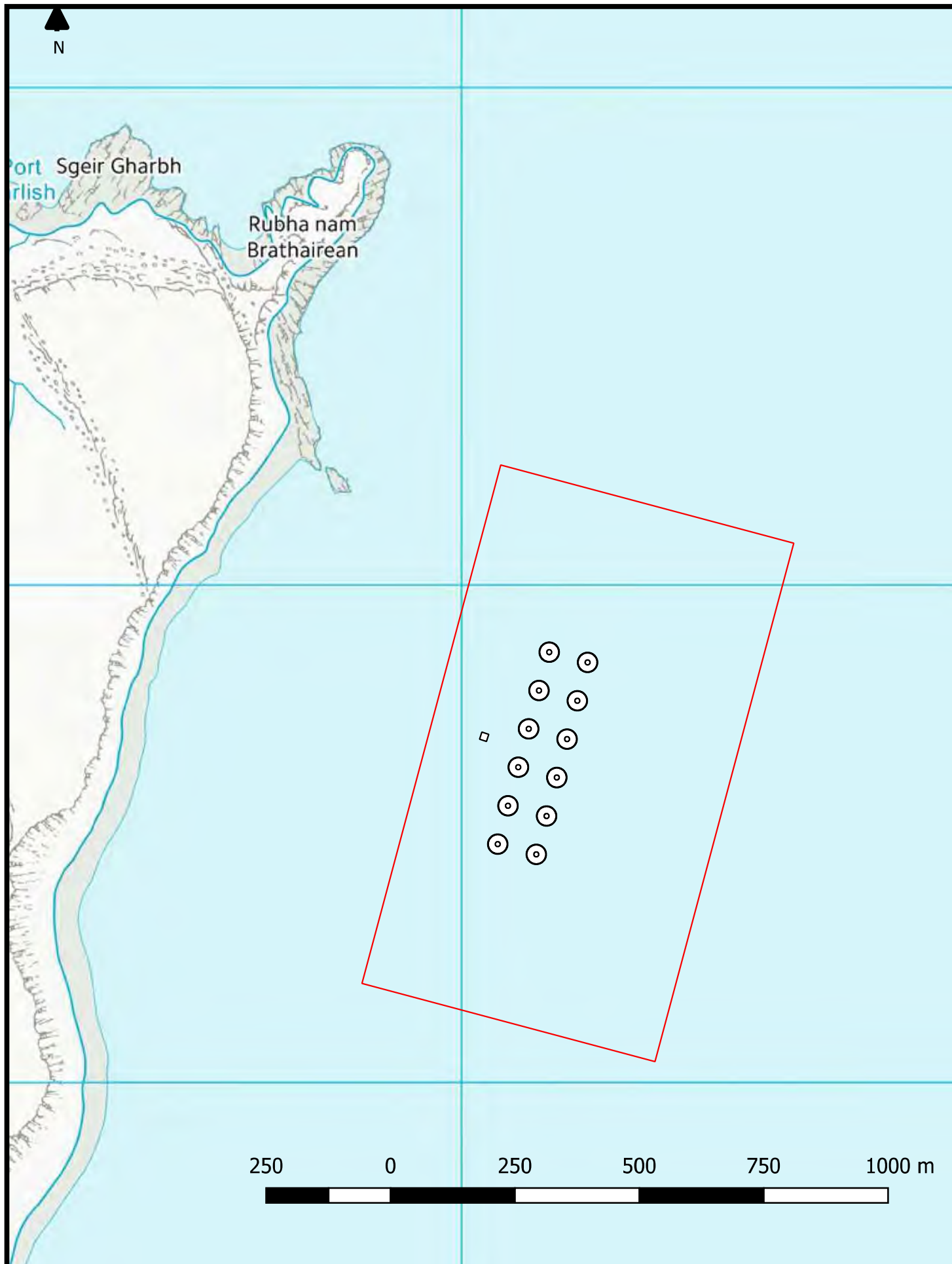
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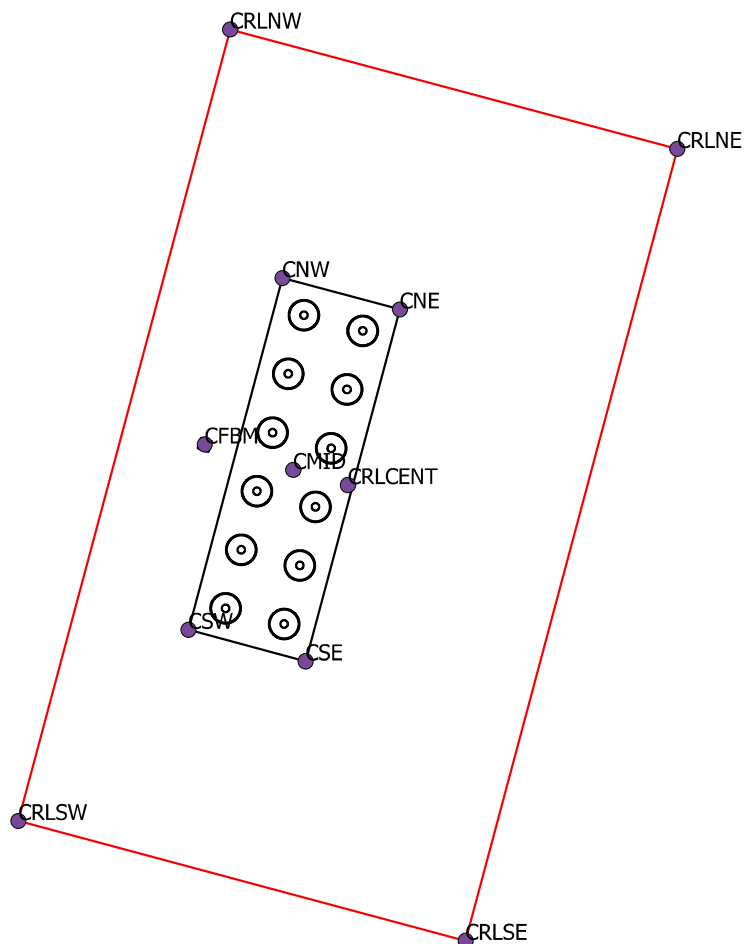
Organic Sea Harvest
Proposed Culnacnoc Site
FIG 3. Site Plan (OS Base) (REV2019)

Ordnance Survey Opensource data. © Crown copyright and database right 2015. UKHO Chart Data supplied by EMAPSITE © Crown Copyright, 2016. All rights reserved. License No. EK001-EMS-366113.
NOT TO BE USED FOR NAVIGATION

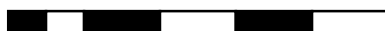


Organic Sea Harvest
Proposed Culnacnoc Site
FIG 4. Site Plan (Chart Base) (REV2019)

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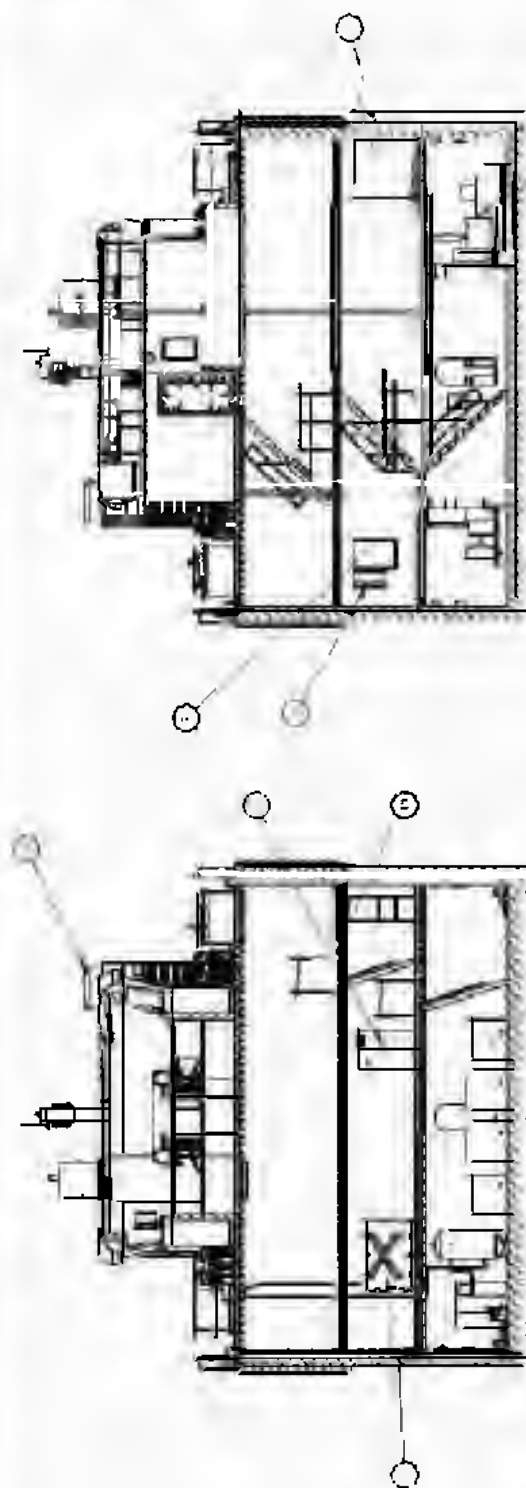


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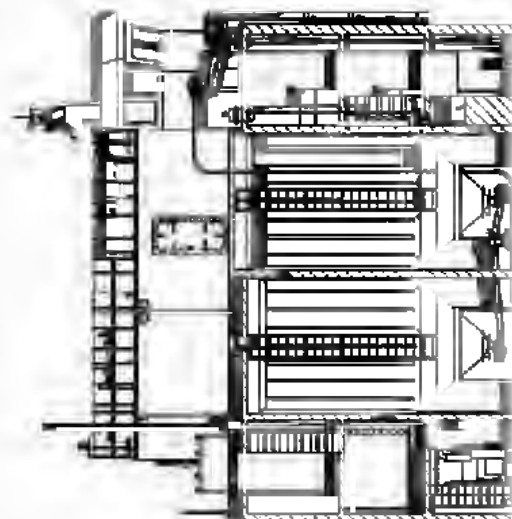


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| CSE | 153179.69 | 861408.86 | 57° 34.504'N | 6° 7.797'W | 57.575057 | -6.129943 |
| CSW | 153025.13 | 861450.2 | 57° 34.521'N | 6° 7.954'W | 57.575343 | -6.132562 |
| CNW | 153149.15 | 861913.9 | 57° 34.774'N | 6° 7.858'W | 57.579565 | -6.130965 |
| CMID | 153163.45 | 861661.13 | 57° 34.639'N | 6° 7.829'W | 57.577308 | -6.13047 |
| CRLNW | 153080.17 | 862241.64 | 57° 34.948'N | 6° 7.947'W | 57.582463 | -6.13245 |
| CRLNE | 153669.45 | 862084.02 | 57° 34.883'N | 6° 7.348'W | 57.581373 | -6.12246 |
| CRLSE | 153390.39 | 861040.7 | 57° 34.313'N | 6° 7.564'W | 57.571874 | -6.126055 |
| CRLSW | 152801.11 | 861198.32 | 57° 34.378'N | 6° 8.163'W | 57.572964 | -6.136042 |
| CRLCENT | 153235.28 | 861641.17 | 57° 34.631'N | 6° 7.756'W | 57.577169 | -6.129252 |
| CFBM | 153046.64 | 861694.79 | 57° 34.653'N | 6° 7.948'W | 57.577546 | -6.132452 |

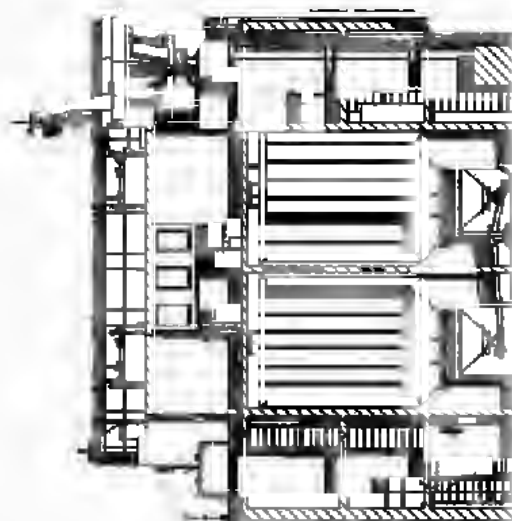
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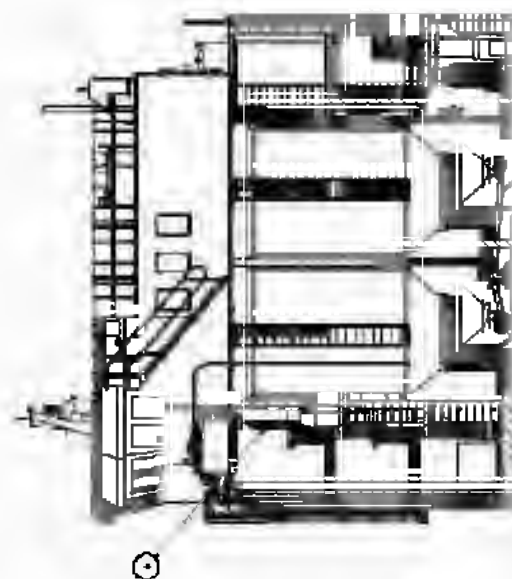
SECTION A-A



22 OCT 23



SECTION 00



3340

[illegible]

SECTION 42 PERMISSION

ReferenceNo:19/03930/S42

To: Organic Sea Harvest
Per: Mr Alex MacInnes
MacDonald House
Somerled Square
Portree
IV51 9EH

Per: Per:
Lochside Associates
Per: Jim Bromham
Lochside Associates
Treetops
Loch Flemington
Inverness
IV2 7QR

Town and Country Planning (Scotland) Act 1997 (As Amended) Planning Etc. (Scotland) Act 2006

DECISION NOTICE

Application under Section 42 to develop land without compliance with condition 1 previously attached to planning permission ref. 17/04749/FUL for a New Fish Farm for Atlantic Salmon consisting of 12x120m circumference circular cages in an 80m mooring grid with associated feed barge at Site 1335M East Of Seaforth, 9 Culnacnoc.

The Highland Council in exercise of its powers under the above Act **grants planning permission to develop land without compliance with conditions 1** previously imposed, in accordance with the particulars given in the application and the following conditions and reasons:

1. No development shall commence until details of the external colour and finish for the feed barge has been submitted to an approved in writing by the Planning Authority. Thereafter the development shall not be carried out other than in accordance with these details.

Reason: To minimise the visual impact and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

2. All plant, machinery and equipment associated with this development shall be so installed, maintained and operated such that the following standard is met: -
The operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty at any noise-sensitive premises.
Terms and measurements to be in accordance with BS 4142: 2014 Methods for

Dated: 1st December 2019

[Redacted]

.....
Area Planning Manager

Rating Industrial & Commercial Sound.

For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

3. No deployment or use of any acoustic deterrent device (ADD) shall take place until an ADD Deployment and Usage Plan has been submitted to and approved in writing by the planning authority. This plan shall include the following information;
- i. full technical details of the sound output of the devices to be used including source level and their operating frequency(s),
 - ii. how many of these devices are to be deployed and in what locations,
 - iii. confirmation that they will only be triggered in the presence of predators - manually or by sensor - and that this triggering will only result in a single finite operation of the device, details of which shall be submitted, with no continuous or auto-intermittent operation possible,
 - iv. confirmation that a log will be kept recording the exact dates when the devices were operated, how often they were operated on that date, for what duration and what the cue for their manual or auto-sensor operation was,
 - v. details of any predation events by seals and any predation measures, including ADD deployment, in use at that time should be logged,
 - vi. details of the person or persons responsible for maintaining the log,
 - vii. an undertaking that a regular meeting (at least annually) will be held with the Planning Authority and SNH to review the log and the ADD Deployment and Usage Plan and adopt a revised Plan if deemed necessary by the Planning Authority.
- No deployment or use of any ADD on the site shall take place unless it is in strict accordance with the provisions of the ADD Deployment and Usage Plan as may be approved.

Reason: In recognition of the legal responsibilities of both the applicant and the planning authority in respect of the Inner Hebrides and the Minches Special Area of Conservation (SAC) selected for its harbour porpoise.

4. No operations shall take place at the site outwith the hours of 06.00 - 18.00 hours.

Reason: To comply with MOD requirements.

Dated: 1st December 2019

[Redacted]

.....
Area Planning Manager

5. All surface equipment, with the exception of navigational markers and safety equipment, shall be finished in a dark, matt neutral colour. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of Trotternish National Scenic Area and the Trotternish and Tianavaig Special Landscape Area.

6. All lighting above the water surface and not required for safe navigation purposes should be directed downwards by shielding. It should be extinguished when not required for the purpose for which it has been installed. If lighting is required for security purposes, infra-red lights and cameras should be used.

Reason: To minimise the visual impact of the installation; to ensure that lights left on in the daytime do not draw the eye towards the site and at night do not present unnecessary sources of light pollution.

7. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the Planning Authority and should include adequate details to address how compliance can be assessed. This should also detail equipment and methods available, triggers/thresholds and associated actions in order to secure that any risks to local wild fish populations and freshwater pearl mussel are minimised. Upon commencement the development and ongoing operation of the site must be carried out in accordance with the EMP as approved.

The EMP shall be prepared as a single, stand alone document, which shall include the following:

(1). Sea Lice Management in relation to impact on wild fish

- a) A method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling and an assessment and monitoring of associated impacts on Freshwater Pearl Mussel;
- b) details of site specific operational practices that will be carried out following the stocking of the site in order to manage sea lice and minimise the risks to the local wild fish population;
- c) details of site specific operational practices that will be carried out in order to manage the incidence of sea lice being shed to the wider environment through routine farming

Dated: 1st December 2019

[Redacted]

.....
Area Planning Manager

operations such as mort removal, harvesting, grading, sea lice bath treatments and well boat operations, along with an assessment of the availability and suitability of the site for cleaner fish;

- d) details of the specification and methodology of a programme for the monitoring, recording, and auditing of sea lice numbers on the farmed fish;
- e) details of the person or persons responsible for all monitoring activities;
- f) an undertaking to provide site specific summary trends from the above monitoring to the Planning Authority on a specified, regular basis;
- g) details of the form in which such summary data will be provided;
- h) details of how and where raw data obtained from such monitoring will be retained by whom and for how long, and in what form;
- i) an undertaking to provide such raw data to the Planning Authority on request and to meet with the planning authority at agreed intervals to discuss the data and monitoring results;
- j) details of the site specific trigger levels for treatment with sea lice medicines. This shall include a specific threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;
- k) details of the site specific criteria that need to be met in order for the treatment to be considered successful;
- l) details of who will be notified in the event that treatment is not successful;
- m) details of what action will be taken during a production cycle in the event that a specified number of sea lice treatments are not successful;
- n) details of what action will be taken during the next and subsequent production cycles in the event that sea lice treatment is not successful.
- o) details of where records of sea lice counts will be made publically available to view in as close to real time as is practicable.

(2). Escape Management to minimise interaction with wild fish

- a) details of how escapes will be managed during each production cycle;
- b) details of the counting technology or counting method used for calculating stocking and harvest numbers;
- c) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;
- d) details of an escape prevention plan. This shall include:
 - net strength testing;
 - details of net mesh size;
 - net traceability;
 - system robustness;
 - predator management; and
 - record-keeping methodologies for reporting of risk events. Risk events may include but are not limited to holes, infrastructure issues, handling errors and follow-up of escape events;
- e) details of worker training including frequency of such training and the provision of

Dated: 1st December 2019

[Redacted]

.....
Area Planning Manager

induction training on escape prevention and counting technologies.

(3). Procedure in event of a breach or potential breach.

- a) A statement of responsibility to "stop the job/activity" if a breach or potential breach of the mitigation / procedures set out in the EMP or legislation occurs. This should include a notification procedure with associated provision for the halt of activities in consultation with the relevant regulatory and consultation authorities in the event that monitoring demonstrates a significant and consequent impact on wild fish populations or Fresh Water Pearl Mussel as a result, direct or otherwise of such a breach.

(4). Requirement for update and review

- a) The development and operation of the site shall be carried out in accordance with the approved EMP unless changes to the operation of the site dictate that the EMP requires amendment. In such an eventuality, a revised EMP will require to be submitted to, and approved in writing by the Planning Authority beforehand. In addition, a revised EMP shall be submitted to and approved in writing by the Planning Authority every 5 years, as a minimum, following the start date, to ensure it remains up to date and in line with good practice.

Reason: To ensure that good practice is followed to mitigate the potential impacts of sea lice loading in the marine environment in general and on wild salmonids and Freshwater Pearl Mussels in particular; in accordance with the Planning Authority's biodiversity duty.

8. No anti-predator netting shall be installed on the farm hereby approved.

Reason: To minimise impacts on biodiversity.

9. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the site operator shall carry out or make suitable arrangements for the carrying out of all measures necessary for lighting, buoying, raising, repairing, moving or destroying, as appropriate, the whole or any part of the equipment so as to remove the obstruction or danger to navigation.

Reason: In the interests of amenity and navigational safety.

10. At least three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to and agreed in writing with the Planning Authority. Upon cessation the approved scheme shall be implemented.

Dated: 1st December 2019

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Reason: To ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

Variations

During the processing of the application the following variations were made to the proposal:

1. None.

Section 75 Obligation

1. None.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence by 17th April 2021. If development has not commenced within this period, then this planning permission shall lapse.

IMPORTANT INFORMATIVES

Please read the following informatives and, where necessary, act upon the requirements specified:

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.

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2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from: http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

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Construction Hours and Noise-Generating Activities:

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species - Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Lighting and Licences: The development should be lit in accordance with Northern Lighthouse Board requirements and obtain any marine licences as required.

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at BuildingStandards@highland.gov.uk or on 01349 886608.

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Land Ownership/Planning Permission

For the avoidance of doubt, the existence of planning permission does not affect or supersede an individual's ownership or other legal rights. Please be advised that this permission does not entitle you to build on, under or over ground outwith your ownership or to enter private ground to demolish, construct or maintain your property.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Dated: 1st December 2019

[Redacted]

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RIGHT OF APPEAL ETC

1. If the applicant is aggrieved by the decision to refuse planning permission for, or approval required by a conditions in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months beginning with the date of this notice. The notice of appeal should be addressed to:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Appeals can also be lodged online via the ePlanning Portal at: <https://www.eplanning.scot>

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Dated: 1st December 2019

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Area Planning Manager