

Agenda Item	<b>6.10</b>
Report No	<b>PLN/024/19</b>

## THE HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 5 March 2019

**Report Title:** 18/05344/FUL: Cromarty Mussels T/A MacKenzie Oysters  
Cromarty Bay West, Cromarty

**Report By:** Area Planning Manager – North

### Purpose/Executive Summary

**Description:** Siting of Marine Shellfish Farm (24,000 x 1m x 3m Oyster trestles)

**Ward:** 09 Black Isle

**Development category:** Major

**Reason referred to Committee:** Major Application

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

### Recommendation

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

## **1. PROPOSED DEVELOPMENT**

- 1.1 The proposal is for a major shellfish development for the cultivation of non-native oysters (*Crassostrea gigas*), native oysters (*Ostrea edulis*) and mussels (*Mytilus edulis*). The oysters would be contained in bags on 1m x 3m x 0.7m trestles, which would be made up of lines of trestles of varying lengths up to 120m long, making up a total of 72,000 trestle metres, consisting 24,000 trestles in 20 blocks. These would form a rough wedge shape, widest at the western end, tapering to the eastern end. Three 1km mussel lines would lie west to east along the northern boundary of the proposal; these would include posts every five metres. A temporary access is proposed from the car park c.600m to the west of the proposal and it would be used until an access ramp through the harbour wall directly onto the site, off the B9163, is constructed. For clarity, the site boundary area encompasses c.66.8ha but the proposed equipment will cover c.7.8ha and the combined equipment and the spacing in between it will occupy c. 19.5ha.
- 1.2 The site was previously occupied by a smaller scale development within the proposed site boundary, consisting two trestle blocks occupying a total area of 1.67 hectares (10/04035/FUL) comprised of 500 trestles. One block was 145m x 95m; the other was 120m x 25m. These two sites have been abandoned following autumn 2015 storm damage and subsequently all equipment was removed from the site. There is a disused oyster site immediately to the east which is currently classified as an 'inactive' site on Scotland's aquaculture website; the applicant is listed as the operator but is not the owner of this neighbouring site.
- 1.3 Pre Application Consultation: The pre-app advice noted concern regarding the scale of the proposal and that potential impacts on the SPA/Ramsar/SSSI would have to be carefully considered; landscape, noise, impacts on local road network also required consideration and clarification of operational details was necessary. Local councillors and the Cromarty Community Council were notified of the public meeting to discuss the proposal. The subsequent PAN consultation statement noted seven people attended the public event but only two of them specifically attended to find out more about the proposal.
- 1.4 Supporting Information: Environmental information to aid Habitats Regulation Appraisal including bird count data; site access information and visualisations.
- 1.5 Variations: Clarification of location and use of temporary access from existing Highland Council car park to the west of the proposal.

## **2. SITE DESCRIPTION**

- 2.1 The site lies immediately west of Shoremill alongside the B9163 road between Jemimaville and Cromarty. The planning boundary area is c.1.33km west to east and c. 590m at the maximum width north to south. In addition, a temporary access track is proposed across the intertidal zone from the car park c.600m west. Much of the equipment would be intertidal or sub-tidal, depending on its position on the site. The area of Cromarty Bay West is no longer classified for shellfish production.

### **3. PLANNING HISTORY**

- 3.1 31/01/2011 10/04035/FUL Placement of oyster trestles within EU Granted  
approved shellfish growing area in area above spring low  
tidal limit
- 3.2 17/10/2017 17/04138/PAN Marine Shellfish Farm - alteration of N/A  
existing Oyster farm - from 5,000 trestle metres to 72,000  
trestle metres in an area approximating 19.5 hectares

### **4. PUBLIC PARTICIPATION**

4.1 Advertised: Unknown Neighbour

Date Advertised: 07/12/2018

Representation deadline: 21/12/2018

Timeous representations: None

Late representations: None

4.2 Material considerations raised are summarised as follows:

a) N/A

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](http://www.wam.highland.gov.uk/wam).

### **5. CONSULTATIONS**

5.1 Landscape Officer: no objection

5.2 Access Officer: no objection

5.3 Environmental Health: no objection

5.4 Transport Planning: no objection

5.5 SEPA: no objection

5.6 MSS: no objection

5.7 SNH: no objection

5.8 RSPB: no objection

### **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

6.1 **Highland Wide Local Development Plan 2012**

28 Sustainable Design

30 Physical Constraints

49 Coastal Development  
50 Aquaculture  
57 Natural, Built and Cultural Heritage  
58 Protected Species  
59 Other Important Species  
60 Other Important Habitats  
61 Landscape  
63 Water Environment

**6.2 Inner Moray Firth Local Development Plan 2015 (as continued in force)**

No specific policies apply

**7. OTHER MATERIAL CONSIDERATIONS**

**7.1 Highland Council Supplementary Planning Policy Guidance**

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

**7.2 Scottish Government Planning Policy and Guidance**

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

**7.3 Other**

Highland Aquaculture Planning Guidance (2016)

**Highland Coastal Development Strategy (2010)**

**8. PLANNING APPRAISAL**

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

Determining Issues

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

Planning Considerations

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) any other material considerations.

## Development plan/other planning policy

- 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;
  - resources, including pollution, particularly within designated areas, on habitats, species, marine systems and landscape.

As the proposal lies either within or close to the:

- Cromarty Firth Special Protection Area (SPA);
- Cromarty Firth Ramsar
- Moray Firth proposed SPA (pSPA)
- Moray Firth Special Area of Conservation (SAC);
- Cromarty Firth Site of Special Scientific Interest (SSSI)
- Various Priority Marine Features (PMF),

careful consideration will be required of the likely impacts.

- 8.6 Policy 57 (Natural, Built and Cultural Heritage) requires all development proposals to be assessed taking into account features of:
- **local/regional importance:** there are a number of amenity and cultural heritages resources in the vicinity of the proposal, as well as the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area;
  - **national importance:** Cromarty Firth SSSI; Highland Council will allow developments that can be shown not to compromise the natural environment, amenity and heritage resources;
  - **international importance:** the proposal lies within the Natura sites and Ramsar site listed above. For features of international importance, developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to appropriate assessment (see Appendix 1).

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

- 8.7 Policy 59 (Other Important Species): this policy requires the council to have regard to the presence of, and any adverse effect of development proposals, either individually and/or cumulatively, on the Other Important Species ... if these are not

already protected by other legislation or by nature conservation site designations. Horse Mussel beds and Eelgrass are Priority Marine Features, for the reasons outlined above, the proposal is also acceptable with regard to this policy.

- 8.8 Policy 61(Landscape) states, among other things, that the council would wish to encourage those undertaking development to include measures to enhance the landscape characteristics of the area. This will apply particularly where the condition of the landscape characteristics has deteriorated to such an extent that there has been a loss of landscape quality or distinctive sense of place. Given the location of the proposal, it is considered acceptable with regard to this policy, as discussed below.
- 8.9 National Marine Plan (2015): The principle of sustainable development and consideration of other coastal and marine interests is one of the key themes of the National Marine Plan. It notes that aquaculture development consents “are determined in accordance with the Local Development Plans and now with this Plan”.
- 8.10 The Highland Council Aquaculture Planning Guidance (2016) outlines a spatial strategy and six development criteria that outline the key considerations for marine fish farm applications. Whilst this entire document is relevant, Development Criterion 1 (DC1: Landscape, Seascape, Siting and Design), 3 (DC3: Biodiversity) and 5 (DC5: Other marine users) are particularly important.
- 8.11 Highland Coastal Development Strategy (2010) The strategy identifies the coast adjacent to the proposal as ‘undeveloped’. The undeveloped coast should generally be considered for development only where:
- The proposal can be expected to yield social and economic benefits sufficient to outweigh any potentially detrimental impact on the coastal environment and;
  - There are no feasible alternative sites within existing settlements or on previously developed land [in planning terms this includes marine fish farm sites].

#### Material Considerations

- 8.12 This application is for the operation of major shellfish fish farm. Whilst it may be developed using a phased approach, it will be assessed at the ‘worst case scenario’ i.e. the full extent of the proposal applied for.
- 8.13 The main elements of this proposal can be considered under three main elements: 1. Landscape; 2. Biodiversity and 3. Other considerations. The cumulative impacts of these factors in relation to the existing aquaculture infrastructure in the vicinity will also be considered.

#### **1. Landscape**

- 8.14 If granted, this proposal would make it one of the largest, if not the largest, oyster farm in Scotland. Whilst the planning boundary extends to nearly 67 ha, the equipment will be largely situated within a c.20 ha area within this wider boundary.

- 8.15 The Landscape Officer notes that the development will be a low lying series of trestles which will, according to the applicant's Overview of Tides in their additional Landscape Report and their LVIA, be largely below the water for the majority of the time but unobtrusive in views, when not covered by water. While the development will constitute a noticeable change in views from the B9163, the changes will be localised in their physical extent and the extent of their effects on the character of the landscape or on visual amenity.
- 8.16 The trestles will be seen in the context of the margin where the agricultural landscape meets the Firth which is home to several large scale industrial elements. While the trestles themselves are 'industrial', the scale is such that they can be seen as continuing the 'human scale' of the Open Farmed Slopes of the Black Isle in contrast to the massive scale of the offshore energy industry elements (moored rigs) in the firth.
- 8.17 The LVIA concludes that the proposed development will have a slightly adverse effect with localized slightly adverse impacts on the landscape resource of the study area overall, but against the industrial backdrop of the Cromarty Firth, the proposed development is considered to be not significant from the aspect of landscape visual impact.
- 8.18 For clarity, the photomontages supplied (9/01/2019) do not show the 3m posts for the mussel spat lines; however, the applicant has confirmed they would be unlikely to be visible in such views. It must be born in mind however, that whilst the photomontages are helpful, they do not attempt to present the full picture and only provide assistance in determining the overall visual impact of the proposal. At some tide states and daylight conditions, few, if any trestles will be visible; at others a much fuller extent of the equipment will be visible. The use of dark, matt materials will further help reduce the visual impact.

The key receptors would be from sections along the A9163, and from Shoremill:

VP1: A9163 car park/picnic area	The trestles will be visible as low lying structures in the middle distance.
VP2: B9163 near bridge NW of 'Woodside'	The trestles dominate the view in the foreground. The mix of layouts, with trestles parallel to the shore and some at 90 degrees, add to the impacts.
VP3: B9163,W of Shore Mill trig point	The trestles will be visible as low lying structures in the middle distance.

- 8.19 The proposal lies c.3.7 km from the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area (SLA). The main focus of the SLA is out to the eastern and south eastern side of the Black Isle, rather than towards the western

side. The coastal area is classed as 'Undeveloped' in the Highland Coastal Development Strategy, which notes the undeveloped coast should generally be considered for development only where:

- the proposal can be expected to yield social and economic benefits sufficient to outweigh any potentially detrimental impact on the coastal environment and
- there are not feasible alternative sites within existing settlements or on other previously developed land.

Given the limited periods when the tide conditions are right for working, the applicants will clarify what provision is to be made for working in hours of darkness, if any. Use of lighting at the site has not been considered in the LVIA and the opinion that impacts are acceptable is predicated on operations being limited to daylight hours; this aspect can be addressed by a condition.

8.20 Considering the limits on both the extent and duration of visibility of the trestles, together with their visual character, the landscape and visual impacts of the proposed development are acceptable with regards to the landscape and amenity aspects of policy 28 and policy 61.

## 2. Biodiversity

8.21 As outlined in section 8.5, the proposal lies within multiple sites designated for various biodiversity features:

Site/Feature	Key issues	Comments
Cromarty Firth SPA	Potential for impacts on Scaup and Wigeon in particular	Appropriate Assessment required for Habitats Regulations (HRA) requirements (see appx 1)
Moray Firth pSPA	Unlikely to be any significant impact	Screened out for HRA requirements (see appx 1) due to distance/geography
Moray Firth SAC	Potential for storm damage, shell debris may affect sandbank feature of SAC	SNH provide no comment on this aspect therefore screened out for HRA requirements (see appx 1)
Cromarty Firth Ramsar	Impacts likely to be similar to those for the SPA	Not part of HRA but separate assessment given below.
Cromarty Firth SSSI	Reduction in mudflats/sandflats available for key bird species	SNH advise natural heritage interests will not be affected
Priority Marine Features: Horse mussel beds Blue mussel beds Eel grass beds	Due to scale and potential for storm damage, shell debris may smother the beds	These PMFs are addressed through protection measures given above for the SPA.



For clarity, the applicant refers to Nigg and Udale Bays as national nature reserves but neither of these is designated as such.

- 8.22 SNH note that the Cromarty Firth Ramsar site may also be affected but the interests of this designation are fully addressed as part of the consideration of the SPA, therefore does not require any further assessment.
- 8.23 To avoid excessive duplication, only a summary of the likely impacts on the Cromarty Firth SPA are considered here: full details are in the Appropriate Assessment (Appendix 1). For clarity, the other Natura sites are screened out (Appendix 1). The Appropriate Assessment outlines the SNH advice that there is potential for the proposal to have an effect on the use of the area by Scaup (*Aythya marila*) through disturbance and loss of feeding habitat i.e. the mussel beds. Mitigation proposed to reduce impacts on Scaup includes having no trestles on the existing mussel beds, as secured by condition, and using small working groups in small areas at a time. These mitigation measures are deemed sufficient. Mitigation to reduce impacts on Wigeon (*Anas penelope*) includes only allowing one access to the site i.e. by the ramp proposed immediately adjacent to the site. The latter aspect can be secured by condition. This condition will also ensure the impacts on the Ramsar and SSSI are minimised.
- 8.24 For other qualifying species, SNH conclude that whilst there may be some modification of feeding habitat, through the placement of trestles, it is of low significance when the SPA is viewed as a whole. The proposal would cover approximately 0.4% of the SPA (as well as the Ramsar and SSSI). MSS advise that modelling on the carrying capacity is acceptable therefore there will be no cumulative or in-combination effects. The Appropriate Assessment concludes therefore that the proposal will not adversely affect the integrity of Cromarty Firth SPA.
- 8.25 The bird interests of the Cromarty Firth SSSI are addressed by the assessment of the SPA. For the Sandflats and mudflats habitat features, there is likely to be some reduction in the habitat available, but the application has provided mitigation that will avoid the most important habitats on site (i.e. mussel beds and eelgrass) that supports the wintering bird species which currently use the site. The mitigation includes non-use of the 'middle' of the wedge shape such that trestles will not be placed in the key areas of mussel beds. The condition to allow only one access to the site from the proposed ramp adjacent to the site will further help minimise the impacts.
- 8.26 Biosecurity: As the Pacific oyster (*Crassostrea gigas*) is classed as a non-native species, a biosecurity plan and monitoring protocol is required to ensure the seed stock comes from certified disease-free stock and does not introduce any invasive non-native species (INNS). This must include a contingency plan to identify the measures required if INNS are found, particularly in light of the sensitivity of the mussel beds within the SSSI. To this end, SNH have provided guidance to assist the plan preparation. These aspects can be secured by conditions.

- 8.27 The various mitigation outlined above, along with the conclusions of the Appropriate Assessment, highlight that the proposal will not adversely affect the integrity of Cromarty Firth SPA or significantly affect wider biodiversity. The proposal is therefore acceptable with regards to the biodiversity interests of policy 28 and accords with policies 57-60.

### **3. Other considerations**

- 8.28 Access and servicing: The application proposes a temporary access from the Highland Council car park c.600m to the west of the proposal to be used "*until such time as cash flow permits the construction of a small ramp to permit access to and from the beach and the public highway.*" For clarity, the original application noted that the exact location of the permanent access ramp was to be determined; however, the updated information requested by the planning authority confirms the ramp position immediately adjacent to the site. It is noted that a small ramp between the car park and the foreshore would also have to be created at the temporary access.

Advice from the access officer notes that the car park land is owned by Highland Council and managed as a picnic site by Community Services; as such, access for the public must not be obstructed or deterred. There are also public access rights to the shore above high water mark and this must also not be obstructed or deterred at any time; this would include along the proposed access route to the shellfish site. The transport planning team do not raise any objection to the temporary or long-term access proposals from a road safety point of view and are satisfied to rely on the road permit licensing system to control the technical details of the access design.

- 8.29 However, use of the temporary access point involves vehicle transits of several hundred meters along the foreshore to and from the location of the trestles. Inevitably this will increase the disturbance of bird habitat within the designated area beyond what would result from use of the permanent access point. Furthermore, the access ramp from the car park would have to be removed when the temporary access was no longer required, leading to further unnecessary disturbance of protected habitat and species. The justification for the temporary access is difficult to understand, as the permanent access works are small scale in comparison with the expense on installing the proposed production infrastructure and a temporary ramp will have to be constructed and removed anyway and this involves upfront cost.

Consequently, it is not considered that there is sufficient justification being made for the temporary access and shoreline route and its deletion from the scheme will ensure sufficient mitigation for both HRA and wider biodiversity requirements. The permanent access to the site should be constructed before any other development takes place and this can be secured by condition.

- 8.30 As the proposal lies within a number of internationally and nationally designated sites, the access track would increase the amount of disturbance and compaction on these features. Thus, to reduce the amount of disturbance on the Cromarty Firth SPA, Ramsar and SSSI, a condition is recommended.

- 8.31 It is proposed that for the bulk of the servicing of the site, a tractor and trailer would be used.
- 8.32 Waste: Shell debris from the oysters and mussels, along with equipment debris and shellfish bags, have the potential to smother the benthic habitat and/or cause litter. In addition, the wider area has a history of abandoned aquaculture equipment therefore a condition is required to ensure that any redundant or storm-damaged equipment, oyster bags, shell debris or other material from the development is removed in a timeous manner.
- 8.33 Shorebase: Whilst the shorebase is not covered in this application, as it will be required for subsequent processing of the shellfish, some information has been provided. Options include the potential to use Farness Farm, which lies c. 1km SW of the proposed site. The previous permission (10/04035/FUL) provided very little detail on this aspect, but given the much larger scale of the current proposal within a multi-designated site, the potential for impacts through the increase amount of operational activity both within the site and to and from any shorebase for e.g. depuration, onward processing etc. will likely require additional planning permissions. MSS expressed a note of caution regarding shellfish hygiene and the potential impact from the Moray Firth SAC [but note the Cromarty Firth SAC is the key consideration] and SSSI/SPA wildlife, which may impact on classification and increase requirements for depuration, thus may require further planning permissions, among other things.

#### Other material considerations

- 8.34 There are no other material considerations.

#### Non-material considerations

- 8.35 None

- 8.36 Matters to be secured by Section 75 Agreement

- a) None

## **9. CONCLUSION**

- 9.1 The application would likely make it the largest oyster farm in Scotland. The proposed site lies within a busy industrial landscape with multiple biodiversity designations.
- 9.2 The appropriate assessment, along with the discussion above, concludes that, with the mitigation outlined and proposed conditions, is acceptable with regard to the impacts on biodiversity.
- 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

<b>Action required before decision issued</b>	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. Prior to the commencement of development, a biosecurity plan and monitoring protocol shall be submitted and approved in writing by the planning authority. It shall ensure that all seed stock comes from certified disease-free stock and does not introduce any invasive non-native species (INNS). It shall include a contingency plan which shall identify the measures required if INNS are found, particularly in light of the sensitivity of the mussel beds within the SSSI.

**Reason:** To minimise the risk to the Cromarty Firth SPA, Ramsar, SSSI respectively and wider biodiversity from impacts associated with the introduction of non-native species and disease.

2. The oyster farm shall only be stocked with oysters (native oysters, *Ostrea edulis* and/or Pacific oyster, *Crassostrea gigas*) that have originated from a commercial hatchery unless otherwise agreed in writing by the Planning Authority. All oysters stocked on site shall comply with the requirements of the biosecurity plan secured by condition 1.

**Reason:** To minimise the risk to the Cromarty Firth SPA, Ramsar, SSSI respectively and wider biodiversity from impacts associated with the introduction of non-native species.

3. The operator of the site shall not allow any dead, or dying, oysters/mussels, empty oyster /mussel shells, or parts thereof, to be deposited within the site, the foreshore, or land adjacent to it, and shall ensure that all such shell waste is disposed of in accordance with a waste management plan to be submitted to and approved in

writing by the Planning Authority prior to the commencement of development. The submitted waste management plan shall also make provision for the recovery and disposal of litter or waste originating from the development, operation or management of the site and for the timeous recovery (i.e. within 28 days) and reuse or disposal of any equipment lost from the site as a result of storms or other weather events.

**Reason:** In order to prevent oyster or mussel shell debris, litter or farming equipment from impacting the Cromarty Firth SPA, Ramsar, SSSI respectively and wider biodiversity.

4. For clarity, the layout of all the equipment i.e. the trestles and mussel lines, shall be as per the approved plan (ref No. 12, dated 12/12/2018) and shall not be repositioned within the planning boundary without the written consent of the local planning authority.

**Reason:** to ensure the proposal minimises the impacts upon the Cromarty Firth SPA, Ramsar and SSSI respectively and wider biodiversity.

5. Prior to the commencement of development, details of the use of any lighting at the site for working in hours of darkness shall be submitted and approved in writing by the planning authority.

**Reason:** to minimise impact on residential or visual amenity. road safety and to ensure the proposal minimises the impacts upon the Cromarty Firth SPA, Ramsar and SSSI respectively and wider biodiversity.

7. For the avoidance of doubt, use of the proposed temporary public car park access is not approved by this permission.

**Reason:** to ensure the proposal minimises the impacts upon the Cromarty Firth SPA, Ramsar and SSSI respectively

8. No other development shall take place until the new access to the site from the B.9163 shown at point 12 on approved drawing no.12 (dated 12/12/2018) has been fully completed in accordance with the construction details shown on approved drawing no.7. Thereafter, no other vehicular access to the site shall take place other than via this entrance point.

**Reason:** To minimise the impacts on the inter-tidal zone and the Cromarty Firth SPA, Ramsar, SSSI respectively and wider biodiversity. In the interests of road safety.

9. Tractor and trailer movements within site shall avoid the areas of mussel beds as shown on approved plan ref No. 12, dated 12/12/2018.

**Reason:** To minimise the impacts on the inter-tidal zone and the Cromarty Firth SPA, Ramsar, SSSI respectively and wider biodiversity.

10. All surface equipment shall be finished in a dark, matt colour unless otherwise agreed in writing by the Planning Authority.

**Reason:** to minimise the visual impact of the proposal.

11. 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 or amenity within 28 days.

**Reason:** In the interests of amenity and navigational safety.

12. At least three months prior to cessation of use of the site for shellfish 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 in full.

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

## **REASON FOR DECISION**

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

## **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

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

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

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

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

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

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

### **Accordance with Approved Plans 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.

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

### **Local Roads Authority Consent**

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

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

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

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

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

### **Mud and Debris on Road**

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

strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

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

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

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

#### **Protected Species – Halting of Work**

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

**Other considerations:** The development should adhere to all Marine Scotland and Northern Lighthouse Board requirements.

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 - Committee location Plan  
Plan 2 - No. 04. Elevation Plan – Mussel longline spat collector detail  
Plan 3 - No. 05 Elevation Plan – Equipment detail  
Plan 4 - No. 07 Section Plan – Access ramp detail  
Plan 5 - No. 12 Site Layout Plan – Visibility of trestles  
Plan 6 - Committee Designations Plan



## **Appendix 1: Appropriate Assessment**

### **Siting of Marine Shellfish Farm (24,000 x 1m x 3 m Oyster trestles)**

**18/05344/FUL**

### **New Shellfish Fish Farm at Cromarty Bay West, Cromarty**

#### **CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES**

The status of the Moray Firth SAC and the Cromarty Firth SPA under the EC Directive 92/43/EEC, the 'Habitats Directive' means that the Conservation (Natural Habitats, etc.) Regulations 1994 (as amended) or, for reserved matters, The Conservation of Habitats and Species Regulations 2017, apply. As Scottish Planning Policy 2014 (para 210) requires proposed SACs to have the same level of protection as designated ones, the Moray Firth proposed SPA is also considered below.

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

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

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

The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required. The proposed shellfish farm has the potential to have a likely significant effect on the qualifying interests. The Council is therefore required to undertake an Appropriate Assessment of the implications of the proposal for the Moray Firth SAC and the Cromarty Firth SPA and the Moray Firth proposed SPA in view of the sites' conservation objectives.

## **Screening**

The proposal lies c.1.3km from the Moray Firth SAC. Given the scale of the proposal it could potentially have an impact on this SAC due to e.g. shell debris caused by storm damage smothering the sandbank features. However, SNH have not provided any comment on this aspect therefore may be reasonably considered to be unlikely to have any risk on the qualifying features therefore would have no adverse effect on site integrity. It is therefore hereby screened out.

The proposal lies c.6.7km from the proposed Moray Firth SPA (pSPA). Given the distance and nature of the proposal from this pSPA, it is unlikely to have any significant impact. SNH have not provided any comment on this aspect therefore may be reasonably considered to be unlikely to have any risk on the qualifying features therefore would have no adverse effect on site integrity. It is therefore hereby screened out.

## **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 on the Cromarty Firth SPA is informed by information supplied by SNH, MSS and the RSPB.

### **Appraisal**

In its response to the Council, SNH has advised that in their view this proposal will not adversely affect the natural heritage interests of international importance on this site. The council has undertaken an appraisal assisted by the information supplied.

### **Decision**

On the basis of this appraisal, it can be concluded that the proposal will not adversely affect the integrity of Cromarty Firth 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 Cromarty Firth SPA

The qualifying interests for which the site is designated is a wide variety of bird species, including osprey, tern, whooper swan, bar-tailed godwit, greylag goose and regularly supports in excess of 20,000 individual waterfowl. The SPA covers 3,248 ha and encompasses most of the coastal areas around the Cromarty Firth.

The conservation objectives for the Cromarty Firth SPA are:

<p><b>To avoid deterioration of the habitats of the qualifying species (listed below) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</b></p> <p><b>To ensure for the qualifying species that the following are maintained in the long term:</b></p> <ul style="list-style-type: none"><li>➤ <b>Population of the species as a viable component of the site</b></li><li>➤ <b>Distribution of the species within site</b></li><li>➤ <b>Distribution and extent of habitats supporting the species</b></li><li>➤ <b>Structure, function and supporting processes of habitats supporting the species</b></li><li>➤ <b>No significant disturbance of the species</b></li></ul>
<p style="text-align: center;"><b>Qualifying Species:</b></p> <ul style="list-style-type: none"><li>• Bar-tailed godwit (<i>Limosa lapponica</i>)</li><li>• Common tern (<i>Sterna hirundo</i>)</li><li>• Curlew (<i>Numenius arquata</i>)*</li><li>• Dunlin (<i>Calidris alpina alpina</i>)*</li><li>• Greylag goose (<i>Anser anser</i>)</li><li>• Knot (<i>Calidris canutus</i>)*</li><li>• Osprey (<i>Pandion haliaetus</i>)</li><li>• Oystercatcher (<i>Haematopus ostralegus</i>)*</li><li>• Pintail (<i>Anas acuta</i>)*</li><li>• Red-breasted merganser (<i>Mergus serrator</i>)*</li><li>• Redshank (<i>Tringa totanus</i>)*</li><li>• Scaup (<i>Aythya marila</i>)*</li><li>• Whooper swan (<i>Cygnus cygnus</i>)</li><li>• Wigeon (<i>Anas penelope</i>)*</li> <li>• Waterfowl assemblage</li></ul>

\* indicates assemblage qualifier only

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

The scientific advice provided indicates that the development may directly cause negative impacts due to the individual and cumulative impacts due to displacement, disturbance and loss of foraging habitat for at least some of the qualifying species, as outlined below.

Scaup (*Aythya marila*): SNH advise that there is potential for the proposal to have an effect on the use of the area by scaup through disturbance and loss of feeding habitat i.e. the mussel beds. However, mitigation to reduce impacts on this species e.g. no trestles on the existing mussel beds, small working groups in small areas at a time, are considered to be sufficient, along with allowing access only directly from the ramp immediately adjacent to the proposal.

For clarity, the RSPB note similar impacts for Slavonian grebe (*Podiceps auritus*) but SNH did not consider it as part of the HRA for the Cromarty Firth AA and it is screened out for the Moray Firth pSPA as noted above.

Wigeon (*Anas penelope*): SNH advise that there is potential for the proposal to have an effect on the use of the area by Wigeon through disturbance, particularly within the area of the temporary access taken by tractor and trailer. Mitigation to reduce impacts on this species includes the measures above and allowing access only directly from the ramp immediately adjacent to the proposal and not the temporary access. This will ensure there is no added disturbance from building and using a temporary ramp at the public car park site and further disturbance by its subsequent removal and thus further minimize the impacts on the SPA, as secured by a planning condition.

The RSPB note that the proposed mitigation for access and operations not sufficient to prevent disturbance to species in the intertidal zone. SNH note that the survey report had identified that there is more optimal habitat for Wigeon in the Udale Bay area to the west of the site and conclude that for this qualifying species, the conservations objective will be maintained.

For other qualifying species, SNH concluded that whilst there may be some modification of feeding habitat, through the placement of trestles, it is of low significance when the SPA is viewed as a whole.

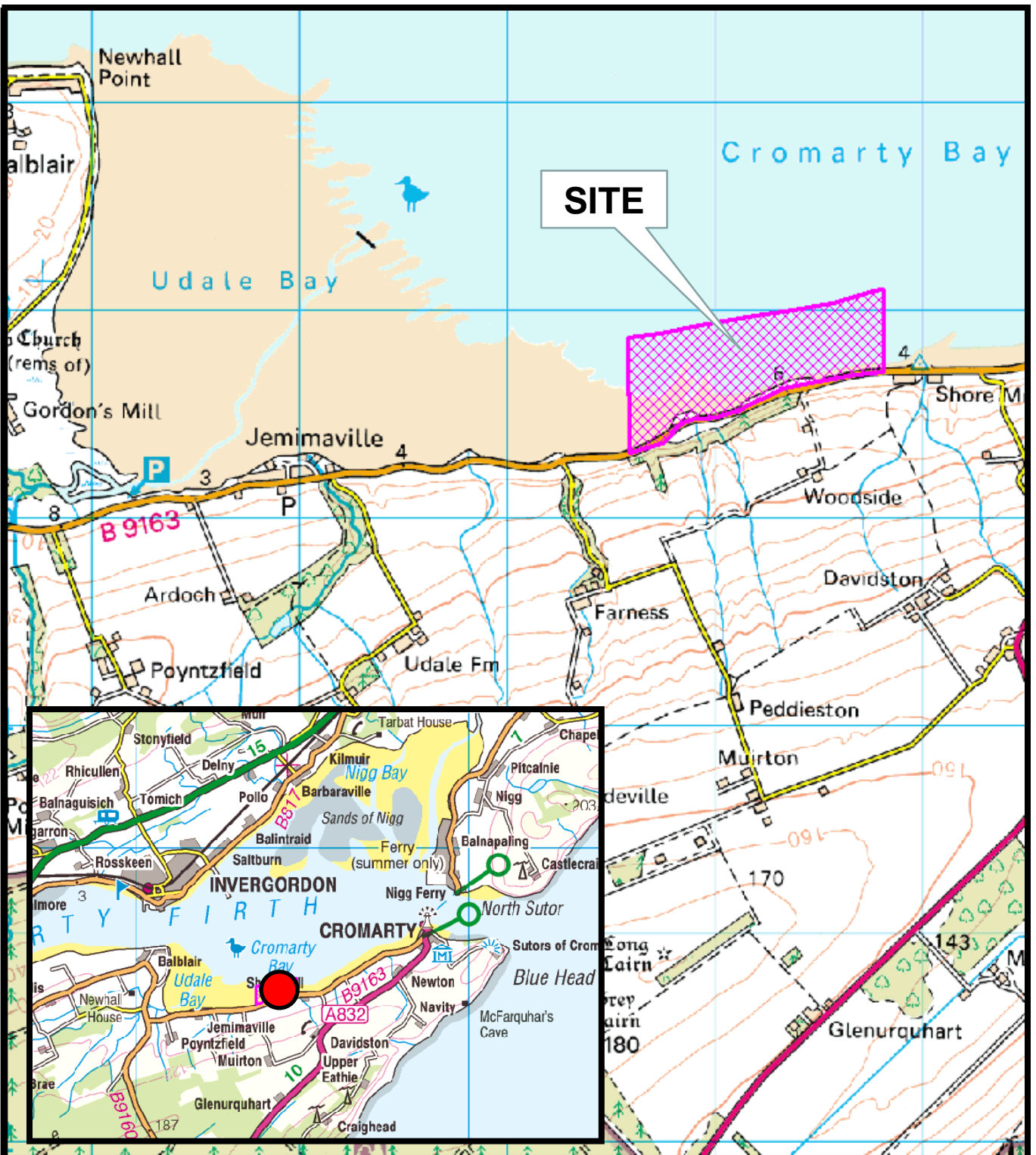
Overall, the proposal would affect c. 0.4% of the SPA; SNH have advised the level of impact is acceptable and the mitigation outlined will help further reduce impacts. Therefore, whilst there will be some loss of habitat, it is deemed insufficient to have an adverse effect on site integrity of the Cromarty Firth SPA.

**Cumulative and in-combination effects:** there is no development on the adjacent site which previously had some oyster trestle development but there is a very large mussel farm c.930m to the north/north east of the proposal, outwith the designated sites, but has potential for cumulative disturbance and carrying capacity effects. The wider area is also a busy industrial area based largely around oil and gas installations and cruise liners. Marine Scotland Science advised that the modelling they conducted is based on very basic hydrographic assumptions which simplify the water body. It indicates that the proposal, together with the other consented mussel farm, should not result in exceedance of carrying capacity in the area of the Cromarty Firth. The mitigation measures proposed will also offer sufficient protection for any likely disturbance or loss of habitat for the other

qualifying features of the SPA with regard to cumulative and in-combination effects. There are unlikely therefore to be any significant cumulative or in-combination effects.

### **Conclusion to scientific appraisal**

The proposal is unlikely to have an adverse effect on site integrity of the qualifying features of the Cromarty Firth SPA.



**SITE**



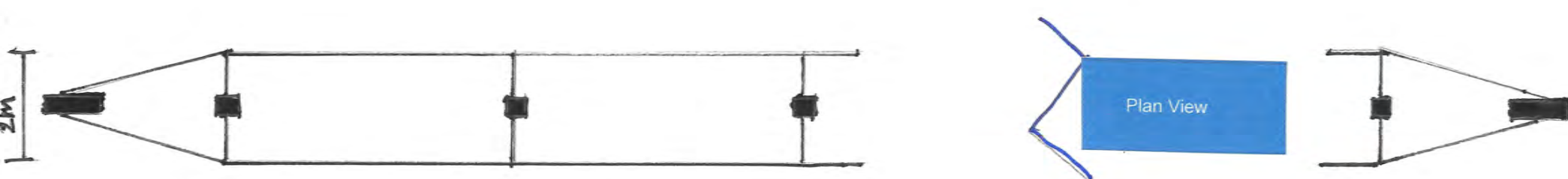
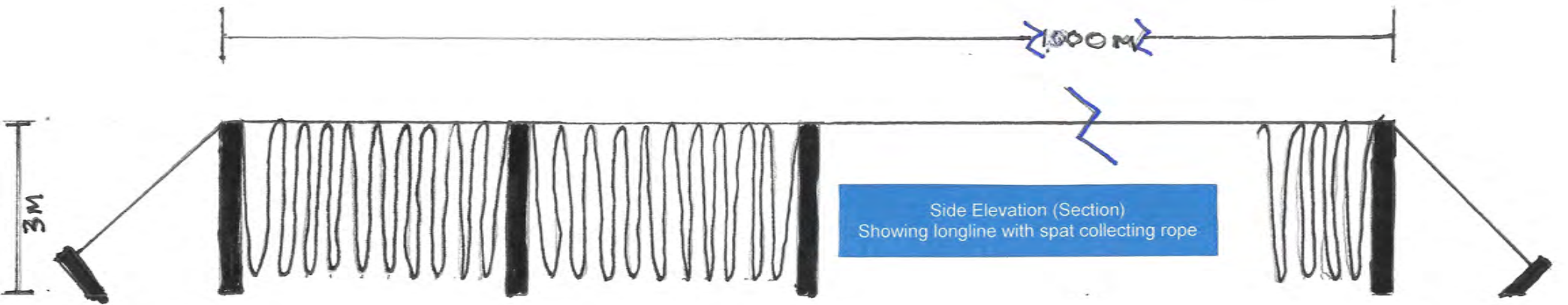
**The Highland Council**  
**Comhairle na Gàidhealtachd**

**Planning & Development Service**

**18/05344/FUL**

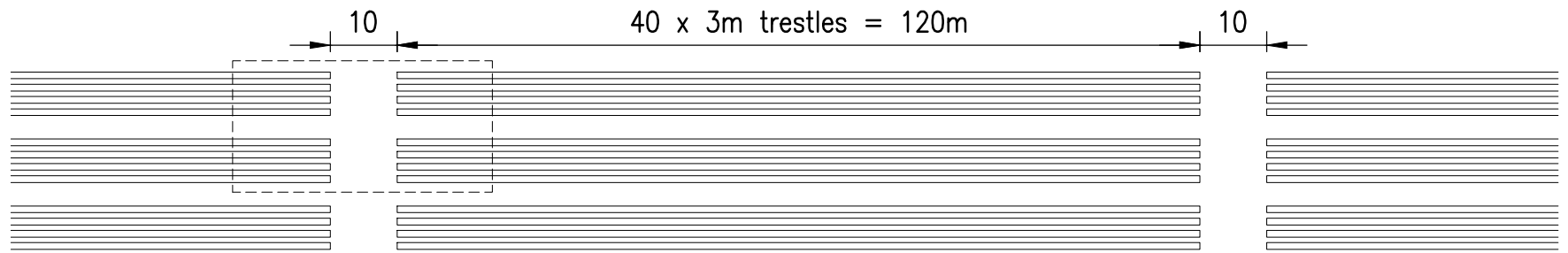
**Siting of marine shellfish farm  
 (24,000 x 1m x 3m oyster trestles)  
 at Cromarty Bay West, Cromarty**



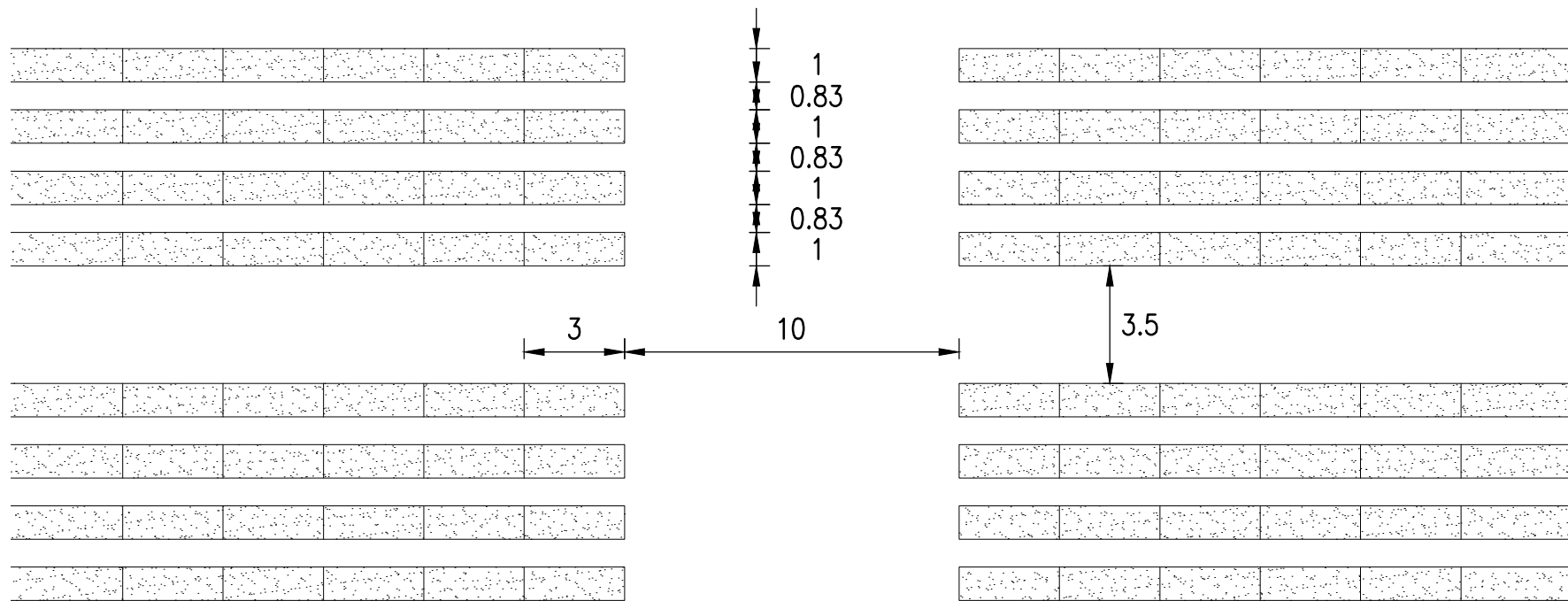


**Mussel Spat Collecting Equipment**  
Showing Upright Posts, End Anchors, Supporting Longline and Continuous Rope Spat Collector



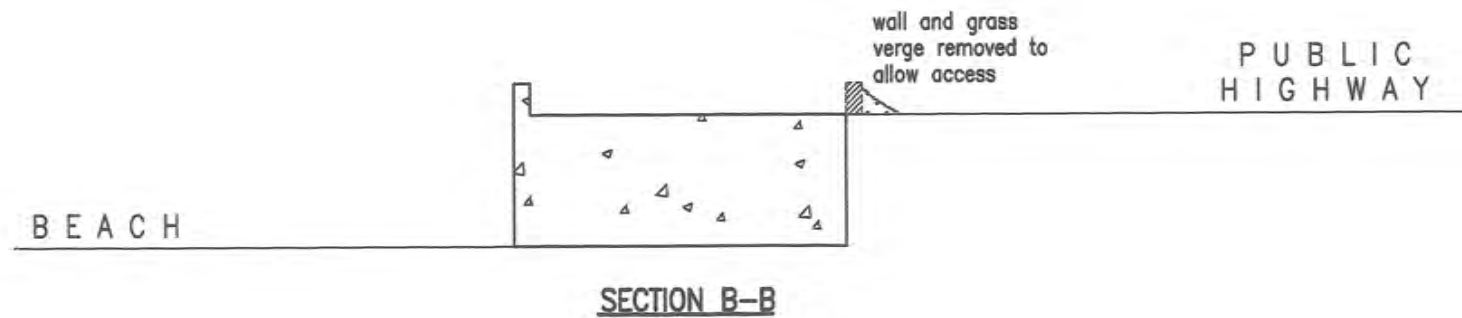
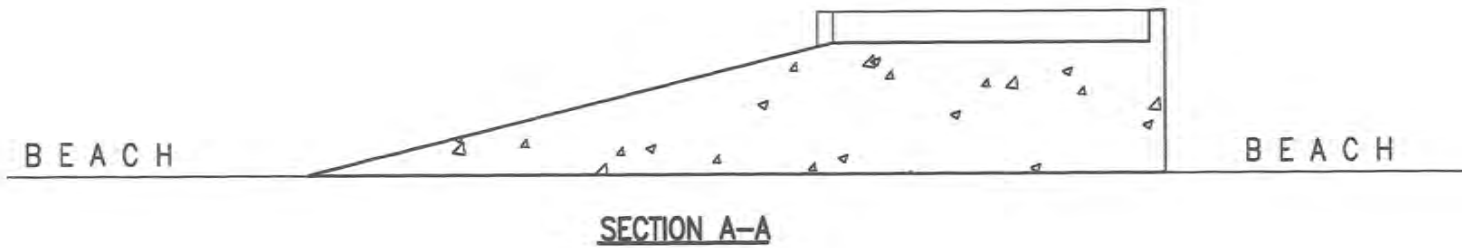
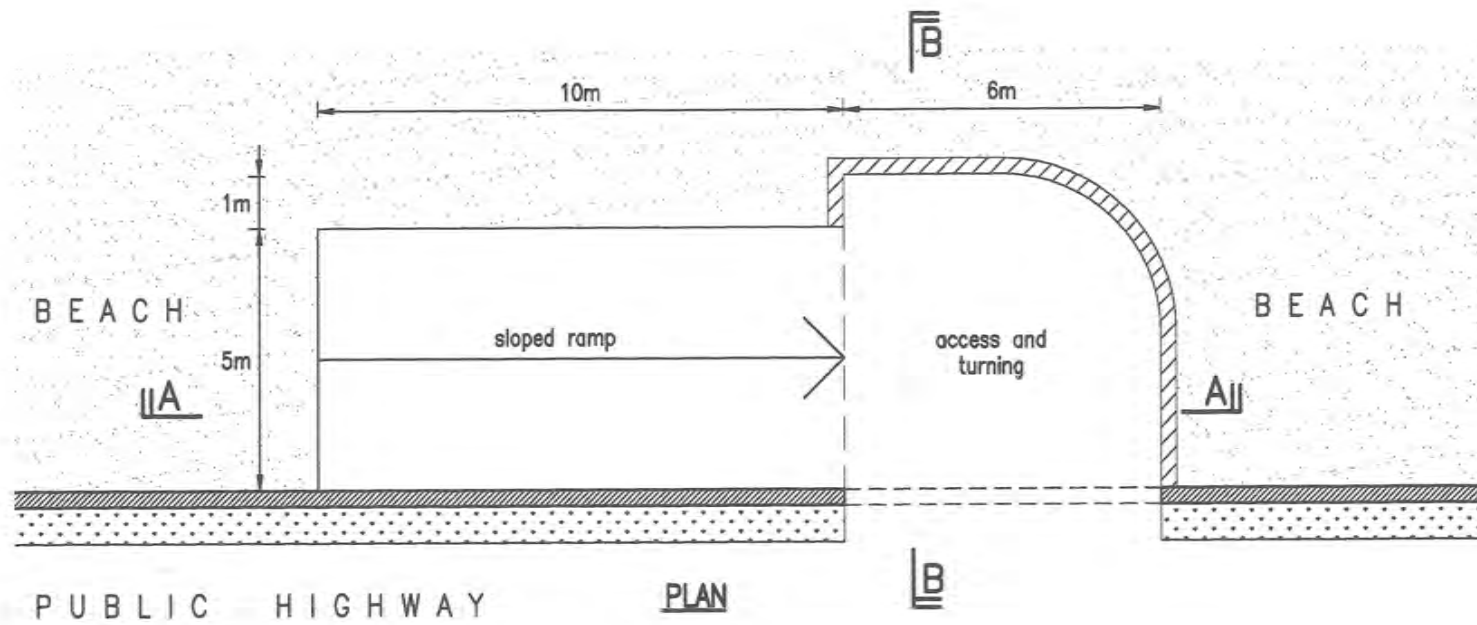


SCALE 1:1000



SCALE 1:200





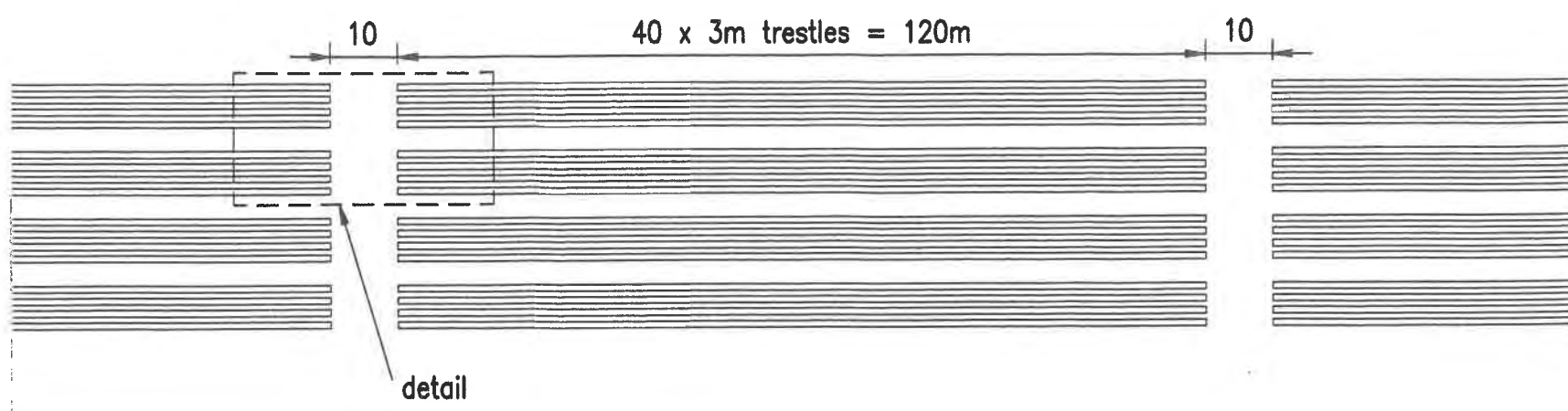
# ACCESS TO OYSTER BEDS

Scale 1:100

**CROMARTY BAY WEST  
OYSTER FARM SITE  
Scale 1: 5,000**

- Legend**
- Proposed Site
  - + Mean Centre of Site  
(NGR 274037, 865588)
  - - - Mean Low Water Springs
  - Blue Mussel Beds

1	273548, 865296
2	273659, 866222
3	274936, 866349
4	274936, 865712
5	274732, 865691
6	274647, 865686
7	274547, 865668
8	274365, 865630
9	274208, 865564
10	274107, 865513
11	273889, 865472
12	273665, 865331
	Revised Pt. 12
A	273641, 865729
B	273743, 865699
C	273730, 865630
D	273691, 865729
W	273985, 865786
X	273997, 865792
Y	274026, 865755
Z	274003, 865744
α	274081, 865736
β	274158, 865751



Scale 1:1000 at A4

**CROMARTY BAY WEST  
OYSTER FARM SITE  
Scale 1: 5,000**

**Supplementary Legend**

- Mussel Spat Lines
- See separate drawing for detail

Refer to Detail Above

**Trestle Alignment**

- Legend**
- Trestle Rows Positioned Perpendicular Aspect to Shore
  - Trestle Rows Positioned Broadly Parallel to Shore

