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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2190
Planning Authority ref: 17/02707/FUL

29 November 2018

Dear Ms Lyons

**PLANNING PERMISSION APPEAL: SITE 2130M EAST OF SCONSER QUARRY
SCONSER ISLE OF SKYE IV48 8TD**

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 <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

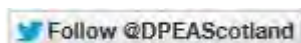
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I trust this information is clear. Please do not hesitate to contact me if you require any further information or a paper copy of any of the above documentation.

Yours sincerely

Jane Robertson

JANE ROBERTSON
Case Officer
Planning and Environmental Appeals Division





Decision by Karen Black, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2190
- Site address: Site 2130 metres east of Sconser Quarry, Sconser, Isle Of Skye, IV48 8TD
- Appeal by Marine Harvest (Scotland) Ltd against the decision by The Highland Council
- Application for planning permission 17/02707/FUL dated 25 May 2017 refused by notice dated 30 January 2018
- The development proposed: New site consisting of 12 x 120 metre circumference circular cages plus installation of feed system
- Application drawings listed in annex 2 of this notice
- Date of site visits by Reporter: 22 June and 23 June 2018

Date of appeal decision: 29 November 2018

Decision

I allow the appeal and grant planning permission subject to the seven conditions listed in annex 1 of the decision notice. Attention is also drawn to the advisory notes in annex 3 and the Habitats Regulations Appraisal in annex 4.

Preliminaries

On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicant made a request for a scoping opinion or direction in respect of the proposed development before 16 May 2017. In this case the request was made on 8 February 2017. I have therefore determined this appeal in accordance with the 2011 regulations as they applied before 16 May 2017.

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (the "Habitats Regulations") require that, where a project is likely to have a significant effect on a Natura site, the competent authority must carry out an "appropriate assessment" of the implications for the site in view of that site's conservation objectives. This is known as Habitats Regulations Appraisal (HRA). In this case, the site is located within the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC). The qualifying interest for which the site is proposed to be designated is Harbour Porpoise (*Phocoena phocoena*). The HRA I have undertaken as the competent authority, is attached as annex 4 to this decision notice.



Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the Highland wide Local Development Plan 2012 (HwLDP). Although the council refers only to Policy 28 in its reasons for refusal, I also consider policies 50, 57, 58, 59 and 61 of the local development plan to be relevant to my assessment of the proposal.
2. I note that the proposed West Highland and Islands Local Development Plan (WestPlan) is currently subject to examination, but as yet, remains as a proposed plan. In response to my request for further written submissions on its relevance and the weight I should attach to the plan, the council confirm that the plan does not contain a specific fish farm policy although its vision and strategy towards development remains relevant. No parties have raised any policy matters related to the proposed plan. My assessment is therefore based on the current adopted development plan policies.
3. Having regard to the development plan, the main issues in this appeal are:
 - landscape and visual impacts;
 - marine pollution;
 - impacts on wild fish; and
 - potential impact on the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC);

Landscape and visual impacts

4. Policy 28 sets out a number of considerations against which developments should be assessed. The impact on landscape, cultural heritage and scenery, together with the sensitivity of the siting and the quality of design are relevant in this case.
5. Policy 50 is supportive of aquaculture where there are no significant adverse effects on landscape, natural heritage or water quality objectives. Where proposals are located on a suitable site they will also need to show amongst other things: appropriate operational and site restoration arrangements including the management of noise and lighting impacts; effective control of pollution; fish farm escapes; predator interaction and disease.
6. Policy 57 requires that development proposals have to take account of Special Landscape Areas (SLA). Policy 61 also requires that new developments should be designed to reflect the landscape characteristics and special qualities of the area in which they are proposed. In this case the proposal, although not located within, lies close to the Cuillin Hills National Scenic Area (NSA), Trotternish and Tianavaig Special Landscape Area (SLA) and Raasay and Rona SLA.
7. The local development plan policies, although pre dating, largely reflect policy guidance contained in Scottish Planning Policy 2014 (SPP) and the National Marine Plan 2015. Aside from the local development plan policies, a number of council guidance documents relating to aquaculture and sustainable design have also been drawn to my attention. However, these other policies and guidance do not add a different policy

dimension, and in my view can be seen to complement and support the local development plan.

8. I consider that the key elements of the proposal likely to result in significant landscape and visual impacts are the 12 pens, each at 120 metres circumference and moored in two rows of six; the 80 metre x 80 metre mooring grid; 2.5 metre central net support; feed barge; feed pipes between the barge and pens; underwater cage lights; and navigational lights.

9. The 120 metre circumference pens incorporate tensioned top nets. The central net support would be used to raise the net above the water surface to prevent birds from accessing the fish feed. The height above sea level of the 'boat style' feed barge when unloaded would be approximately 6.4 metres, and loaded would be approximately 5.3 metres. The barge hull would be painted black and the superstructure a combination of battleship grey, white and black.

10. Bearing in mind the council's reasons for refusal and concerns raised by local residents I have also considered the potential cumulative impacts of the three nearby fish farms at Balmeanach Bay, Maol Bans and Cairidh.

11. The appeal site is located to the east of Sconser Quarry, in the Caol Mor waters at the southern end of Raasay Sound, to the west of the entrance to Loch Ainort and east of the mouth of Loch Sligachan. The landscape around the proposed site, recognised by its inclusion in the Cuillin Hills NSA, Trotternish and Tianavaig SLA, and Raasay and Rona SLA is of an exceptionally high quality in a national, regional and local context. The HwLDP highlights that landscapes designated as NSAs and SLAs are of the highest quality and value within Highland. Although not located directly within these areas, the proposed site is located approximately 3 kilometres at the nearest point to the boundary of the NSA. The SLA boundaries are all located between approximately 3 and 4 kilometres to the north east and west of the appeal site.

12. I visited all of the viewpoints included in the appellant's Landscape Seascape and Visual Impact Assessment (LSVIA). I also viewed the site from additional locations at The Braes, Peinchorran, the golf course at Sconser, the distillery at Borodale House and Eyre Point on Raasay. The council's particular concerns relate to insensitive siting due to the proximity of the appeal site to residences at Sconser and Luib and to roads and ferry routes used by residents and visitors to Skye and Raasay. Overall, I agree that the scenic quality of the area is derived from the coastal panoramas, mountainous upland landscape and backdrop of the Cuillins to the south and west of the proposed site. The views along the coast from Sconser, Balmeanach, and Raasay in particular are generally of very high quality, along with views from the ferry travelling between Sconser and Raasay.

13. The LSVIA considered the potential for significant impacts affecting a number of key receptors, including the immediate vicinity of the proposal at the Moll Road, the A87 and receptors on the island of Raasay. It also assessed the cumulative impacts, especially with the adjacent site at Maol Bans. The appellant has submitted photomontages of the site from each viewpoint in support of the LSVIA. I note that SNH and other statutory consultees had no objections to the methodology, which is based on an assessment of the

magnitude of effects, sensitivity of receptors, significance of effects, including cumulative impacts.

14. Based on my site inspections and the submitted evidence I agree that the most significant and immediate view of the appeal site is obtained from the unclassified Moll Road in the vicinity of viewpoint 1. The feed barge would be located approximately 460 metres at its nearest to the road at this point. Although there are no residential properties adjacent to, or in the immediate vicinity of the site I noted a small number of sparsely located residential properties lying approximately 2 kilometres south of the appeal site. Two of these properties currently have a distant view of the existing Maol Bans fish farm. The road appears to be infrequently used and during my site inspection I encountered only one other vehicle using this route.

15. I noted the relatively open views of the proposed site from parts, but not the whole road. However these open views, looking both east and north towards the appeal site are set against a wide and expansive view of the Caol Mor seaway between Scalpay and Raasay and the Narrows of Raasay in the distance to the north. There are limited opportunities along this road to view the existing Caol Mor farm and the appeal site together. I must therefore concur with the conclusions of the assessment that although the proposed development would be seen in the immediate foreground adjacent to the coastal road, it would not detract from the attraction of the road for tourists and locals, nor erode the landscape and visual qualities of the area from this particular location. Cumulative impacts are similarly acceptable.

16. Opportunities to appreciate the scenic quality of the area, including the coastal panoramas, and upland landscape of the Cuillins are perhaps best appreciated from travelling on the Sconser to Raasay ferry (viewpoint 2). The existing Balmeanach farm is readily visible from the ferry, set against the moorland and rugged massif character areas at The Braes to the north and west of the existing farm. I agree that the effects of the existing Balmeanach farm are significant and adverse from this viewpoint. The appeal site, just over 2 kilometres to the south can also be seen from the ferry, however when set against the backdrop of the Cuillins and the Sconser Quarry in the foreground, the eye is drawn across to the quarrying operations at Sconser Quarry. In combination with the wide seascape and mountainous backdrop, the proposal would not be dominant from this location. I therefore consider that the landscape and visual effects of the proposal would be negligible.

17. In terms of cumulative impacts, although both the existing Balmeanach site and the appeal site can be seen from the ferry, they cannot be seen in combination in the same view. I consider therefore that the cumulative impacts are also negligible.

18. From the ferry jetty on Raasay, and the area around Raasay House and nearby distillery, I could see the existing farm at Balmeanach with only a distant view of the appeal site. The existing farm at Maol Bans was not visible. From the pier at Suisnish and other locations along the Raasay coast (viewpoints 3, 6 and 7) to Eyre Point, the existing farm at Balmeanach is visible and the Maol Bans farm, together with the appeal site could be seen approximately 2 kilometres in the distance. The dominant views however, are of the ferry terminal, associated infrastructure and buildings, Sconser Quarry to the south and the Cuillins in the distant background.

19. Overall, I would agree that the proposal would be visible from some viewpoints on Raasay, however given the low profile of the cages and neutral coloured finishing materials of the feed barge, the impacts, including cumulative impacts set against the expansive and panoramic views from these locations would negligible.

20. Concerns have been raised in representations that the development would be detrimental to the view looking from the Peinchorran and Braes area (viewpoint 5). Consequently, I viewed the proposed site from these elevated locations along the coast. As the LSVIA highlights, there are commanding views to the proposed site from some houses at various points in this area. From these locations the appeal site is seen as an integral part of the wider coastal panorama to the south and east. However, the view is dominated by the existing fish farm at Balmeanach in the foreground, the operational quarry at Sconser and the mountain backdrop of the Cuillins around Sconser. There is an absence of any intervening landform and only sparse vegetation of limited height which accentuates the openness of the views from this area, however I found the appeal site, at approximately 4 kilometres distant to be largely indecipherable at this range.

21. The council's concerns focus primarily on the insensitive siting of the proposal because of the proximity of the appeal site to residences at Sconser and Luib. The layby at viewpoint 4 on the A87 between Luib and Dunan and viewpoint 8 from the Sconser Hotel afford views of the proposed site.

22. The A87 is the main road north and south and used by almost all visitors to the island. For the majority of the route the proposed site is not visible due to intervening topography, buildings and roadside vegetation. The proposed site at approximately 3.5 kilometres in the distance is visible from the A87 at Ard Dorch, as are the existing sites at Cairidh and Maol Bans. The existing farm at Cairidh is prominent in the foreground from this location. I did not however find either the Maol Bans and the proposed site to be dominant in view, nor prominent from the A87 at this point. The surrounding landscape, open waters to the north, and Raasay to the east are the primary focus of views from this point. Consequently, I consider that the additional combined landscape and visual effects of all three farms at this location, would be low.

23. Only the proposed farm and the existing at Balmeanach are visible from Sconser, the local hotel (viewpoint 8) and golf club. The surrounding upland landscape and expansive seaways, in my judgement, again remain the predominant features from these viewpoints. The proposed development would not be a detractive feature.

24. I cannot agree with some of the assertions of the council that the LSVIA underplays the seascape and landscape effects of the existing Maol Bans and the appeal proposal. On the contrary, I note that some of the photomontage evidence expands on the views and to a certain extent enhances the visual effects of the proposal. I would agree that the proposal would be visible, however the impacts, including cumulative impacts on the expansive and panoramic views from these locations would negligible. Consequently, I am satisfied that that the proposal, either in combination with the existing Balmeanach farm nor in its own right would be so dominant, that it would result in significant adverse impacts in landscape or visual terms.

25. Matters related to the impacts of lighting are addressed in section 5.7.1 of the environmental statement. The Northern Lighthouse Board requires navigational lighting at the extremities of fish farms using lit yellow poles. The feed barge would also be required to display a fixed white light to be seen by vessels approaching from all directions. I note that submerged lights within the fish pens result in a localised glow which is of low visibility. These lights are not always required depending on the year class of fish and the site. I note the council propose a condition to mitigate any impacts from above surface lighting, and I agree that such a condition is appropriate.

26. Drawing all these matters together, I am satisfied that although the proposal would be seen in combination primarily with the farm at Maol Bans and Balmeanach at some viewpoints, particularly from some locations on Raasay and at a short section of the A87 at Ard Dorch, they would be a small component of the overall coastal panorama and landscape backdrop. The proposal, being low profile and finished in neutral colours would not be of sufficient size and presence as to dominate the landscape. I therefore agree with the conclusions of SNH that the proposal, including consideration of the cumulative impacts, would not have an adverse effect on the integrity of the NSA or the SLAs, nor the qualities for which they have been designated. Overall, I find that the proposal, subject to mitigation regarding surface equipment colours and lighting required by condition, would have very limited impact on the appreciation of the NSA and SLAs and would not detract from the scenic qualities of the area in general. Consequently I am satisfied that the proposal would be in accordance with the relevant criteria in policies 28, 50, 57 and 61 of the HwLDP.

27. I also note the evidence highlighting the recent planning consent for an additional 2 cages to be added to the centre the existing farm at Maol Bans. The cages would be added to the middle of the existing farm, however I do not consider that adverse cumulative impacts would arise. My conclusions therefore remain as set out above.

Marine pollution

28. Policy 28 of the local development plan includes a requirement to assess the impacts of proposals, on the extent to which they have an impact on pollution and marine systems.

29. Policy 50 supports the sustainable development of fin-fish and shellfish farming subject to there being no significant adverse effect, directly, indirectly or cumulative benthic and water column impacts. The council's aquaculture guidance also highlights that development and activities rely on high water quality. Potential impacts from fish cages come from the discharge of treatment chemicals, waste feed, feed treated with anti-sea lice chemicals and fish faeces, which in turn can have biodiversity impacts. A degree of tidal flushing to disperse waste materials and provide plankton for shellfish developments is therefore required.

30. My assessment of these matters must also take account of the guidance in paragraph 108 of SPP, which indicates that the planning system should not duplicate other control regimes such as Controlled Activities Regulations (CAR) licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland.

31. A number of objections have been made by local residents, however neither SEPA, Marine Scotland Science (MSS) nor SNH have objected to the proposed development.
32. Uneaten food and faeces are the main components of particulate waste generated at a fish farm which may impact on the benthic environment and seabed. A number of representations to the planning application and in response to the appeal process express concerns about the detrimental impacts of such waste on the seabed and resulting increased pollution. Potential benthic and water column impacts are therefore key considerations in any aquaculture planning application. Both are assessed in section 5 of the Environmental Statement.
33. Benthic impacts of fish farming are regulated by SEPA under the CAR regime. Planning permission does not negate the need for a CAR licence and it is not possible to operate a farm without a CAR licence. In this case an application for a CAR licence has been submitted to SEPA. A baseline benthic seabed survey, visual baseline and video survey have also been carried out and the results provided to SEPA as part of the CAR licence application. The exact biomass and the quantities of sea lice therapeutants would be determined as part of the CAR determination process. SEPA confirm that it has received all the required information and based on the information provided, the licence is likely to be authorised. Consequently, it has no objection to the planning application.
34. Section 5.1 of the environmental statement addresses benthic impacts. In compliance with SEPA requirements modelling was completed to predict the fate of the fish faeces and uneaten food particles dropping down from the pens. The appellant confirms that the modelling has shown that the site layout would adhere to SEPA's environmental quality standards. In addition the automated feed systems allow for a high level of control over feed input and a consequent reduction in the volume of feed which is wasted. Benthic conditions at the site would also be monitored as part of the CAR regime.
35. The environmental statement also addresses matters related to chemical treatments. Discharges from the use of medicines at fish farms are once again limited by conditions in licences issued by SEPA under the CAR regime. Efficient medicine treatment through good husbandry management is used to avoid the requirement for an increase in medicine output and reduces the potential for waste feed and thus reduces medicinal release to the environment. In addition to the above measures, routine monitoring of the seabed, as stipulated in the SEPA CAR discharge consent, would be carried out at the proposed site. The site would have a regular monitoring program which checks that the ongoing benthic impacts are controlled and kept within SEPA standards.
36. Section 5.2 of the environmental statement assesses water column impacts. As noted above, currents are an important aspect of fish farms as they play a large role in dissipating waste throughout the water column thus lessening the potential for accumulations of high concentration loads of nutrients. Impacts are also regulated by SEPA under the CAR regime, advised by Marine Scotland. The appellant's modelling work and hydrographic survey of the site indicate that the cumulative effects of nutrient enhancement from the proposed site is not considered to be significant and results suggest that the fish farm would not cause unacceptable environmental impact in terms of nutrient enhancement. The appellant advises that figures provided are negligible when compared with background levels and are well below regulatory thresholds.

37. I also note that once a fish farm is built, the seabed would be subject to regular monitoring for in-faunal disturbance, epifauna assessment and surveys for medicine residues. All survey data is submitted to SEPA for assessment against environmental standards. Routine monitoring of the seabed, as stipulated in the SEPA CAR discharge consent, would be carried out at the site.

38. I note that neither SEPA nor Marine Scotland disagree with these results, nor is there any other evidence before me to suggest that the conclusions are not valid. SNH similarly advise that the proposal does not raise issues of national interest in relation to benthic impacts.

39. Overall, whilst being mindful of the regulatory function of SEPA and Marine Scotland, I consider that appropriate mitigation to ensure monitoring of benthic and water impacts can be mitigated by planning conditions. This mitigation would ensure compliance with policies 28 and 50 of the local development plan.

Impact on wild fish

40. Although a CAR licence is required, impacts on wild salmon are also a material planning consideration. As noted in paragraph 5, Policy 50 of the local development plan requires consideration of impacts on the wild fish population. I also note that Atlantic salmon are included in the UK Biodiversity Action Plan Priority Species List. Policies 58 and 59 of the HwLDP are therefore relevant. The policies require the council to have regard to the presence of, and any adverse effect of development proposals, either individually and/or cumulatively on priority habitat or protected species.

41. Paragraph 109 of SPP similarly highlights the potential for conflict between fish farming and local fishing interests, and that the effects of fish farm development on traditional fishing grounds and angling interests should, therefore, be considered.

42. The council's aquaculture guidance advises that a sea lice management plan will be required by planning condition. In addition, fish farming businesses located within a farm management area must be party to a farm management agreement or prepare and maintain a farm management statement. This was provided by the appellant in July 2017.

43. As the appellant confirms, the relationship between farmed salmon stocks and their wild counterparts is complex and the transfer of lice from one to the other is subject to ongoing research and monitoring. The use of medicinal substances to control and remove lice at fish farms is regulated by SEPA under the CAR regime and the quantities of sea lice therapeutants would be determined as part of the CAR determination process.

44. Registration and authorisation is also required from Marine Scotland under the Aquaculture and Fisheries (Scotland) Act 2007, which covers fish health standards and containment, including powers specifically related to sea lice infestation. The Aquatic Animal Health (Scotland) Regulations 2009 requires the authorisation of all aquaculture production businesses in relation to animal health requirements for aquaculture animals and products, and on the prevention and control of certain diseases in aquatic animals. In addition, marine farms are required to apply for a marine licence under Part 4 of the Marine

(Scotland) Act 2010. Ministers also have powers to vary, revoke or suspend a licence, and to take enforcement action.

45. The council, in the committee report confirm that data from the Scottish Salmon Producers Organisation shows that sea lice levels in the past few years for the existing farms in this area have reduced, however remain around 2.5 - 4 times over the recommended levels.

46. Matters related to sea lice management and monitoring are included in sections 5.1 and 5.4 of the environmental statement. To control infections, the appellant confirms that weekly sampling to assess lice population dynamics is implemented at all its sites and a broad range of treatment types are employed to control lice numbers to meet and exceed good practice codes. New measures, set out in the appellant's 'sea lice attestation' allow more reliable and greater control of sea lice numbers. Interventions, such as biological control, medicinal treatments, and thermic/physical removal of sea lice in combination with good husbandry form part of the control strategy. With modern techniques of cleaner fish, mechanical controls and freshwater treatments the salmon industry is moving away from medicinal treatments. The appellant also comments on the effectiveness of on-going lice management strategies within the farm management area which should remain constant or improve, regardless of the increased tonnage of fish within the area. It also points to its involvement in gathering, monitoring and sharing lice data with Fisheries Trusts.

47. Marine Scotland Science (MSS) indicates that the development has the potential to increase the risks to wild salmonids but confirm that provided the CAR licence is granted to include the quantities of chemicals detailed in the submitted modelling reports, chemotherapeutants should be available in sufficient quantities to provide treatment options for the maximum biomass throughout the production cycle, without breaching environmental quality standards. I also note that MSS do not object to the proposal and conclude that "suitable measures for the control of parasites would remain in place in the farm management area despite the increase in biomass and pens as far as can be reasonably foreseen".

48. The Wester Ross Area Salmon Fishery Board, whose boundaries lie adjacent to those of the Skye District Salmon Fisheries Board, object to the planning application on the basis that the proposal has the potential to present further significant adverse impact within an area where there have been sea lice control issues. Its concerns relate to the potential impacts on migratory wild salmonids mainly in relation to the Sligachan, Broadford and Applecross rivers.

49. In response, the appellant advises that the variety of treatment methods for removal of sea lice would result in the possibility of a simultaneous sea louse infestation being minimal. I also note from the containment and contingency escapes plan (annex 5 of the environmental statement) that regular inspections of moorings, nets, pens and equipment would be undertaken. Escapes would also be reported to Marine Scotland Science, the Skye and Wester Ross District Salmon Fishery Board and Skye and Wester Ross Fisheries Trust. Farm Managers are also encouraged to hold an escapes protocol meeting with the representatives of these organisations at least once during a cycle. Recapture strategies would also be agreed as part of this process.

50. Concern have also been expressed about the appellant's existing site at Balmeanach Bay creating a funnelling effect with the appeal proposal through which any salmon migrating to the River Sligachan would be required to pass. However I note that the appellant confirms that if the appeal proposal goes ahead and proves viable, the Balmeanach site will close. Any funnelling effect should therefore only exist for a single cycle and both sites would be operated to strict lice figures, minimising the risk to wild stock over this period.

51. Although there are clearly some on-going debates about the impact of sea lice on wild fish, there is no evidence submitted which would lead me conclude other than that the proposal complied with all necessary government guidelines on these matters. I am also mindful of the lack of any objections from the regulatory authorities. Previous appeal decisions, including reference to planning conditions addressing such matters have been drawn to my attention and I agree that my consideration of the potential effects on wild fish necessarily involves some repetition between the relevant regulatory regimes. Paragraphs 20 and 21 of Circular 4 /1998 'The use of conditions in planning permissions' advises that conditions which duplicate the effect of other controls will normally be unnecessary. However, whilst other matters may be subject to control under separate legislation, they may be of concern to the planning system and conditions may be needed to deal with circumstances for which a concurrent control is unavailable.

52. In this case, I note that the council's committee report includes a recommended condition, modelled upon the previous appeal decisions. It requires the submission and approval of an environmental management plan, a sea lice management plan, escape management plan, a requirement to carry out wild fish monitoring and to provide the planning authority with summary data on sea lice levels and notification of any losses or escapes. A number of these requirements are already in draft form, in separate documents as part of the planning application submission. Consequently, the appellant agrees with such a condition.

53. I consider that a requirement to provide data on sea lice levels and notification of any losses or escapes, would ultimately allow the planning authority to monitor impacts on wild fish and in my view, such measures would complement, rather than duplicate other regulatory regimes, whilst discharging the planning authority's biodiversity duty. The imposition of the condition and requirement to provide this data would meet the enforceability requirements of Circular 4/1998. It would also provide the planning authority with ongoing information at any time during the lifetime of the permission to take action if the operations of the farm were considered to be causing material harm to wild fish stocks.

54. In the circumstances therefore, I am satisfied that these measures would ensure mitigation in respect of any impacts on wild salmonids. Such a planning condition would bring together the relevant monitoring and mitigation proposals in so far as they relate to 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 terms of any planning consent. Subject to the imposition of such a condition I conclude that the proposal would meet the relevant criteria in policies 50, 58 and 59 of the local development plan, and in turn relevant national policy guidance.

Potential impact on the candidate SAC

55. As noted above, policies 58 and 59 refer to a requirement to consider impacts on priority habitat or protected species. Policy 57 also specifically references the requirement for appropriate assessment in circumstances where developments are likely to have a significant effect on these features.

56. In this case, the proposed site is located within the Inner Hebrides and Minches candidate Special Area of Conservation (cSAC), identified given its importance for harbour porpoise interests. The proposal aims to use acoustic deterrent devices (ADDs) which emit a high frequency sound below water to deter seals away from the pens. The harbour porpoise feed on a wide variety of fish associated with a range of seabed substrates in the cSAC. I therefore consider that the proposal has potential to have a significant effect on the harbour porpoise interests of the site. That view is also supported by SNH. Consequently, taking the consultation response from SNH into account, I have undertaken an appropriate assessment of the implications for the conservation interests for which the site has been designated (see annex 4 of this decision notice) as required by the Habitats Regulations.

57. All cetacean species found in Scottish territorial waters are classed as European Protected Species. SNH advise that other cetacean species also use the Caol Mor area, particularly bottlenose dolphin. Similar issues regarding disturbance/habitat exclusion apply to those species and effects on them should also be considered.

58. I also note that SEPA has undertaken assessment, as required by the Habitats Regulations, for the impacts of marine cage fish farms on harbour porpoise. The assessment concluded that those pressures, which can be controlled under CAR, are unlikely to have a significant impact on harbour porpoise and are therefore unlikely to adversely affect the integrity of the SAC.

59. The proposal lies approximately 3 kilometres from the Cuillins SPA. The qualifying feature is the golden eagle. SNH did not provide comments on this aspect and the council confirm it has not received any reports of any adverse effects from the current fish farms nearby. Consequently, I agree with the council that it is likely that the proposal would not have any adverse effect on the eagles and therefore the integrity of the SPA. An appropriate assessment is therefore not required for this SPA.

60. Potential effects on species or habitats of conservation importance are assessed in sections 2 and 5 of the environmental statement. The appellant comments that the effect of ADDs on marine mammals is very difficult to determine scientifically and the appellant is not aware of any definitive studies on the subject. The farm manager would decide which method of predator control is most suitable for the site and the predator issues being experienced. In this case, high levels of net tension would be the principal system used. As a second line of defence, ADDs would be used.

61. A draft Predator Mitigation Plan is included in Annex 4 of the environmental statement. The appellant confirms that any changes, and the final version would be approved by SNH before ADDs are used at the site. Under SNH guidance and recommendation ADD transducer heads that emit signals would be used, which the appellant states are unlikely to disturb cetaceans. The appellant has also been working

with SNH to develop a site specific ADD plan for the appeal proposal and current methods will be kept under review taking account of SNH advice. I note that SNH recommend that where it becomes evident that ADD use at a specific site is not preventing seal predation from occurring, alternative defences should be deployed rather than continue with the same type of ADD. The latest version of the appellant's plan (document APP 226) includes such a step. SNH confirm that while the precise wording of the flow chart still has scope for improvement, an updated version of the plan, including a requirement for updates to take account of developing good practice, could be included as a condition, with provision for review.

62. The appellant also confirms that the use of ADDs at the proposed site and the existing farms at Balmeanach, Maol Bans and Cairidh is site specific i.e. activity at the proposed site would not automatically trigger ADDs to be turned on or switched off at the existing farms. Other measures would include feedback loops to encourage ADDs to be switched off if there is not a risk posed by seals; logging and review of ADD use at the end of each production cycle; employees to log cetacean sightings; and review of data at the end of each production cycle. I note that SNH also comment that the commitment to remove the Balmaenach Bay farm at the end of the production cycle reduces the potential for cumulative impacts with ADDs used at other farms in the area.

63. In response to my request for further written submissions regarding an update on progress of discussions with SNH, the appellant agrees that a planning condition modelled on the council's proposed condition 3, including a requirement to implement the final ADD plan would be acceptable. The appellant also acknowledges that on rare occasions there can be a problem with particularly aggressive and persistent seals and that shooting of persistent seals is a deeply emotive and often controversial issue. This option is only ever considered as a last resort, when other methods fail, and is conducted in line with the appropriate regulations. In this context I note that from 2011, where fish farms in Scotland require to manage seals, an annual seal management licence is required. Predator control at the farm would therefore have to be managed in a manner which is also compliant with the conditions of such a licence.

64. Taking all these matters into account, I agree that a condition, including provision for monitoring, review and implementation of any ADD plan, would be appropriate, whilst potentially complementing current good practice methods and regulatory requirements in relation to predator control.

65. Whilst I am aware that wider discussions on this topic are ongoing between SNH and the aquaculture industry, based on the submitted evidence, I consider that by employing best practice at this site, the use of ADDs, in combination with the mitigation required by condition provides sufficient control such that the proposal would not be significantly harmful to harbour porpoise, nor the bottlenose dolphin.

66. Drawing all these matters together, including the outcomes of the appropriate assessment in annex 4, I therefore consider that operation of the fish farm is unlikely to have any adverse effect on the conservation interests for which the site has been designated, nor adversely affect the integrity of the cSAC. I conclude that, with the conditioned mitigation measures in place, the proposal would comply with relevant criteria

in policies 57, 58 and 59 of the local development plan. My conclusions are supported by both SNH and SEPA.

Other Material Considerations

67. As I have found that the proposed development would result in no unacceptable impacts, I find the proposal to be consistent with paragraphs 249 - 253 of SPP on supporting aquaculture and the council's aquaculture guidance.

68. Although the appellant is committed to removing the existing fish farm at Balmeanach if the appeal proposal proves to be viable, I do not consider it necessary or appropriate to make the operation of the proposed site conditional on the removal of the Balmeanach Bay operation. I have previously concluded that landscape and visual impacts, including cumulative impacts are acceptable. On the basis of the evidence before me, I have also found no reason to suggest that the cumulative effects on marine pollution and sea lice cannot be addressed by appropriately worded conditions relating to a requirement for a detailed environmental management plan. In my view, a planning condition requiring the cessation of operations at the existing Balmeanach site, would neither be necessary or reasonable, thereby not meeting the tests in circular 4/1998.

Other Matters

69. Section 5.6.2 of the environmental statement also addresses matters related to the impacts on commercial fishing activities. The appellant's benthic video survey footage indicated little evidence of high quality commercial fishing ground at the appeal site. Exclusion of commercial fishing activities would be mitigated by maintaining minimum appropriate length of mooring lines, and once installed, the majority of the area taken up by mooring lines would still be accessible for creeling or diving, with full exclusion only required during maintenance of mooring lines or boat operations on site. I note that there are no objections from the council, nor statutory consultees. I therefore conclude that subject to mitigation required by condition in relation to escape prevention methods, there would be no significant effects in this respect.

70. The economic and social benefits of the proposal are not in dispute. I agree that the potential to create full time jobs; additional seasonal employment; supporting the local supply chain, helping to sustain local communities in a rural location; and its contribution to the Scottish economy would meet the provisions of both SPP and the National Marine Plan.

71. Some objections relate to the potential adverse impacts on tourism. I have found that there are no significant landscape and visual impacts resulting from the proposal and I agree with the appellant that the assertions regarding the impacts on tourism are unsubstantiated by any evidence in this case.

72. Objectors also raise concerns about the potential increase in noise levels and sea traffic. Section 5.8 of the environmental statement notes that as all generators and compressors within the feed barge have acoustic protection, there should not be any significant impacts on key receptors. I also note the lack of any concerns from the council's environmental health service and agree that the council's suggested condition which ensures noise impacts are controlled would be appropriate.

73. The appellant acknowledges that there may be a slight increase in boat traffic to service the site. The greater storage capacity of the feed barge would however reduce boat movements in this respect. I also noted at my site inspections that the existing ferry base at Sconser appears to be a fairly busy crossing point in any case, with half hourly sailings when I visited. Consequently, any increase in traffic movements to serve the proposed fish farm would, in my view be negligible. On the whole I consider that there would be no adverse impact on road safety, nor adverse impacts from additional boat traffic in accordance with relevant criteria in policy 28 of the local development plan.

Conditions

74. The council's committee report includes a number of planning conditions, to be used in the event that the appeal is allowed. In reaching my conclusions on this matter, I have given consideration as to whether the suggested conditions meet the tests set out in Circular 4/1998: The Use of Conditions in Planning Permissions. I have adopted the suggested wording in the main. However, I have amended condition 3 to include provision for review of the acoustic deterrent device plan, in line with a similar requirement for the environmental management plan, to take account of changing practice as suggested by SNH.

Overall Conclusions

75. Overall, I conclude the proposal has been sensitively sited and does not detract from the special qualities of the nearby NSA, SLAs nor has any adverse impacts on the surrounding area, all in accordance the requirements of the relevant criteria in policies 28, 50, 57 and 61 of the HwLDP. This conclusion is also based on my assessment of the potential cumulative effects of the proposed and nearby existing fish farms.

76. In reaching my conclusions, I have carefully considered all the relevant environmental information. I have also taken account of the responses of the consultation authorities and my assessment is that aside from those effects referenced above, which can be satisfactorily addressed by the relevant mitigation, there are no other significant effects.

77. Mitigation measures required by condition would complement existing regulatory controls in terms of marine pollution and impacts on wild salmonids. The proposal is unlikely to have any adverse effect on the conservation interests for which the site has been designated, nor adversely affect the integrity of the Inner Hebrides and the Minches candidate Special Area of Conservation, in accordance with policies 57, 58 and 59.

78. 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. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Karen Black

Reporter

Annex 1: Conditions

1. All surface equipment, with the exception of navigational markers, shall be finished in a dark, matt neutral colour unless alternative finishes are agreed in advance in writing with the planning authority. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter.

Reason: To minimise the visual impact of the installation and to help safeguard the integrity of The Cuillin Hills National Scenic Area.

2. 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.

3. Prior to the commencement of development, the final Acoustic Deterrent Device Plan shall be submitted and agreed in advance in writing with the planning authority. The development and operation of the site, shall be carried out in accordance with the approved plan unless changes to the operation of the site dictate that the plan requires amendment. In such an eventuality, a revised Acoustic Deterrent Device Plan will require to be submitted to, and approved in writing by the planning authority. Notwithstanding such a requirement, a revised Acoustic Deterrent Device Plan 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 minimise the impact on the Inner Hebrides and the Minches candidate Special Area of Conservation.

4. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the planning authority and should include adequate details to address how compliance can be assessed. This should also detail 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, standalone 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.

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.

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 interests of amenity and navigational safety.

7. All plant, machinery and equipment shall be so installed, maintained and operated such that any associated operating noise does not exceed NR 20 when measured or calculated within any noise-sensitive premises with windows open for ventilation purposes. For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which

a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

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

Annex 2: Schedule of approved plans

Figure 1: Cage elevations
Figure 3: Location plan
Figure 4: Feedbarge elevations
Figure 6: Site layout plan
Annex 2: Equipment plans and elevations

Annex 3: 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)).

Annex 4: Habitats Regulations Appraisal (Appropriate Assessment)

1. The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (the "Habitats Regulations") require that, where a project is likely to have a significant effect on a Natura site, the competent authority must carry out an "appropriate assessment" of the implications for the site in view of that site's conservation objectives. This is known as Habitats Regulations Appraisal (HRA). The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. This document records the results of the Habitats Regulations Appraisal, including the appropriate assessment that I have undertaken, as the competent authority. In carrying out the assessment I have also taken account of the consultation responses to the planning application from Scottish Natural Heritage (SNH).

Project Description and Candidate Special Area of Conservation (cSAC)

2. The proposal is to install a new fish farm in the waters to the east of Sconser Quarry. The proposal is for 12 x 120 metre circumference pens within an 80 metre x 80 metre mooring grid with 12 metre deep nets, operating to a maximum biomass of 2,500 tonnes. The farm would be serviced by an automated barge feed system which is computer-controlled and backed up by the use of feed-back loops and feed guides.

3. The site is located within the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC). The qualifying interest for which the site is proposed to be designated is harbour porpoise which are present throughout the year. The conservation objectives for the cSAC are solely to aid the conservation of the porpoise. The cSAC is the largest protected area in Europe for harbour porpoise and covers just over 13,800 square kilometres, supporting over 5000 individuals.

4. Sightings and modelling data used to inform the cSAC selection demonstrates that Caol Mor, within which the proposal is located, is an important part of the cSAC for harbour porpoise. Caol Mor connects the Inner Sound and Sound of Raasay, both having very high levels of predicted and observed harbour porpoise activity. Caol Mor is also likely to be important for animals moving from one part of the cSAC to another.

5. SNH indicates the proposal has the potential to have a significant effect on harbour porpoise within the cSAC because acoustic deterrent devices (ADDs) are included as part of the range of predator control measures. I agree that proposal is likely to have a significant effect on the qualifying interest of the site ie harbour porpoise. Consequently, as competent authority I am required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest.

Appropriate Assessment

6. In carrying out the assessment and following advice from SNH I have considered the following factors:

- The proposal is not directly connected with or necessary to site management for conservation;
- A range of alternative predator control measures would be used before ADDs are considered. These include top nets, tension nets, seal blinds and daily stock mortality removal;
- The appellant proposes to use TR1 ADDs at the Sconser Quarry site (if ADDs are required). The scientific trials for this device have not been completed but based on the currently available information it is expected that this low frequency transducer would have lower impacts on cetaceans than the US3 currently used on adjacent fish farms;
- ADDs would not be used constantly. They would only be turned on when stock mortalities attributed to seals occur. Their use would be reviewed daily by the site manager and weekly by the area manager;

- The appellant is committed to maintaining a record of ADD usage, make and model of device, deployment dates, settings used, position of transducers, including the use of deployment logs and to make that information available to the regulatory authorities;
- The appellant operates three other fish farms in the Caol Mor area which currently use, or have the option to use ADDs. In discussion with SNH, and as part of the appellant's 'cumulative assessment' document they are committed to operating the Sconser, Cairidh and Maol Bans sites using the same 'ADD deployment guidance' as at Sconser Quarry, logging and reviewing ADD use; and using the TR1 device in preference to the US3 in the first instance. Taken together these measures would be likely to reduce the noise output from the existing farms in comparison with previous production cycles;
- Implementation of seal licence requirements;
- Implementation of CAR licence requirements.

7. By employing such measures at this site, the use of ADDs, in combination with the mitigation required by condition requiring submission of an acoustic deterrent device plan and detailed environmental management plan, with a requirement for monitoring of methods and reporting of data, I am satisfied that the proposal would not be significantly harmful to harbour porpoise.

Conclusion

8. Overall, my appropriate assessment of the implications on the conservation objectives of the cSAC is such that any effects can be mitigated by imposing planning conditions where appropriate, addressing the above matters as outlined in this decision notice. Consequently, I conclude that the proposal would not adversely affect the qualifying interest and conservation objectives of the Inner Hebrides and the Minches cSAC, nor adversely affect the integrity of the cSAC.