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Ms K Lyons  
Highland Council  
Sent By E-mail

Our ref: PPA-270-2146

10 November 2016

Dear Ms Lyons

**PLANNING PERMISSION APPEAL: NORTHWEST OF LOWER MILOVAIG, LOCH POOLTIEL, SKYE**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints>.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

*Colin Bell*

**COLIN BELL**  
**Case Officer**  
**Planning and Environmental Appeals Division**



## Appeal Decision Notice

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Decision by Allison Coard, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2146
- Site address: North west of Lower Milovaig, Loch Pooltiel, Skye
- Appeal by Kames Fish Farming Limited against the decision by The Highland Council
- Application for planning permission 15/02012/FUL dated 30 April 2015 refused by notice dated 5 November 2015
- The development proposed: New Marine Fish Farm for Salmon and Rainbow Trout
- Application drawings: as listed at the end of the decision notice
- Date of site visit by Reporter: 21 March 2016

Date of appeal decision: 10 November 2016

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### Decision

I allow the appeal and grant planning permission subject to the 8 conditions listed at the end of the decision notice. Attention is drawn to the 3 advisory notes at the end of the notice.

### Reasoning

#### Main Issues

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. From my consideration of the Highland-Wide Local Development Plan the main issues in this appeal are:

- Impact on landscape character and visual amenity
- Impact on wildlife including potential disturbance to protected species
- Impact of potential siltation and pollution on the areas value for recreational diving
- Impact on the wild fish stock
- The potential benefits of the proposal
- Mitigation and conditions

2. Policy 50 of the Highland Wide Local Development Plan is supportive of aquaculture where there are no significant adverse effects on landscape, natural heritage or water quality objectives. In this respect there is reference to the Scottish Natural Heritage commissioned report: Landscape/seascape Carrying Capacity for Aquaculture and to support being conditional on proposals being consistent with Marine Scotland's Locational



Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters. Where proposals are located on a suitable site they will also need to show: appropriate operational and site restoration arrangements (including management of noise and lighting impacts, public health and safety, and the effective control of pollution, fish farm escapes, predator interaction and disease); good design of cages, lines and associated facilities and that opportunities for shared use of jetties, piers and ancillary facilities are promoted where possible. Other relevant policies include Policies 36, 50, 57 and 61 which apply more generally to development in the countryside and to landscape character and quality.

### Landscape character and visual amenity

3. The proposed fish farm would consist of 12 circular cages. Each of the cages would be 100 metres wide grouped together in two rows, each with six cages. The proposal also includes a feed barge designed to resemble a boat. This would be located between the shore and the cages and is shown as 20 metres long and 7 metres in height above the water-line. The proposed equipment has a total surface area of 9474 square metres. The associated moorings would extend over 17.2 hectares.

4. The site lies within the North West Skye Special Landscape Area which has the status of a local/regional heritage feature in the local development plan (Policy 57). This policy presumes in favour of development provided it can be satisfactorily demonstrated that the development will not have an unacceptable impact on the particular heritage feature(s). Policy 36 has a broader remit extending to development in the Countryside and includes a criterion on landscape character and capacity whilst Policy 50 specifically deals with the landscape impacts of aquaculture proposals. Policy 61 requires consideration of and compatibility with local landscape characteristics and special qualities.

5. The North West Skye Special Landscape Area is described as “A coastal landscape of dramatic cliffs, and headlands, isolated bays, and intimate beaches contrasts with a stepped moorland interior which often has distinctive hills shaped by their volcanic origins. The complex interplay of land and sea provides an ever-changing sequence of views, many of which extend outwards across the full width of the Minch.” Various sensitivities to change are identified in this area including:

- Coastal and marine development which would introduce any incongruous man-made elements into views over open water or from shore to shore across bays and inlets.
- Further large-scale features which would significantly increase the incidences of such features intruding on coastal and mountain views.

6. The area has a relatively remote and undeveloped coastal and moorland character dominated by the impressive scale of the cliffs south of Biod an Athair. These cliffs are to the north of the appeal site and are an understandably valued feature of the local landscape to both residents and visitors. The proposed location is closer to the more settled southern shore where the loch opens out into the wider sea-scape. The coastal fringes in this location include other man made features including the pier and the residential properties around Upper and Lower Milovaig.

7. The photomontages in my opinion underestimate the actual visual impact that would be evident on a clearer day. As evident on my site visit there are more distinct views out

over the Little Minch to the islands beyond and improved visibility would increase the relative prominence of the infrastructure in views out from and over the loch. Viewpoint 2 is the main view from the B994 on approach to Glendale where there are a number of residential properties. This viewpoint affords a panoramic view of the sea loch. All of the 12 pens and the feed barge would be visible from this location at a distance of 4.9 kilometres.

8. Other views from the public road are mainly interrupted by landform and vegetation although viewpoints 3 and 4 provide an open view from the minor adjoining public road in closer proximity to the appeal site. The proposal would also be viewed close to Meanish Pier (viewpoint 1). From here there are uninterrupted views over the loch and all the infrastructure would be visible at a distance of under 1 kilometre. Walkers on the rough moorland above the cliffs up to Biod an Athair would have unobstructed views of the farm at a distance of 4 kilometres. From here the development would be set against the rising ground on the opposite shore.

9. The current open and uninterrupted views across the Loch will undoubtedly be changed through introduction of this significant man made feature. I appreciate the concern of local residents and visitors. However, my assessment must be based on the nature and severity of any visual impact rather than concern that the infrastructure can be seen or that a view would be altered. The council's planning officer and Scottish Natural Heritage reference the mitigating effects of distance given the limited height of the infrastructure above sea level. I agree with them that the proposed layout and horizontal emphasis would serve to diminish any negative impact given the expansive scale of the existing seascape and landscape. I consider the impact would be further reduced subject to the application of a condition controlling the storage of materials and the colour of the surface equipment.

10. Scottish Natural Heritage (SNH) has published Guidance on Landscape/Seascape Capacity for Aquaculture 2008. I have also taken into account the more specific design guidance contained in "The Siting and Design of Aquaculture in the Landscape: Visual and Landscape Considerations" (SNH 2011). In this context, I do not consider the coast fits the description of "isolated" due to the proximity of settlement. I find that due to the expanse of the loch, the ordered arrangement of the infrastructure and the setting closer to the south-western shore the proposal could be accommodated without dominating the water surface or leading to a cluttered appearance. The proposal would be visible from surrounding roads and viewpoints. However, it would be a single feature in a much wider landscape. As such I do not consider it would interrupt the dramatic views towards the cliffs to the north-east or out to the sea and the islands beyond to an extent that would significantly diminish the scenic quality of this area.

11. My conclusion is that the proposal would have a localised landscape and visual impact but that this would not be significantly adverse.

#### Impact on Wildlife and habitats

12. The island group of Isay and Lampay is located near the mouth of neighbouring Loch Dunvegan and forms part of a designated marine Special Area of Conservation (SAC). The SAC is designated for the protection of the common seal. The site is 10.1 kilometres

distant by water from the edge of the SAC so farming operations and boat traffic to the site would be outside this area.

13. I recognise this coastal area supports relatively high densities of seals, Cetaceans and Basking Sharks and I have carefully considered the matters raised by the Hebridean Whale and Dolphin Trust. The appellant has suggested mitigation to follow good practice but retains the possibility of using acoustic deterrent devices to deter seals. Both grey and harbour seals are present within Loch Pooltiel as well as along the outer coastline. Consequently, a site specific predator management plan is required. Scottish Natural Heritage accepts the possibility of some localised displacement of marine species. However, if deterrents are used, it considers that the open nature of the coastline means that major effects are unlikely. I find no reason to dispute this advice or to conclude that there would be any potentially significant effect on the integrity of the Special Area of Conservation. The sea bed survey found no priority marine features or habitats.

14. Representations from the Royal Society for the Protection of Birds (RSPB) and Scottish Natural Heritage (SNH) reference species protected under the Wildlife and Countryside Act 1981. RSPB object to the proposal given the location of the proposal in proximity to a known nesting site and the anticipated level of disturbance. SNH references the protection afforded by the law and advises that in order for any offence to be avoided construction should not take place during the breeding season. In addition, restricted hours of operation should apply. It also notes the favourable breeding conservation status of the species. I consider that there is potential for the hours of operation and the timing of construction to be controlled through appropriately worded conditions.

15. With the appropriate mitigation, as referenced above, I consider that any significant adverse effects would be avoided. In reaching this conclusion, I have also had regard to the statutory duty to further the conservation of biodiversity imposed by the Nature Conservation (Scotland) Act 2004.

#### Potential siltation and pollution

16. Concerns are raised by a local dive company about the impact of the fish farm on two of its regular dive sites at Meanish Reef, northwest of Meanish pier, and the wreck of the 'Chadwick' which lies at the north end of Oisgill Bay. The submission states that the proposal would be within 550 metres of one of Skye's most important dive sites which is referenced in the recently published "Top 100 British Shore Dives". The proposal is considered to be a threat not only in terms of pollution and siltation but also given the potential to damage a divers hearing.

17. The appellant points to the technical information which has accompanied this appeal including a visual seabed survey and a benthic survey. The technical supporting information is referenced in the Environmental Statement under the headings Benthic and Water Column Impacts. The relevant reports have been reviewed by the Scottish Environment Protection Agency (SEPA) and Marine Scotland Science. Proposed mitigation includes a reduction in waste by optimising feeding efficiency to reduce nitrification impacts. SEPA was specifically asked by the council for a view on the potential for the development to impact upon the Meanish Reef and the wreck of the SS Chadwick.

18. The submissions refer to the particular unspoiled qualities of the dive sites. I would be concerned if there was clear evidence that the operation of the fish farm would have a direct negative consequence on the marine resource and its associated value to this local dive company. I note the council's experience of fish farms close to other dive sites at Port Napier at Kyle of Lochalsh and Shuna in the Sound of Mull and that this is disputed by the dive company based on its knowledge of these sites. However, the consultation response provided by the Scottish Environmental Protection Agency advises that it does not expect the fish farm to have any significant effect on the dive sites. In the event that monitoring were to reveal such an impact then SEPA has powers to deal with this under separate regulatory control.

19. In terms of the Water Environment (Controlled Activities) (Scotland) Regulation 2011 (as amended) a CAR licence from SEPA is required. A CAR licence was obtained from SEPA relating to this proposal on 6 August 2015. Operational aspects including the biomass and discharge of licensed medicines are matters which will be controlled through the CAR licence and as a consequence no planning conditions relating to these aspects are necessary. I understand from the submissions that the CAR licence is monitored by SEPA and a benthic survey is required with every production cycle.

20. I have no conclusive evidence on underwater noise impact for divers other than reference to dive sites which operate close to other fish farms. Wider noise impacts are considered below.

21. My conclusion is that on the balance of the available evidence, following the advice of SEPA and taking into account the safeguards provided through other regulation, any significant adverse effects on the quality of the marine environment and its value for recreational diving would be avoided.

#### Impacts on wild salmonids and fishing interests

22. The potential interaction with wild salmonids is dealt with in the Environmental Statement at pages 58-65. I note the concerns of The Skye District Salmon Fishery Board and others regarding an increased risk of sea lice infestation and mass fish farm escapes. Due to the exposure of the location storm damage, with the consequent risk of escapes, is raised as a particular concern. The location of the site relative to migration routes and to the River Hamara is highlighted. River surveys over the last six years show wild salmonid and sea trout levels to be dangerously low.

23. An earlier consultation (3 July 2015) from Marine Scotland Science requested further information regarding the risks to wild fish populations. This was in response to reported recent difficulties with sea lice management in this Fisheries Management Area(FMA). The submissions refer to recent high recorded sea-lice levels being due to atypical circumstances. A sea lice management statement is submitted with an undertaking to sign an agreement with the existing operator regarding management and treatment. The consultation responses from Marine Scotland checked the robustness of the proposed fish farm equipment for the site along with the containment and escapes contingency plan and the arrangements for management of sea lice on the farmed fish. The mitigation proposed in relation to sea lice treatment in relation to farmed fish was deemed to be satisfactory as far as can be reasonably foreseen as were the arrangements for containment. The

consultation response explains that the greater the number of lice on the farm the greater the risk to wild salmon and sea trout. It is not possible to accurately predict the future lice levels on a farm but the performance of existing farms within the area could act as a guide.

24. A farm partnership agreement will be important in this respect. Section 4(A) of the Aquaculture and Fisheries (Scotland) Act 2007 requires that a person who carries on the business of fish farming within a farm management area must either be a party to a “farm management agreement or prepare and maintain a farm management statement”. Furthermore, there are obligations to ensure that the fish farm is managed and operated in accordance with the agreement or statement.

25. From all of this I understand the risks to wild fish stocks from sea lice would increase and that appropriate safeguards and management will be crucial in protecting these important interests. Marine Scotland has statutory responsibilities under the Aquaculture and Fisheries Act (Scotland) Act 2007. This includes a range of regulatory provisions relating to sea lice control on existing and new fish farm sites. Whilst Marine Scotland provides advice at this stage it does not go as far as supporting or objecting. The weight to be attached to the protection of local fish populations is left as a matter for the planning authority to consider. Scottish Planning Policy through paragraph 253 advises that the planning system should not duplicate other control regimes such as controlled activities regulation licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland.

26. Reference is made in the submissions to the application of the precautionary principle in circumstances where there is uncertainty about the nature and significance of an environmental effect. The submissions refer to Policy Wild Fish 1 of the National Marine Plan which acknowledges the potential interaction between wild fish and other activities, including aquaculture, and notes that this should be taken into account in decision-making. It states that mitigation should be adopted where possible and information on impacts should be used to inform subsequent marine decision making.

27. Having assessed the appeal submissions I sought further information to clarify the following:

- The acceptability of the identified potential risks and impacts on the wild fish population bearing in mind the location of the site relative to the River Hamara.
- The potential for mitigation, the appropriate control regime and the consequent roles of the Land Use Planning System and Marine Scotland in securing any required mitigation.
- The appropriate application of any associated planning condition and the detail of such a condition with reference to other fish farms where a detailed Environmental Management Plan has been required.

28. The consequent responses clarified the remit of Marine Scotland covers the health of farmed fish, but also extends to wild fish, including wild migratory salmonids. However, regulatory responsibility is restricted to sea lice on aquaculture animals only. In relation to wild salmonids the response from Marine Scotland states “Salmon aquaculture results in

elevated numbers of sea lice in open water and hence is likely to have an adverse effect on populations of wild salmonids in some circumstances. The magnitude of any such impact in relation to overall mortality levels is not known.” It goes on to state that “contrary to the planning officers view Marine Scotland consider that it would not be reasonable to assume there should not be any significant adverse effect on wild fish populations.”

29. Concerns that there may be a significant impact of aquaculture have been raised due to declines in catches of both salmon and sea trout on the Scottish west coast. I understand that the economic value of the River Hamara is thought to be relatively low. However, the river is one of those on Skye supporting populations of salmon and sea trout, and is close to the proposed development (less than 3 km away). Having adequate measures in place to prevent, control and reduce parasites on aquaculture animals held on a fish farm minimises risks to wild salmonids, however it remains the case that there are considerable uncertainties associated with assessing the impact of sea lice emanating from aquaculture facilities on wild salmonid populations. Scientific evidence from Norway and Ireland indicates a detrimental effect of sea lice on sea trout and salmon populations.

30. Since the River Hamara is located within 3 km of the proposed development submissions to this appeal reference an increased probability of infestations. Marine Scotland feel it is appropriate to rely on the response and on the control (or regulatory) regimes that are in place, bearing in mind the remit of the regulatory regime for sea lice is to ensure that satisfactory measures are in place for the prevention, control and reduction of parasites on the aquaculture animals held on fish farms.

31. The Rivers and Fisheries Trusts of Scotland have developed a locational guidance model. This is referred to in both the response from the Skye District Fishery Board and by the applicant and a copy was submitted (document K49). The purpose of the document is described as to provide information on factors relevant to wild salmonids when considering planning applications for new aquaculture sites. This study has sought to grade the West of Scotland and Western Isles into various categories of risk sensitivity from 1-5. Loch Pooltiel is shown in yellow on the map within the least sensitive category. However, I recognise the point made by the Skye and District Fisheries Board that the wild salmon of Hamara River are migratory and are likely to travel through more sensitive areas.

32. The applicants reference a lower potential risk to wild salmonid populations by choosing a location at Loch Pooltiel than other areas of the West of Scotland and Western Isles. They consider that the location within Loch Pooltiel should be acceptable given the relatively low importance of the stocks within the Hamara River. Reference is made to a variety of factors other than fish farming which may contribute to declining fish stocks.

33. The Scottish Government has also produced locational guidance in relation to nutrient loading rather than wild fish stocks. I understand Loch Pooltiel, with the development, would move from Category 3 to Category 2. On this basis, Loch Pooltiel would be considered to have environmental capacity to accommodate this proposal and would be located favourably within the strategic framework. My understanding is this also indicates potential for the application of mitigation measures for the control of sea lice.

34. Nevertheless my conclusion is that there is currently a recognised lack of evidence regarding the consequent relationship between levels of sea lice on farmed stock and any



consequent impact on wild fish populations. In reaching a conclusion on this matter I must have regard to the statutory duty to further the conservation of biodiversity imposed by the Nature Conservation (Scotland) Act 2004. The scale and nature of the identified impact and any associated uncertainty has to be balanced in the context of the nature of the risk, the available mitigation, the policy context and the benefits of the proposal. I return to these matters below.

### Environmental Impact Assessment

35. The appeal proposal is subject to the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. I draw on the submitted Environmental Statement, the response of the relevant regulatory authorities and other submissions in my assessment of the main impacts referenced above. I have also considered all the other potential environmental effects referenced in the submissions.

36. The scoping process as carried out in consultation with the relevant authorities identified the following potential impacts.

- The impact of the site's footprint on the benthic environment.
- Nutrient loading and enrichment resulting from the biomass production.
- The potential impacts on predators.
- The potential impacts on wild salmonids.
- The potential impacts on species or habitats of conservation importance, including sensitive sites.
- The potential impacts on navigation, anchorages, commercial fisheries and other non-recreational maritime uses.
- The potential landscape and visual impacts.
- Potential impacts of noise and light pollution
- Waste management (non-fish).
- How the footprint of the farm (including mooring area) will affect or interact with access and recreation.
- The potential effects of traffic and transport.
- The operational relationship between the proposed site and other sites in the area, and waste management (fish mortalities).

37. From my assessment of the appeal submissions I have not identified any other potential effects. My assessment of the first and second of these potential impacts is set out in paragraphs 16-21 above. The third potential impact is addressed in paragraphs 12-15 as is the impact on protected species and habitats. The potential effects on wild salmonids are assessed in paragraphs 22-34. Noise and light pollution is a recognised impact but I consider this could be addressed through appropriate mitigation. These matters are addressed in paragraphs 49 and 50 below. My conclusions in relation to environmental assessment are supported by the relevant consultation responses of Scottish Natural Heritage, the Scottish Environment Protection Agency and Marine Scotland.

38. On the remaining potential effects I have not identified any potentially significant traffic impacts given the minimal amount of associated boat trips. There would be two road

based lorry deliveries in the construction phase. Operational boat trips would mainly be by sea from Kishorn. On the matter of waste, potential impacts would relate to fish waste, nets and rope. I consider significant effects would be minimised through the industry standard management practices referenced in the appellant's environmental statement. On the matter of cumulative impact there is no other site existing or proposed in the loch and reference is made to only one other farm within the Fisheries Management Area. I find nothing to indicate any significant cumulative effects.

### Other matters

39. On the matter of obstruction to public navigation rights, The Northern Lighthouse Board has recommended its standard marking and lighting arrangements for the fish farm. In any event, the competent body to deal with rights to navigation is Marine Scotland which would assess this as part of the fish farm company's application for a Marine License.

40. Circular 1/2015 explains the relationship between the statutory land use planning system and marine planning and licensing. My conclusion is that there are appropriate safeguards through other regulation to ensure that any significant adverse impacts on coastal navigation are avoided. Additional safeguards to prevent any obstruction to navigation during the construction and operation phases and to ensure appropriate remediation of the site could be addressed through appropriately worded planning conditions.

41. There are submissions about the track record of the company and concerns raised about a previous proposal which was not progressed in another location within the loch. However, I must assess this appeal on its merits based on the details presented in relation to this current appeal.

### Benefits of the Proposal

42. This part of Skye lies within a Fragile Area as referenced in Policy 36 of the local development plan. This policy requires consideration of the extent to which the proposal "would help, if at all, to support communities, in maintaining their population and services ". In this context the proposal would create 4 full time and 2 part time jobs. In addition Marine Scotland has carried out an "Assessment of the benefits to Scotland of Agriculture". This highlights not only the benefits to more remote economies but the wider benefits to the Scottish and UK economy taking account of processing and retailing. It references the not insignificant benefits of increasing marine finfish production sustainably to 210,000 tonnes by 2020 and the direct industry and supply chain value and employment potential this could generate.

43. The National Marine Plan (THC1) reaffirms the Scottish Government's commitment to not expanding aquaculture on the north and east coasts of Scotland. This is stated to be on a precautionary basis. Such an approach is not applied on the west coast where the economic benefit of fish farming is recognised.

44. Scottish Planning Policy through paragraph 249 also recognises that Aquaculture makes a significant contribution to the Scottish economy, particularly for coastal and island communities and also references the target of 210,000 tonnes by 2020. I consider the proposal has potential to assist in meeting this target and would comply with Policy 36 of

the Local Development Plan. In coming to this conclusion I note concerns about a potential negative impact on tourism. I recognise the growing importance of wildlife viewing in attracting visitors to the area and that the proposal may cause some displacement in this respect. I have also considered the interpretation of visitor survey information presented by the Scottish Aquacultural Research Forum. A number of responses to this fish farm proposal present a more negative point of view in relation to the potential impact on local settlements such as Lower Milovaig. However, appropriately sited and managed fish-farms co-exist with tourism in other scenic locations and I find nothing sufficient to demonstrate that visitor numbers would decline.

45. As referenced above Scottish Planning Policy advises that the planning system should not duplicate other control regimes. It also sets out the relevant considerations for the development plan in assessing specific proposals for aquaculture developments. More generally it supports sustainable economic development but recognises the need to protect landscape and wildlife habitats important to tourism and quality of place. These considerations are largely reflected in the relevant policies of the Highland Wide local development plan including Policy 50 on aquaculture and are addressed elsewhere in this decision notice.

46. I have also taken account of the National Marine Plan which sets out similar objectives for aquaculture as expressed in Scottish Planning Policy. It supports a sustainable marine economy subject to the avoidance of significant environmental effects. These policy objectives are also reflected in the council's Highland Coastal Development Strategy.

### Conditions

47. On the matter of conditions, I note the appellant takes no issue with the conditions suggested by the council aside from the final one which proposes a scheme, including timescales for implementation, for the improvement and/or re-development of the facilities at Meanish Pier including:

- Proposed consultation with the Glendale Trust and users of the pier
- Proposals for the establishment of new moorings
- Improvements to the existing pier
- Improvements to the Glendale Estate Shed
- On-going maintenance and aftercare

48. The council proposes this condition in the interests of securing improvements to and around Meanish Pier to enable the appellant's operation to coexist with other users. Whilst such an outcome might be desirable, and I note the reference in Policy 50 to opportunities for shared use of jetties, I have no evidence that it is necessary to allow the development to go ahead. Whilst the environmental statement references some transport movements from the pier the appeal submissions state services and provisions can be brought in by boat from elsewhere. I note the pier is not in the appellant's control. It may be possible for an agreement to be reached separately to enable access and improvement of the pier. This might be an indirect benefit of the proposal but I do not consider that this could appropriately be secured through a planning condition given that this would run contrary to the terms of Circular 4/1998.

49. I find the other suggested conditions necessary to address the matters of reducing visual impact, site restoration, noise and light impacts, navigation and public safety and the protection of wildlife to secure compliance with the relevant criteria of Local Development Plan Policy 50. These conditions also respond to local community concerns regarding noise and light pollution.

50. I appreciate particular concerns about noise impacting on the valued tranquillity of the area and about the potential for noise to carry across the loch. Noise from the development would arise from the feed barge, where the feed selector, blower and generator would be located, from the feed pipes and from routine boat activity. However, the environmental statement details noise insulation to reduce noise to that equivalent of low level household noise mainly confined to normal operating hours. There is nothing to suggest that noise impacts would be unacceptable in this location and an appropriate condition could be applied to ensure that noise does not exceed acceptable limits. Similarly lighting could be kept to a minimum and again conditions could be applied to limit the impact of lighting not required for safe navigation. With these conditions, I find no reason to conclude that the impact of noise and light would be significantly adverse.

#### Planning Condition relating to wild fish

51. Drawing together all of the above leaves the remaining matter of the potential impact of the proposal on wild fish populations and the scope for appropriate mitigation. This is set in the context of the uncertainties expressed above and the focus of the current regulatory regime on the health of the farmed fish.

52. The Aquaculture and Fisheries (Scotland) Act 2007 provides the main regulatory framework in relation to the appropriate control and mitigation. This enables inspections to assess the risk of escape and also whether an escape has occurred. There are also duties on the operator to notify in relation to escapes. This includes powers of enforcement if Scottish Ministers were not satisfied regarding the arrangements for the containment of fish, the prevention of escape of fish and the recovery of escaped fish. There are also related powers should an escape occur and there is a duty on the operator to notify in relation to escapes. The required Farm Management agreement would also provide an important component in minimising risks to the wild fish population. However, the regulatory powers under the Aquaculture and Fisheries (Scotland) Act 2007 do not extend to the prevention, control and reduction of parasites on wild fish.

53. As referenced above the national marine plan advises me of the economic benefits of such proposals and does not point to any specific restrictions on the west coast of Scotland. It indicates that appropriate mitigation should be secured wherever possible. The site is in proximity to the River Hamara and I appreciate the concerns raised in this respect. However, I find nothing to suggest this is a particularly sensitive location in a west coast context. Marine Scotland as the expert advisors on these matters express some uncertainty but do not object to the proposal.

54. Against this background the council and the appellant have suggested the terms of a potential planning condition linked to an Environmental Management Plan (EMP). By its nature the focus is on the farmed fish activity. The prevention of interaction between the

wild and farmed fish population is recognised as the most achievable means of mitigation. However, this mitigation by its nature overlaps significantly with the controls available through the regulatory channels which are open to both Marine Scotland and the Scottish Environment Protection Agency. Consequently the appellant considers most of the condition wording is unnecessary. The focus of the suggested condition is on monitoring arrangements in relation to the farmed fish.

55. To address the planning authorities statutory biodiversity duty in relation to wild fish I consider some repetition between the relevant regulatory regimes is necessary. An appropriately worded planning condition could bring together the relevant monitoring and proposals for mitigation in so far as these are important for the protection of wild fish. This should enable the full scope of available mitigation in relation to the protection of wild fish to be considered and monitored in the round.

56. Marine Scotland recognises the use of such a condition but states that the information required, along with its collection and use in relation to managing the interactions with wild salmonids, would need to be established. Most of the information detailed in the council's suggested condition provides information which would be suitable for monitoring and managing sea lice on the aquaculture animals. It is not possible to translate sea lice numbers observed on a farm to a specific impact on a wild fish population. The local Authority should establish how the raw sea lice data will be analysed and considered in relation to achieving their objective of managing interactions with wild salmonids. Taking this into account, I consider any relevant monitoring should also extend to provision for monitoring/sampling of the wild fish population and agreement would have to be reached on an appropriate methodology for this.

57. I consider that any condition would have to reflect the comments made by Marine Scotland but also give weight to the views expressed by The Skye District Salmon Fishery Board. It raises concern regarding the control that could be exercised through such a condition and the need for its purpose to extend beyond the provision of monitoring information. I must consider the application of any condition in relation to Circular 4/1998. In my view such a condition can only prove effective if it can exercise control of future operations in the event that monitoring and consultation with the appropriate agencies demonstrates an identifiable and causal impact on the wild fish population.

58. Consequently, I have also included some further amendments to address the need to halt the associated activities in the event of a breach of any of the mitigation or procedures as agreed through the environmental management plan and/or where there is clear evidence of an adverse impact on wild fish in the catchment area. The condition is tied to a requirement to halt the permitted activity until such time as the breach has been resolved. For completeness and given the importance of containment in relation to the impact on wild fish I have also referenced the need for the Environmental Management Plan to detail how escapes would be managed and addressed.

59. With this condition, along with the protection afforded by other regulatory regimes and taking into account the relevant national policy and guidance, I find the identified risk of an adverse impact on the wild fish population falls within acceptable limits.

## Conclusion

60. Drawing together all of the above I consider that the proposal has localised impacts on landscape and visual amenity and may impact on opportunities for wildlife viewing in the vicinity. I do not consider that these impacts would be significantly adverse. The proposal increases potential risks to the marine environment and to wild fish. However, the balance of evidence, including current locational guidance, demonstrates that with the appropriate planning conditions and operation of the relevant control regimes any significant adverse effects could be appropriately managed. My conclusion is that subject to the appropriate control and mitigation the identified impacts would be acceptable when balanced against the benefits of the proposal and the objectives of the National Marine Plan.

61. Consequently, I find the proposal would be consistent with the development plan policies referenced above and specifically with Policy 50 on aquaculture. In reaching this conclusion I also find the proposal is consistent with the relevant aspects of Scottish Planning Policy and the National Marine Plan as well as the published advice of Scottish Natural Heritage, the Scottish Environment Protection Agency and Marine Scotland. I have assessed all the relevant environmental information including that contained in the appellant's Environment Statement and find nothing that leads me to a different conclusion.

62. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission.

*Allison Coard*

Reporter

## Application Drawings

Location Plan 1 Version A

Location Plan CD 354-02 Version C

K6. Feed Barge Drawing With Measurements To Water Line (Full)

K7. Feed Barge: Side Elevation Drawing

K8. Feed Barge - Scale Drawings

K9. Details Of Fish Pen Construction: Extrusion Stops & Mooring Stops

K10. Detail Of Cage Construction

K11. Details Of Fish Pen Construction

K12. Side Elevation Drawing Of Fish Pen

K13. Long-Section And Cross-Section Views Of Fish Farm

K14. Details of Moorings

## Conditions

1. All surface equipment, with the exception of navigational markers and safety equipment shall be finished in a dark matt neutral colour unless alternative finishes are agreed in advance in writing with the Planning Authority. In particular, the tap nets and netting along walkways shall be matt grey. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter and routed below water where it is practical to do so.

Reason: to minimise the visual impact of the installation and to help safeguard the integrity of the North West Skye Special Landscape Area.

2. All lighting above the water surface and not required for safe navigation purposes shall 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.

3. Construction of the fish farm shall take place outwith times which are sensitive for birds in this area (ie outwith the breeding season February to August and avoiding the roosting period within two hours of sunrise or sunset). The applicant should seek advice from RSPB and SNH and follow their guidance in this respect.

Reason: to safeguard the protected bird interest in this area.

4. 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, buoys, raising, repairing, moving or destroying, as appropriate any associated obstruction or danger.

Reason: in the interests of amenity and navigational safety

5. 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.

6. All plant, machinery and equipment associated with ventilation, compressors, blowers, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that any

associated operating noise does not exceed noise standard NR 20 when measured or calculated within any noise sensitive premises with windows open for ventilation purposes.

Reason: to protect the amenity of nearby houses and to avoid noise nuisance

7. Mitigation measures submitted as part of the Environmental Statement shall be fully implemented.

Reason: To ensure environmental impacts are satisfactorily mitigated.

8. Prior to the commencement of development 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 triggers/thresholds and associated actions in order to secure that any risk to local wild fish populations is 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;
- 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;
- 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.

(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 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 in particular; in accordance with the Planning Authority's biodiversity duty.

## Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).