

Agenda Item	7.3
Report No	PLN/072/18

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 27 November 2018

Report Title: 18/01203/S42: Migdale Smolt Ltd – Removal of 10 year condition
Loch Merkland, Achfary, Lairg. IV27 4NZ

Report By: Area Planning Manager – North

Purpose/Executive Summary

Description: Application under Section 42 to remove condition 2 of Planning permission 08/00038/FULSU - Temporary permission for 10 years expiring on 27/11/2018

Ward: 01 - North, West and Central Sutherland

Development category: Local development

Reason referred to Committee: Objection from statutory consultee

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 the removal of a 10 year time limit condition for the operation of the fish farm at this location. The development consists of 20 cages: a group of ten x 10m squared cages and a group of ten 7.5m squared cages with a large shed on a barge in between the two cage groups.

2. SITE DESCRIPTION

- 2.1 The proposal lies within Loch Merkland, towards the north west end of the loch. It is visible from stretches along the A838 which runs along the east side of the loch. This is a narrow loch, c.500m wide at the location of the fish farm. Either side is relatively steep moorland, much of it designated as Wild Land Areas.

3. PLANNING HISTORY

- | | | | |
|-----|------------|--|--------------------|
| 3.1 | 19/08/1994 | SU/1994/139 Renewal of existing consent for smolt cages in current location in Loch Merkland [Re SU/1987/358 and SU/1988/143] | Permission granted |
| 3.2 | 13/02/1998 | SU/1997/302 Cages area for smolt rearing | Permission granted |
| 3.3 | 27/11/2008 | 08/00038/FULSU Continuation of fish farming | Permission granted |
| 3.4 | 8/09/2009 | 09/00317/FULSU On-shore fish farm facility involving siting of 2 steel storage containers, 1 portakabin and a wooden/plastic pontoon | Permission granted |

4. PUBLIC PARTICIPATION

- 4.1 Advertised: Unknown neighbour
Date Advertised: 17/04/2018
Northern times Unknown neighbour 14 days
Representation deadline : 27/04/2018
Timeous representations : 0
Late representations : 0
- 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 SEPA: no objection: concerns over water quality for SEPA's remit
- 5.2 SNH: no objection; amended advice provided
- 5.3 Kyle of Sutherland District Salmon Fishery Board (KSDSFB) : objection due to the impacts on wild salmonids
- 5.4 Marine Scotland: no objection; were not a direct consultee but offered information regarding escapes work via a teleconference followed by email submission.

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
50 Aquaculture
57 Natural, Built and Cultural Heritage
58 Protected Species
61 Landscape
63 Water Environment

6.2 Caithness and Sutherland Local Development Plan (Aug 2018)

No specific policies apply

7. OTHER MATERIAL CONSIDERATIONS

7.1 Highland Council Supplementary Planning Policy Guidance

Highland's Statutorily Protected Species (March 2013)

7.2 Scottish Government Planning Policy and Guidance

Scottish Planning Policy (The Scottish Government, June 2014)

7.3 Other

Highland Aquaculture Planning Guidance (2016)

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,

as outlined below.

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 and landscape.

As the proposal lies close to the Assynt - Coigach National Scenic Area and several Wild Land Areas and has the potential to have an effect on water quality and wild salmonids, 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,
- **national importance:** the proposal is close to the Assynt-Coigach NSA; we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resources;
- **international importance:** The proposal is in a waterbody linked to the River Oykel Special Area of Conservation (SAC) and in the vicinity of the Caithness and Sutherland Peatlands Special Protection Area (SPA). 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.

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 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 c.3.6km east of the Assynt - Coigach NSA. Given the history, location, nature and scale of the proposal, it is considered acceptable with regard to this policy, as discussed below.

8.8 Other material considerations

Consideration b)

- 8.9 The Highland Council Aquaculture Planning Guidance (2016) outlines a spatial strategy and six development criteria that outline the key considerations for fish farm applications. Whilst most of this document is relevant, Development Criterion 3 (DC3: Biodiversity) and DC4: Water Quality are particularly important.
- 8.10 SPP notes the planning system should play a supporting role in the sustainable growth of the finfish and shellfish sectors to ensure that aquaculture is diverse, competitive and economically viable. The National Marine Plan (2015) notes 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”.

Material Considerations

- 8.11 The proposal is for removal of a 10 year condition on a freshwater fish farm, therefore in effect the sustainability of the whole proposal requires consideration. The farm consists of 20 cages: ten x 10m squared cages and ten 7.5m squared cages. The information supplied showed a variety of cage numbers, whilst a site visit confirmed there were twelve x 10m square cages where only ten are permitted, along with the ten x 7.5m square cages. Further discussion with the applicant confirmed these had been added without permission. They have since been removed.
- 8.12 For clarity, as S.26(6) of the Planning Act contains the definition: “*fish farming*” means the breeding, rearing or keeping of fish or shellfish, and applies to inland waters as well as marine, so many of the issues and guidance related to marine fish farming are similar and often also apply to freshwater i.e. inland waters. The temporary condition was placed on the fish farm to allow monitoring of water quality, disease, and escapes etc. due to the potential impact on wild salmonids. The water body also links to the River Oykel SAC, designated for Atlantic Salmon (*Salmo salar*) and Freshwater Pearl Mussel (*Margaritifera margaritifera*). As the condition effectively is seeking to make the whole development permanent, all aspects of it need consideration, as discussed below.
- 8.13 There is a concurrent application to remove a 10 year condition on the Jubilee fish farm in Loch Shin the adjoining water body to the south (18/01202/S42). Both it and this current application share the same water body therefore the cumulative impacts, along with the other issues discussed below, are considered in determining both applications.
- 8.14 **Landscape:** As the proposal is to remove the 10 year condition, it is effectively seeking permanent planning permission for the operation of the fish farm, therefore the landscape aspect is a consideration, particularly given the proposal lies c.3.6km east of the Assynt - Coigach National Scenic Area (NSA), adjacent to the Reay-Cassley Wild Land Area (WLA) and close to the Foinaven – Ben Hee WLA. However, although the farm is prominent within the water, it is a relatively small feature within the wider landscape within which it is considered to be readily assimilated. Public views of this isolated site are very limited. Given this, and the

fact that there has been a fish farm here for over 30 years and no changes are proposed and there are no new cumulative impacts, the proposal is considered acceptable in terms of the landscape aspects of Policy 28 and of Policy 61.

- 8.15 **Water quality:** Unfortunately, the supporting statement requested does little to address the reasons for the condition other than to state SEPA has rated the operation as 'Excellent' for the entire period of operation, but it was unclear what aspect this related to. Following clarification from SEPA, the rating is with respect to the Compliance Assessment Scheme (CAS). SEPA advised that:

CAS focuses on the compliance of a licence holder with their licence- in this case CAR/L/1004009. The scheme distinguishes between conditions that relate directly to the environment and those which relate to the management requirements that ensure appropriate environmental protection. Both are equally important and there is a compliance matrix made up of six compliance bands 'Excellent' through to 'Very Poor'. These bands allow the compliance assessment to be tracked year on year. An 'excellent' rating means no breaches of environmental limits and high performance on environmental management attributes.

However, in their original response, SEPA also noted that there are ongoing issues over water quality and provided further clarification on these concerns, as discussed below. The applicant has not taken the opportunity to show how issues such as escapes have been addressed. Information from the various consultees and others however can help address these issues.

- 8.16 Thus, whilst SEPA do not object to the proposal, they have concerns over the increasing levels of total phosphorus in Loch Merkland and subsequently Loch Shin, which has the concurrent application (18/01202/S42); the water bodies are connected. The two main sources of phosphorus have been identified as coming from forestry activities and fish farming. Currently the loch remains around SEPA's Good/Moderate status but it is possible that any additional input of phosphorus to the loch may put the ecology at risk of deterioration. As this is a water quality issue dealt with by SEPA and they are managing the situation, it is outwith the planning remit to duplicate control.
- 8.17 **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 and Species Directive and are listed on Schedule 3 of the Conservation (Natural Habitats, andc.) Regulations 1994 (as amended) whilst in freshwater. 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.
- 8.18 **Natura sites:** The proposal is in a waterbody linked to the River Oykel SAC, designated for Atlantic salmon (*Salmo salar*) and Freshwater Pearl Mussel (*Margaritifera margaritifera*). Whilst originally SNH had no comments to make on the proposal, in reviewing the matter, they advised that the proposal is likely to have a significant effect on the qualifying features of the SAC and the council was required to carry out an Appropriate Assessment (see Appendix 1). The advice and assessment done by SNH concludes the proposal will not adversely affect the integrity of the site. To avoid excessive repetition, only a summary of the

Appropriate Assessment is provided here. For the Oykel SAC, SNH advise that:

- adherence to technical standards,
- the fact that farmed salmon have a lower survival return rate to the catchment and
- as FWPM require a health population of salmonids, the assessment for this species is directly informed by the management measures for salmon,

means the proposal will not adversely affect the SAC integrity.

For the SPA, SNH advise that:

- the technical standards for the equipment, along with
- the large size of the loch and
- water quality,

means the proposal will not adversely affect the SAC integrity.

- 8.19 **Escapes:** Marine Scotland note there is a problem with escaped farmed fish from the Loch Shin system, as discussed below, but they do not offer any opinion on whether the application should be approved or not. The SNH advice only relates to potential impacts on the River Oykel SAC and do not object to the proposal. The Kyle of Sutherland District Salmon Fishery Board (KSDSFB) and its parent organisation, Fisheries Management Scotland, object due the impact of escaped farmed fish on wild fish.
- 8.20 Marine Scotland offered to update us on their *“recent and on-going activity and dialogue with the Kyle of Sutherland DSFB, the Kyle of Sutherland Fisheries Trust, Fisheries Management Scotland, Migdale Smolts, Scottish Sea Farms (SSF), Cooke Aquaculture, SEPA and SSE regarding freshwater farmed smolt production on Loch Shin”*. Scientists from Marine Scotland Science (MSS) have undertaken research to determine the source of escaped farm fish in Loch Shin. As the water bodies are linked and fish are moved from the Merkland site to the Loch Shin site, the issues are closely linked. They found *“that escaped fish from both farms [i.e. Jubilee and Shallachy] were in the system, although the non-random methods of collection meant that absolute proportions were unable to be determined”*.
- 8.21 Marine Scotland confirmed that apparent fish escapes from the operators’ sites were found in the Shin system, ranging from 544 farmed fish in 2012 to 221 in 2016, with an average of 333 escaped fish per annum between 2012 – 2016. As Loch Merkland is connected to Loch Shin via the Merkland River, escapes may also come from the Merkland fish farm. Whilst there is a requirement to report all escapes, none appear have ever been reported from this site, according to the ‘*Scotland’s aquaculture*’ website records.
- 8.22 As the fish traps were closer to the Loch Shin fish farm, and therefore this Merkland proposal, compared to the Sallachy site (to the south of Loch Shin), it is unsurprising that the bulk of the escaped fish were from the Jubilee farm. Thus, MS note that *“of the 212 fish sampled from the wild, 37% were identified as being of farm origin, with 95% coming from the Jubilee site and 5% from the Sallachy. These percentages represent proportions in the samples collected for analysis and as this was not a random sample, are not representative of the absolute proportions in the system. These numbers were also probably an underestimation*

of the farmed escapees in the system, due to evidence of vaccination marks on a fish not genetically matching the available farm strains and so, almost certainly, an escapee from farm cages at an earlier time point, when different stocks were present on the farms.”

- 8.23 The escapes were therefore identified as largely from the Migdale smolts operator i.e. the Jubilee proposal, which did contain fish moved from this Merkland site, and from the other operator’s site in the loch at the time i.e. SSF’s site at Sallachy. Whilst it cannot be determined from the samples examined whether the loss of containment was suffered at the Merkland or Jubilee site, the samples examined were consistent with the stock held at the Jubilee site when the sample was carried out. Thus the cumulative impacts must be considered as either or both sites (Merkland and Jubilee) could be responsible for the ongoing escapes from this operator.
- 8.24 Regardless of the operations of the Sallachy site, the research is clear that there are definitely escapes from the Loch Shin site. During the discussions with MS, it was made clear that a target of zero escapes was considered unrealistic for smolt farming but the levels shown by this research highlight that it is an ongoing problem. In addition, the KSDSFB note that work by them, SSE and MSS have found fish farm escapes each year from 2011-2016. Whilst no trapping was done in 2017, subsequent work in 2018 has again found escapes.
- 8.25 MS also noted that *“escaped farmed fish have the potential to negatively impact wild populations through both direct impacts when the fish breed with wild stocks and disrupt locally adapted traits, or indirect impacts through mechanisms such as competition for food and habitat and disease/parasite transfer to the wild. It is thus important to identify the source of escaped farm fish when found, so that aquaculture facilities, together with regulators, can work together to enhance containment at the sites in question. This study represents the first time that fish that escaped directly into freshwater from smolt rearing facilities have been traced back to origin and, as such, provides a new tool to aid conservation of wild stocks”*.
- 8.26 Given the nature of smolt farming, discussions with MS highlighted that it is unlikely to have zero escapes, as discussed above. The issue of escapes is also highlighted by the KSDSFBs response; they note that they believe that the continued operation of aquaculture within the Shin catchment is damaging wild salmon populations *“primarily due to persistent escapes of juvenile salmon”*. They note particular concern regarding the potential for genetic introgression (i.e. escaped farm fish could breed with wild salmon, altering the genetic stock, behaviour etc of wild salmon). This is one of the key issues raised regarding the ongoing time-limited conditions placed on this site. For clarity, the KSDSFB also referred to conditions relating to 06/00473/FULSU, but this is for a different site in Loch Shin (18/01202/S42), which has a similar current application to remove a ten year condition.
- 8.27 The operator is contributing to wider research work in the Shin system as outlined in 8.20, but, despite repeated requests, little detail was provided by the applicant on the nature of their contribution to this work and it related only to assistance from late 2017. However, details on compliance with various conditions of the existing application have moved on somewhat due to the changes in policy and guidance,

which among other things, does not require the planning authority to control aspects that are clearly within the remit of other statutory agencies, as discussed in section 8.16 above. The new technical standards required for fish farm equipment also support improved fish containment. It is therefore recommended that more appropriate conditions are applied, in accordance with the updated policy and guidance on fish farming, as outlined below, to ensure appropriate monitoring of potential impacts on wild salmonids.

- 8.28 The Technical Standard for Scottish Finfish Aquaculture (2015) requires, among other things, that the nets are suitable for the pens in which they are to be deployed. This new standard should be helping to reduce the amount of escapes and compliance with it forms part of SNH's assessment. The recent and ongoing research highlights that work is also being done to improve the situation with regard to escapes. The applicant has contributed to this work and is aware of the various new technical standards for site equipment that are required. Subsequent information submitted on 14 September 2018 notes the use of improved nets and net testing methodologies. These are all welcome steps to help minimise impacts on wild salmonids but more detail is required regarding wild salmonid monitoring. It is recommended therefore that the proposal is granted but subject to a new set of conditions that will clarify and strengthen the monitoring of wild fish impacts. Thus it is recommended that a new ten year time limit is also placed on the proposal with a clear requirement on the applicant to provide regular updates on wild fish monitoring and escapes. If improvement to containment is demonstrated during those ten years, then a further s.42 application to remove the condition could be supported.

iv) Other Considerations

- 8.29 No changes to operational issues e.g. use of shore base/harvesting etc. are affected by the lifting of the condition other than the continuation of use.

Non-material considerations

- 8.30 • None

Matters to be secured by Section 75 Agreement

- 8.31 a) None

9. CONCLUSION

- 9.1 There are no landscape concerns with the proposal; the key consideration is the ongoing impact of escaped farmed salmon on wild salmonid populations. The Appropriate Assessment concludes there will be no significant impact of the River Oykel SAC or the Caithness and Sutherland Peatlands SPA.

- 9.2 Whilst a number of issues are highlighted above, it has also been shown that a number of improvements have been or are in the process of being made. These include the need to comply with technical standards, the ongoing work with SEPA to improve water quality, and the work being done by Marine Scotland and the KSDSFB regarding wild salmonid impacts. The use of updated conditions, along

with the improved technical standards for equipment and management practices, will ensure the fish farm can continue to operate and allow that operation to clearly demonstrate any impacts on wild salmonids will be addressed appropriately.

- 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

Action required before decision issued	N
Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	N
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. Within six months of the granting of this proposal, 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 and associated actions in order to secure that any risks to local wild fish populations 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). Escape Management to minimise interaction with 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 how escapes will be managed during each production cycle;
- c) details of the counting technology or counting method used for calculating stocking and harvest numbers;
- d) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;
- e) 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
- f) details of worker training including frequency of such training and the provision of induction training on escape prevention and counting technologies.

(2). 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.

(3). 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 escaped farmed fish on wild salmonids in accordance with the Planning Authority's biodiversity duty.

2. Permission for this proposal is granted for a period of ten years from the date of the decision notice, following the expiration of which, all cages, moorings and any ancillary material within the site shall have been removed from the site, unless application is made for renewal.

Reason: To allow assessment and monitoring of any impacts of escaped farmed fish on the wild salmonid population.

3. All surface equipment, with the exception of navigational markers and safety equipment, shall be finished in a dark, matt neutral colour.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of the Assynt - Coigach National Scenic Area, the Reay-Cassley Wild Land Area and Foinaven – Ben Hee Wild Land Area.

4. 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.

5. 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 within 28 days.

Reason: In the interests of amenity and navigational safety.

6. 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.

FOOTNOTE TO APPLICANT

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

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

Signature: Dafydd Jones
Designation: Area Planning Manager – North
Author: Dr Shona Turnbull
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - Plan 000006 Operational Site Layout Plan
Plan 2 - Plan 000007 Pen dimensions and moorings

Appendix 1: Appropriate Assessment

River Oykel Special Areas of Conservation and Caithness and Sutherland Peatlands Special Protection Area

Application under Section 42 to remove condition 2 of Planning permission
08/00038/FULSU - Temporary permission for 10 years expiring on 27/11/2018

18/01203/S42

Loch Merkland, Achfary, Lairg. IV27 4NZ

CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES

The proposal could affect the River Oykel Special Area of Conservation (SAC), designated for its Atlantic salmon and freshwater pearl mussel interests. It could also affect the Caithness and Sutherland Peatlands Special Protection Area (SPA), designated for its range of upland breeding birds, including both red and black-throated diver.

The status of the SAC and SPA means that the requirements of the Conservation (Natural Habitats, etc.) Regulations 1994 (as amended), or, for reserved matters, The Conservation of Habitats and Species Regulations 2017 apply. 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 those sites, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the areas have 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 have an adverse effect on site integrity (AESI). If this is not the case and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest.

Screening for Likely Significant Effects

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required. The proposal has the potential to have an effect on the qualifying interests. The Council is therefore required to undertake an Appropriate Assessment of the implications of the proposal for the River Oykel SAC and the Caithness and Sutherland Peatlands SPA, in view of the various sites' 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, the applicant, various published information as referenced and Marine Scotland.

Appraisal Summary

In its response to the Council SNH has advised the proposal is likely to have a significant effect on the River Oykel SAC and the red and black-throated divers of the Caithness and Sutherland Peatlands SPA. 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 have an adverse effect the integrity of the River Oykel SAC or the Caithness and Sutherland Peatlands SPA.

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 Qualifying SACs

		Qualifying feature(s)	Approx. distance/location from proposal	Latest Assessed Condition/Summary condition; Date
1	River Oykel SAC	Atlantic salmon (<i>Salmo salar</i>); Freshwater pearl mussel (<i>Margaritifera margaritifera</i>)	c. 40km SSW as the fish swims	Salmon: Favourable Recovered/Favourable; 07/07/2011 FWPM: Unfavourable No change/Unfavourable; 08/04/2015

2	Caithness and Sutherland Peatlands SPA	Variety of breeding birds including: Black-throated diver (<i>Gavia arctica</i>) Red-throated diver (<i>Gavia stellata</i>)	c. 4km SE	Black-throated: Unfavourable Declining/Unfavourable; 15/06/2007 Red-throated: Favourable Maintained/Favourable; 31/07/2006
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River Oykel SAC:

Salmon are a 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 and Species Directive and are listed on Schedule 3 of the Conservation (Natural Habitats, andc.) Regulations 1994 (as amended) whilst in freshwater. The Council also has a Biodiversity Duty under the Conservation of Nature (Scotland) Act 2004 to protect them.

The freshwater pearl mussel (FWPM) *Margaritifera margaritifera* is protected by the SAC status and under Schedule 5 of the Wildlife and Countryside Act (1981). It is classified as critically endangered on the IUCN Red List of Endangered Species due to its unprecedented, worldwide decline during the latter part of the 20th Century¹. They are on the brink of extinction; Scotland's rivers are a global stronghold for the species, containing around half of the world's population². Many factors have contributed to the decline including pearl fishing, water pollution, siltation, declines in host fish populations³ and fish farm effluent (Young *et al* 2000, in SNH, 2003).

The freshwater pearl mussel has a very long life-span, commonly reaching ages of over 130 years and individuals inhabit oligotrophic (nutrient-poor) rivers with clean, well oxygenated gravels⁴. *M. margaritifera* has a very interesting and complex life cycle which requires a host fish for their larvae (glochidia)⁵. Their first year of life is spent harmlessly attached to the gills of young salmon or trout before they drop off to settle on the river bed.

SNH advise that “the proposal will no adversely affect the integrity of the site”. Their appraisal was carried out considering the impact of the proposal on the following factors:

¹ <https://www.fba.org.uk/pearl-mussels>

² <http://www.gov.scot/Topics/Environment/Wildlife-Habitats/paw-scotland/types-of-crime/fresh-water-pearl-mussels>

³ <https://www.fba.org.uk/pearl-mussels>

⁴ [ibid](#)

⁵ [ibid](#)

- The applicant should adhere to the industry Technical Standard, '*Marine Scotland. A Technical Standard for Scottish Finfish Aquaculture*' <http://www.gov.scot/Resource/0047/00479005.pdf>. The Standard applies to the farming of all species of finfish in Scotland. It should be used alongside operational procedures, codes of practice, operators' manuals, and the training of staff to ensure equipment is used and maintained appropriately and that procedures are followed correctly.
- There are high mortalities of Atlantic salmon at sea. Farmed salmon have a lower survival rate than wild fish returning to the catchment.
- As freshwater pearl mussels require a healthy population of salmonids, the assessment for this species is directly informed by the above for Atlantic salmon.

It can be concluded therefore that the proposal will not have an adverse effect the integrity of the River Oykel SAC.

Caithness and Sutherland Peatlands SPA

The Black-throated diver breeds mainly in the Highland and Islands, usually on single-territory lochs. Within Britain, this species is at the extreme oceanic edge of its distributionⁱ.

The Red-throated diver breeds at freshwater lochs across the north of Scotland. During the breeding season, from April to September, breeding birds feed at sea, commuting between freshwater nets sites and shallow marine feeding areasⁱⁱ.

SNH advise that "the proposal will no adversely affect the integrity of the site". Their appraisal was carried out considering the impact of the proposal on the following factors:

- Some divers are likely to feed in Loch Shin when they are breeding on some of the nearby component sites contributing to the SPA. The industry Technical Standard should ensure that there is little available netting for divers to become entrapped.
- As Loch Shin is so large, we consider that it is unlikely that the effects of fish farm foods at a localised scale will result in an increase of wild salmonids to a level at which it will have any adverse effects on SPA divers.
- As divers feed visually underwater, water clarity is important to allow them to secure their prey. Phosphate content of fish feed will be determined through CAR Licence to reduce nutrient increase of the water. Therefore, water quality should be adequate to support divers using the loch.

It can be concluded therefore that the proposal will not have an adverse effect the integrity of the Caithness and Sutherland Peatland SPA.

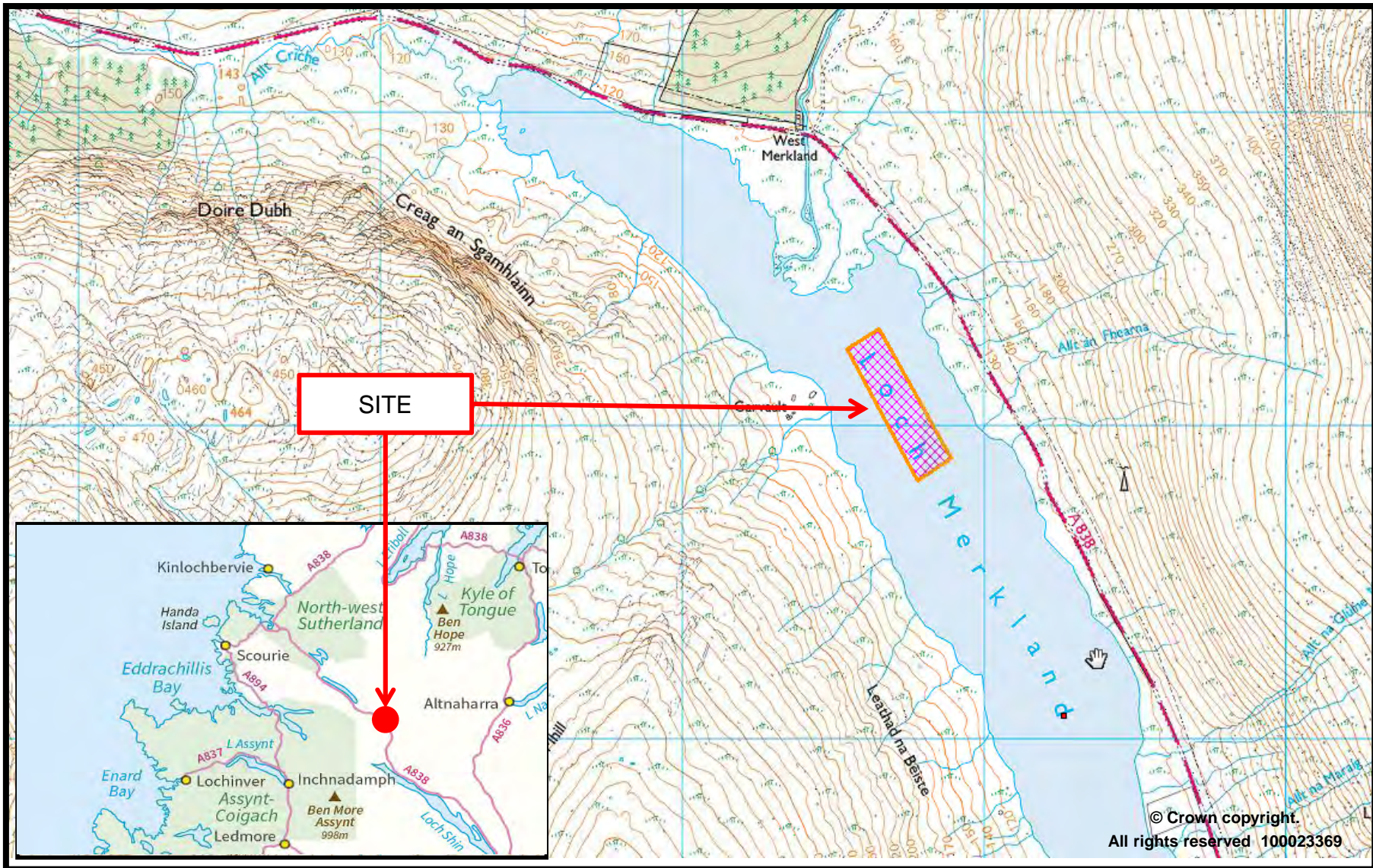
Cumulative and in-combination impacts: There is a potential for cumulative and in-combination impacts on the SAC and the SPA due to the Jubilee Shin, Loch Shin fish farm and the other fish farm at Sallachy also in Loch Shin. However, for the reasons discussed above in relation to the individual site, these are not considered to be significant.

Reference

SNH (2003) Ecology of the Freshwater Pearl Mussel *Margaritifera margaritifera*
Conserving Natura 200 Rivers, Ecology Series No. 2.

ⁱ www.snh.org.uk/pdfs/publications/commissioned_reports/379.pdf

ⁱⁱ www.snh.org.uk/pdfs/publications/commissioned_reports/885.pdf



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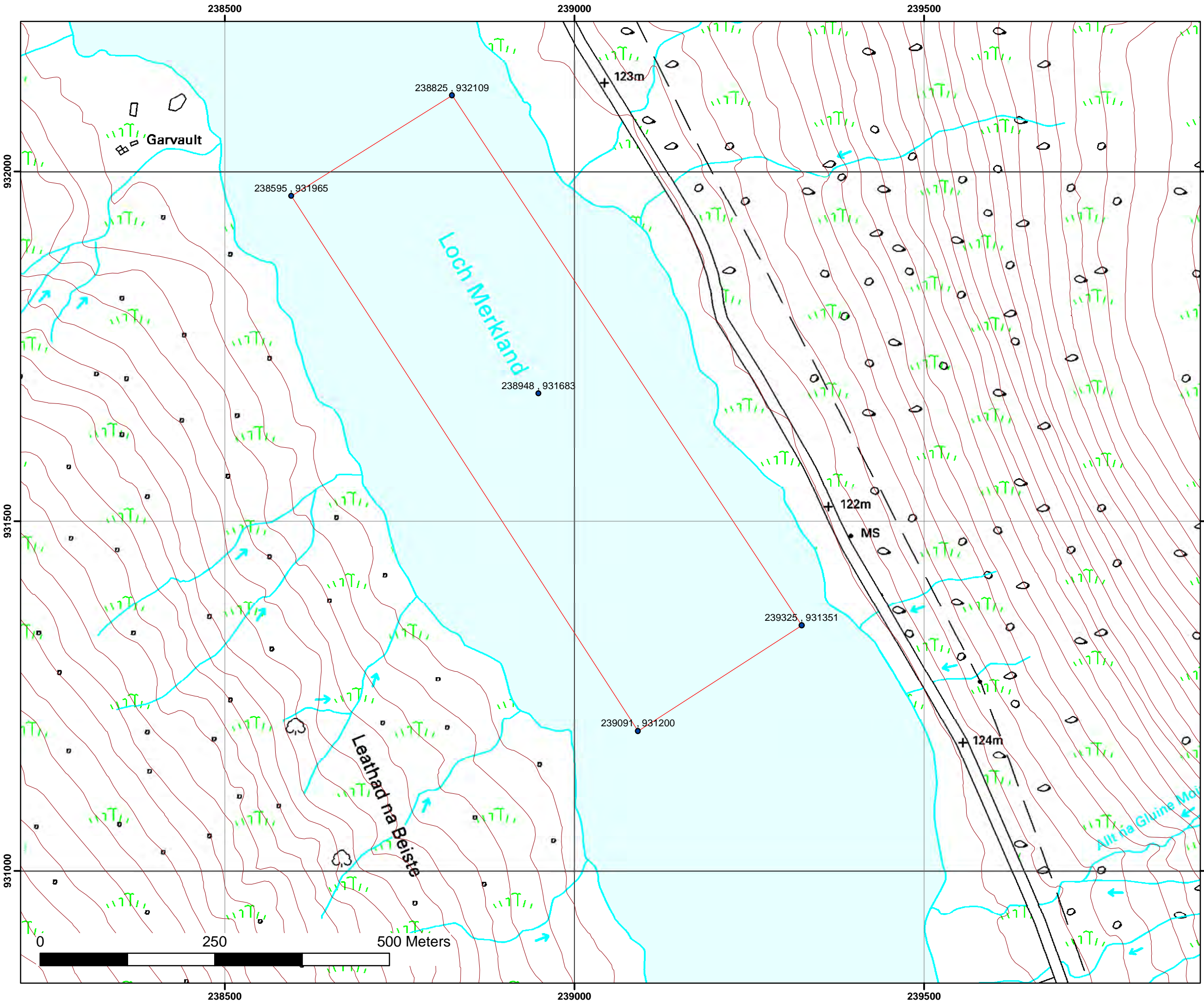
Planning and
Development Service

Location Plan
18/01203/S42

**Application under Section 42 to remove condition 2 of Planning permission
08/00038/FULSU - Temporary permission for 10 years expiring on 27/11/2018**

November 2018

Scale:



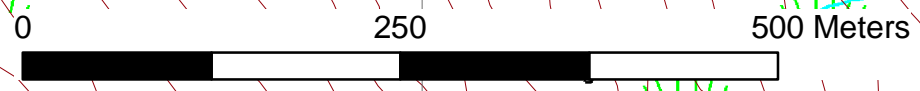
Migdale Smolt Ltd
Bonar Bridge

Planning Reference
18/01203/S42
Loch Merkland Cage Area

Created On: 19/04/2018

Legend

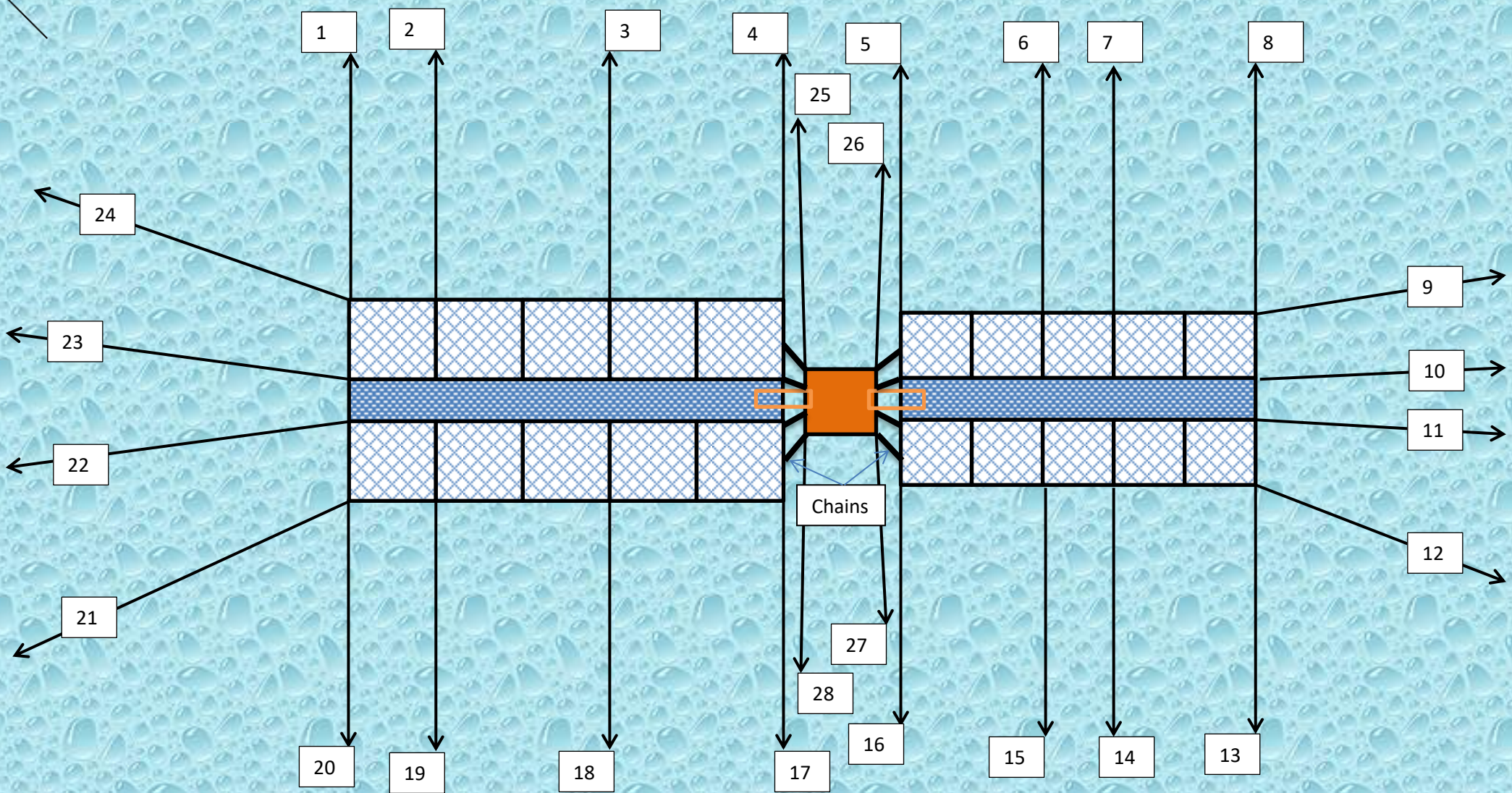
Loch Merkland Cage Area



1:5,000
Scale Correct at A3

NORTH

Merkland Farm Plan with Moorings Index



28 moorings each one made of 1@250kg mud anchor connected to wired shackle connected to 20m length of stud link@34mm long link chain connected to wired shackle into spliced hard eye on 36mm SeaSteel @ 110m connected on both long sides to single block of 10@10m² steel pens on West end and single block of 10@7.5m² steel pens on East end. 4 anchors connected on walkway and cages on far end of both West and East ends. 4 runs of 34mm long link chains connect each face of central barge (both East and West) to both cage blocks. Each anchor has an 18mm SeaSteel 'tripper' rope to a surface buoy.