



---

Decision by Lorna McCallum, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2224
- Site address: land 1520 metres North East of Bridgend Cottage, Flodigarry, Portree, IV51 9HZ.
- Appeal by Organic Sea Harvest Limited against the decision by Highland Council
- Application for planning permission 19/03093/FUL dated 5 July 2019 refused by notice dated 27 January 2020
- The development proposed: New marine fish farm for Atlantic salmon consisting of twelve 120 metres circumference circular cages in an 80 metres mooring grid with associated feed barge
- Date of site visit by Reporter: 2 to 4 September 2020

Date of appeal decision: 26 November 2020

---

## Decision

I dismiss the appeal and refuse planning permission.

## Preliminaries

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 Special Area of Conservation (SAC). 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 A to this decision notice.

## Environmental impact assessment

The proposed development is described as above and at Section 3 of the Environmental Impact Assessment (EIA) report. It is EIA development. The determination of this appeal is therefore subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 EIA regulations").

I am required to examine the environmental information, reach a reasoned conclusion on the significant environmental effects of the proposed development and integrate that conclusion into this decision notice. In that respect I have taken the following into account:



- the EIA report submitted on 5 July 2019;
- the Environmental Management Plan (EMP) dated September 2019 and revised photomontages
- the ADD Use Statement dated 15 June 2020
- consultation responses from Scottish Environment Protection Agency, Marine Scotland Science, Skye District Salmon Fishery Board, Northern Lighthouse Board, Royal Society for the Protection of Birds (RSPB), Scottish Natural Heritage, Scottish Water and Historic Environment Scotland
- representations from members of the public.

I am required by the 2017 EIA regulations to include information in this decision notice in regard to opportunities for the public to participate in the decision-making procedure. I set that information out in Schedule 1 below. My conclusions on the significant environmental effects of the proposal are set out at paragraphs 4-103 below.

It should be noted that Scottish Natural Heritage changed its name to NatureScot on 24 August 2020. As all the references to the organisation in this notice refer to the period when it was Scottish Natural Heritage, and it was largely complete when the change occurred, for consistency I have used its original name.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:

- Landscape, seascape and visual impacts
- Impacts on wildlife and habitats
- Impacts on the wild fish
- Impacts on navigation, anchorage, and other maritime users
- Noise
- The potential economic impacts of the development

2. The development plan consists of the Highland wide Local Development Plan 2012 (HwLDP) and the West Highlands and Islands Local Development Plan 2019 (WestPLan). The policies relevant to this proposal are contained within HwLDP. The council has indicated that no specific policies within WestPlan apply in this case and I agree with that judgement.

3. Policy 50 'Aquaculture' supports the development of fish farms subject to there being no significant adverse effect on the natural, built and cultural heritage and existing activity such as commercial inshore fishing grounds. Matters to be taken into account include landscape character, wild fish populations, benthic impacts and existing activities such as commercial and inshore fishing, harbours, navigation routes and existing and consented aquaculture sites. Proposals should show that opportunities for shared use of jetties, piers and ancillary facilities are promoted where possible. The council's 'Highland Coastal Development Strategy' (2010) also gives support for aquaculture where adverse environmental impacts are minimised. The National Marine Plan 2015 supports the industry's target to grow marine finfish (including farmed Atlantic salmon) production.

## Landscape, Seascape and Visual Impacts

4. In addition to Policy 50 above, Policy 28 ‘Sustainable Design’, Policy 36 ‘Development in the Wider Countryside’, Policy 57 ‘Natural, Built and Cultural Heritage’ and Policy 61 ‘Landscape’ are relevant to landscape, seascape and visual impacts. Policy 28 requires consideration of impacts on landscape, scenery, individual and community residential amenity and whether proposals demonstrate sensitive siting. Policy 36 requires developments to be assessed in terms of whether siting and design are acceptable and compatible with landscape character and capacity. Policy 57 indicates that for features of local/regional significance developments will be allowed where it can be satisfactorily demonstrated there would not be an unacceptable impact on the natural environment. Policy 61 requires that new developments are designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed.

5. The aforementioned policies largely reflect Scottish Planning Policy 2014 (SPP) and the National Marine Plan. In particular, Policy ‘Aquaculture 5’ of the Marine Plan requires that developments should avoid and/or mitigate adverse impacts upon the seascape, landscape and visual amenity of an area, and follow Scottish Natural Heritage (SNH) guidance on the siting and design of aquaculture.

6. The appeal site would be situated approximately 1 kilometre off shore and approximately 1,200 metres to the north of Eilean Flodigarry. I estimate it to be approximately 650 metres from the smaller adjacent island of Sgeir na Eireann. The closest settlement is Flodigarry Township which lies adjacent to the coast at a distance of approximately 1,300 metres to the south west of the proposed fish farm. The proposal consists of twelve 120 metres circumference circular cages set in two rows of six within an 80 x 80 metres mooring grid. The total surface area of the cages would be 13,751 square metres. It is intended that the cages would incorporate top nets secured by poles of 4 to 5 metres in height. A feed barge would be anchored on the inshore side of the site close to the midpoint of the cage group.

7. The proposed fish farm lies within 400 metres of the northern boundary of the Trotternish National Scenic Area (NSA) and lies just outside the boundary of the Trotternish and Tianavaig Special Landscape Area (SLA). The boundaries of both of those designations cover the adjacent onshore area of the Trotternish Peninsula and are coterminous. They only cover a short distance offshore and do not extend into the sea as far as the appeal site. The settlement of Flodigarry and the offshore islands Eilean Flodigarry and Sgeir na Eireann are within the NSA.

8. The special qualities of the NSA include the unique and dynamic landslip topography, the contrast between the ridgeline spine and the moorland platform, the crofting settlements along the coastal fringe and ‘distant views over the sea’. Wide vistas may be obtained across the Minch and to the mountains of Wester Ross, weather permitting this provides” a stunning panorama, including the nearby islands of Staffin and Flodigarry and the more distant islands of Rona and Raasay”. Although it is noted that from much of the platform of moorland, croftland and settlement the sea itself is not visible.

9. The SLA is described as one of the most spectacular landscapes in Britain, valued for its stunning scenery and impressive, dynamic landforms. The special qualities of the SLA include the dynamic landslip topography with dramatic rock outcrops, cliffs and

pinnacle features such as the Old Man of Storr, the elevated spine of the Trotternish Ridge, its associated undulating moorland core and the narrow coastal fringe where settlements and communications routes are concentrated. The special qualities of the SLA also make reference to the views out to sea from the Trotternish Ridge and from the coastal fringe. The pinnacles set away from the main escarpment are prominent in views along the coastal road. Sensitivities to change include:

- development on remote uninhabited areas of coastline could detract from the feeling of tranquillity and isolation or which would impinge on views out to sea or inland towards the ridge
- the introduction of marine-based installations in nearshore waters could fall within important coastal views or introduce built elements in areas remote from habitation, and
- large man-made structures outwith the SLA could encroach on panoramic views or affect the perception of scale of the landscape.

10. The SLVIA predicts that due to the local topography, coastal cliffs and intervening higher ground significant effects on landscape character would be largely limited to the coastline immediately adjacent to the proposal. Major to substantial and significant effects are predicted on the Bodha to Steall a' Ghreip, Druim Nan Slochd and Flodigarry and Sgeir na Eireann Landscape Character Areas. Viewpoints VP03, VP04 and VP06 relate to these locations. The SLVIA predicts locally significant impacts on seascape and undeveloped coast. Major to substantial and significant effects on seascape are predicted to occur mostly within 1 kilometre of the site. The assessment concludes that there would be significant impacts upon the NSA but that these would be highly localised, only affecting the northern periphery and would have no impact on the core area. It notes that the SLA has specific sensitivity to marine developments of this nature and indicates that the fish farm would be visible from within the SLA and in views into it. It predicts that significant impacts would be localised and that the proposal would not affect the overall integrity of the SLA, which it describes as large and spectacular. It notes that local impacts would be accentuated by periodic and temporary activity, lighting and noise. Most areas of settlement and the A855 would not be significantly affected.

11. The council is of the opinion that the SLVIA underplays the significance of the effects on the local landscape at viewpoints VP02 and VP08, a number of representees share that concern. Some representations expressed the opinion that the viewpoints had been selected to minimise the visual impact of the development, especially in relation to Flodigarry Township and stopping points frequented by tourists. Scottish Natural Heritage (SNH) is satisfied that the methodology used in the SLVIA is appropriate, that the visualisations are reasonably accurate and that they err on the side of the worst case scenario.

12. During my site inspection I observed the appeal site from a variety of locations. For the most part I consider that the viewpoints selected represent the visibility of the proposed development, however I will go on to consider where I consider that effects have been downplayed. I consider that the most significant landscape, seascape and visual effects of the proposed fish farm would be on Flodigarry Township, the offshore islands of Sgeir an Eireann and Eilean Flodigarry and part of the Skye Trail coastal footpath.

13. I have taken into account the consultation response from SNH and its published 'Guidance on Landscape/Seascape Capacity for Aquaculture' (2008) as well as the more specific design guidance contained in 'The Siting and Design of Aquaculture in the Landscape: Visual and Landscape Considerations' (2011). The 2011 guidance contains a presumption against development in areas of isolated coast, distant from centres of population and lacking in obvious signs of development and often inaccessible.

14. In the council's Coastal Development Strategy this part of the coast is classified as undeveloped rather than isolated. The SLVIA also describes the location as undeveloped and as wild and tranquil. It notes that the setting is devoid of existing large scale and commercial development, being essentially a crofting landscape at the coastal margins with open moorland uplands and limited maritime activity. From my inspection of the area surrounding the appeal site I concur with those assessments of the nature of the locality. Although this area is somewhat remote only the stretch of coastline in close proximity to the appeal site is uninhabited, the wider area contains a number of crofting settlements. Taking account of my observations on site I consider that this location falls into the category of open and expansive coasts within the SNH guidance, where the coastline is relatively straight with cliffs and infrequent shallow bays. It is notably affected by the changing pattern of light and movement associated with the sea, I therefore observed the site at various times of day and in differing light conditions.

15. In considering the effects at Flodigarry Township the SLVIA predicts that views from some locations would be minor to moderate but not significant. Viewpoint VP06 was selected as a worst case representation. Overall, it concludes that impacts on the landscape character of this area would be negligible and non-significant.

16. It appears that the development has taken into account the SNH guidance in terms of being set alongside a relatively straight length of coastline. However, despite the coastline being relatively straight, the topography of the landscape in the immediate vicinity of Flodigarry it is generally focused on and enclosed within a small, rounded valley. Although somewhat scattered in layout the township is mostly contained within this valley and I consider that its setting is intimate in scale. Views outwards towards the sea are limited by the local topography and Eilean Flodigarry and Sgeir na Eireann are dominant features within the seascape at this location. This is in contrast to the settlements to the north and south which either follow the line of roads or are more scattered and open in nature and where views over the sea are more expansive.

17. The effects of the fish farm within this setting are depicted in viewpoints VP05, VP06 and VP11. It would be sited a short distance off shore with the individual cages and feed barge easily distinguishable and it would be clearly apparent in views alongside the two off shore islands. I consider that it would compete with and would distract from the visual focus and appearance of the islands, particularly as it would be comparable in size to the nearest of the two, Sgeir na Eireann. The Flodigarry Hotel, perched upon the outer edge of the valley, forms a noticeable landmark at this location. The fish farm, when viewed across the settlement, would feature in the backdrop to the hotel. In relation to this setting I consider that it would appear as an obvious, man-made feature of significant size and that it would be out of harmony with the landscape and seascape. This conclusion is supported by SNH who consider that the cages would be misaligned with the coast at this location, causing it to be a dominant and discordant feature. The coast at this location is relatively undeveloped, it does not include any large structures or other developments that might

allow the fish farm to be more readily absorbed into the landscape. I believe that the proposed development would significantly and adversely erode the landscape character and setting of Flodigarry Township and the special qualities of the National Scenic Area at this location.

18. The SLVIA predicts that the effects for walkers in this vicinity would be moderate to major and significant but low and not significant for fast moving receptors. From my inspections of the area I noted that travellers on the A855 in the immediate vicinity of Flodigarry have restricted views of the wider hinterland. Views of the settlement, particularly when heading northwards beyond the “Flodigarry Hike” parking area, are very much focused on the intimate setting of the township and the adjacent stretch of sea. The A855 is a very busy tourist route as witnessed during my site inspections. There are no formal lay byes or viewpoints on the A855 which have an open aspect to the sea in the vicinity of Flodigarry. However, I observed that in the vicinity of Flodigarry vehicles are travelling at a significantly reduced speed due to the geometry and narrowness of the road and have much more than a glimpsed view at this location. At various times of day I also observed vehicles informally parked or stopped at a number of locations adjacent to the A855, sometimes on the edge of the road, whilst occupants decanted to take photographs or walk to a location nearby where they could take in the scenery. In addition, Stage Two of the Skye Trail utilises this section of the public road and takes in viewpoint VP07. Taking these matters into account I agree that effects on walkers on this part of the trail would be major and significant but I consider that the SLVIA underestimates the effects on vehicular travellers in the vicinity of Flodigarry.

19. During my site inspection I noted that the path from Flodigarry leading to a viewpoint at the coast, referred to in some representations, forms part of the Skye Eco-museum. This is clearly intended to draw visitors to this location as a place of cultural and historic importance. The SLVIA made no assessment of the effects from this location. Although the fish farm is likely to be visible from this location I did not consider that it was necessary for me to seek further submissions in relation to this particular location to supplement the assessment already undertaken.

20. A number of the representations raise concern that the landscape and visual impacts of the development would have adverse effects upon residential properties and tourist accommodation including Dun Flodigarry Hostel and the Flodigarry Hotel. The SLVIA assigns receptors at residential properties as moderate to high sensitivity, however, it considers that the proposal is situated to minimise views from Flodigarry Township. It notes that the hotel and hostel have panoramic views to the east and south east and views to the north are largely blocked by landform and vegetation. Although the principal views from the hotel would not be affected valued views from the terrace would be detracted. Sensitivity of receptors at this location was considered to be low to moderate and effects predicted to be minor and not significant.

21. As part of my site inspection I did access the grounds of the hotel and the hostel. I did not inspect the views from within the curtilage of individual domestic properties, however, I did stop at various points within and around the settlement. I observed that the hostel, the hotel and the Flodigarry Pods are orientated towards the east and south east as are many of the residential properties within the Township. The hotel has a seated terrace which wraps around the north east end of the building. The principal view from the hotel building and grounds is to the south-east over Staffin Bay and over the Minch towards the Torridon hills on the mainland. As noted above, the views across the sea to the mainland,

taking in the off shore islands, are identified as a special feature of the NSA. From the hotel terrace and possibly also within the rooms above, the fish farm would be partly visible to the north east. The development would also be visible from the lower parts of the grassed areas to the south and east of the hotel. The grassed areas are undulating and do not lend themselves to formal use as an outdoor events space and I noted no seating within that part of the hotel grounds. That is not to say that visitors to the hotel do not make any use of this area. Elsewhere within the hotel grounds the fish farm would be screened by trees and topography. Although the hotel benefits from an extensive vista I believe that the effects have to some degree been underplayed here. I consider that the most significant effects upon this location would be in relation to the setting of the hotel within the landscape at Flodigarry. As described above I consider that it would adversely affect the aesthetic quality of its setting within the landscape.

22. From some locations within the settlement existing vegetation obscures the views towards the appeal site, mostly it obscures views from the minor public road through the settlement to the coast. I am satisfied that there would be no visibility of the fish farm at the hostel. The majority of the properties, residential and tourist related are orientated to have panoramic sea views. Consequently, I consider it is likely that the fish farm would appear in a small portion of the overall views obtained from individual properties. However, where views of the development would be seen in relation to the setting of the township and the offshore islands I consider that it would have significant adverse effects on their character and appearance.

23. I am aware that there is no legal right to a view and, as noted in Circular 3/2013 'Development Management', the planning system does not exist to protect the interests of one business against another. The circular also clarifies that the planning system is concerned with consideration of amenity in the wider public interest rather than potential financial loss to any particular party as a result of a development. However, the planning system can take into account the design of a development and its impact on and relationship to its surroundings and legitimate public concern expressed on such matters. In those respects I consider that the proposed development would have significant and adverse landscape and visual impacts in respect of the hotel and the community at Flodigarry. Furthermore, SNH's 2011 guidance expects that all developments respect the landscape character of the area within which they are located and sustain the qualities which reinforce experience of place. I do not consider that the proposed development accords with these requirements.

24. I turn now to consider the effects upon the Skye Trail coastal footpath. The part of the coastal path which makes up the northern section of the Skye Trail runs along the coast from Rubha Hunish to Flodigarry. Mostly this part of the trail is within the SLA but the part from Flodigarry to just south of viewpoint VP04 is within the NSA. This section of the Skye Trail is within an area of high scenic quality for sequential views of the seascape and the Trotternish Ridge. The special qualities of the NSA include the wide vista across the Minch and the views of the offshore islands and the special qualities of the SLA include the views out to sea from the coastal fringe.

25. The SLVIA predicts significant visual effects at the coastal path at Galta Mor, in the vicinity of viewpoints VP03 and VP04, and on the A855 at Dunans at VP07 and for vessels travelling within 0.6 to 1.1 kilometres offshore at VP10. At viewpoints VP03 and VP04, directly on the coastal path, the proposed fish farm would be viewed from an elevated position at a distance of between about 0.9 km and 1.7 km. The SLVIA considers that at

view point VP03 the development would be a prominent feature and at VP04 it would be a dominant feature. At viewpoint VP07 the fish farm would be fully visible at an oblique angle at a distance of 2.3 kilometres. The assessment notes that it would dominate the view that is framed by the hillside at this location. It concludes that the proposal would directly impact upon the on the character of this part of the long-distance footpath and directly impact on key characteristics of the SLA. The assessment notes that this section of the Skye Trail is not heavily used. Overall, it is predicted that there are unlikely to be significant effects on the path.

26. The stretch of the path from the high point to the north of Flodigarry past the former radar station to Balmaqueen runs along a section of rugged coast. The trail generally hugs the coastline in an area with little signs of human habitation or obvious land management. The A855 is set well back and at the time of my site inspection any traffic was inaudible, the sounds of the wind and sea were dominant. I acknowledge that I did not have the benefit of visiting the site during calm weather. At this location I noted that there is a strong sense of exposure to the elements and the vast seascape. I consider that the location has the qualities of remoteness, reinforced by lack of accessibility that the SNH guidance advises is inappropriate for aquaculture developments.

27. The vistas at viewpoints VP03 and VP04 on the trail are panoramic, the main focus for walkers is the outlook towards the expansive sea views. The inland backdrop of the Quiraing is set at a distance to the south west and features more predominantly when traversing north to south. There is no doubt that, as shown in those view-points, the development will be seen at close quarters from the trail. The individual cages and feed barge would be clearly identifiable. Day to day activity at the site would be obvious and in calm conditions noise is likely to be noticeable. As a result I consider that it would adversely affect the qualities of remoteness and isolation experienced on this section of the trail. Although the development would be set within a large vista, visually it would form a dominant feature in comparison with and would detract from the setting of the islands which are at a similar distance offshore.

28. Viewpoint VP02 is taken from the coastal path near the former radar station, here the fish farm would be visible at an oblique angle. The SLVIA identifies the former radar station as a public view point and as a location for wild camping. From my observations on site it is clear that this location, which sits higher than the coastal path, is well used as a view point and that people park off the road nearby just to walk to this point. I also saw evidence that walkers on the Skye Trail do divert from the recognised route, which sits rather precariously close to the cliff edge, to walk up to this point. The fish farm would be more clearly seen from the vicinity of the radar station than as shown in VP02 which is taken from a lower ground level. At this location I consider that the effects would be greater than shown in the photomontage used to assess effects in the SLVIA.

29. The length of the trail affected by close proximity to the development is fairly short, in my estimation likely to be no more than 2 kilometres. I, therefore, agree that the effects would be localised. However, in terms of landscape and visual effects I find that due to the proximity of the proposed development to the offshore islands it would have significant and adverse effects on the views out to sea from this part of the coastal fringe. I, therefore, conclude that it would erode the special qualities of the SLA and the NSA. There is some disagreement over the level of use of this section of the Skye Trail, however, that does not alter my findings.

30. In terms of the wider area the Trotternish Ridge, including the Quiraing, forms a distant backdrop to the coast and lies within the NSA. Sron Vourlinn is the closest section of the ridge to the development, at approximately 3 kilometres away but it is off the main walking routes. Although the fish farm would be visible from parts of the Trotternish Ridge and from Sron Vourlinn the SLVIA considers that impacts would be mitigated by distance and taking into account the expansive scale of the setting and panoramic views the effects are predicted to be minor to moderate and non-significant.

31. From this upland area, where views are obtained of the fish farm it would be set within expansive stretches of sea and would not restrict the wide vistas that may be obtained across the Minch or impinge on views of the upland interior of the NSA. In relation to the scale of its setting against open sea I am satisfied that it would not dominate the seascape. However, from the upland interior where such vistas include views of Eilean Flodigarry and Sgeir na Eireann the islands are notable features. Where the proposed development would be viewed in conjunction with the islands it would compete with them in terms of scale. I consider that it would diminish their appearance and detract from them as a special quality of the NSA.

32. Concerns have been raised that the night-time lighting and the design of the feed barge would add to the landscape and visual impacts. Two lit marker poles each 2 metres in height would be located at the northern and southern seawards extremes of the site. There would also be submerged lights fitted to the fish pens and an all-round fixed light on the feed barge. Deck lighting would occasionally be present during early or late working hours. The SLVIA indicates that the submerged lights would be fully visible from the coastal Skye Trail and from Sron Vourlinn and parts of the Trotternish Ridge including parts of Meall na Suiramach). It is predicted that the impact on the adjoining coast would be significant but would affect few people. Overall, it is concluded that effects would be non-significant, due to both distance from the higher ground and low sensitivity due to limited users of those areas at night.

33. Only the navigational lights would be used on a permanent basis, however, I consider that the other lighting, would at times when it would not yet be fully dark, add to the significance of the adverse landscape, seascape and visual effects at Flodigarry Township.

34. The SLVIA visualisations were revised to incorporate the amended design of the feed barge. I find the proposed design of the feed barge to be overly simplistic and box shaped in appearance and that it looks less like a boat than the original proposal. Whilst the design proposed might be appropriate at some other locations I consider that in the context of the setting of Flodigarry and the short range views from the coastal path it would exacerbate the adverse impacts on landscape and seascape character.

35. Following my site inspection of the wider area I am satisfied that there would be no adverse cumulative or sequential effects in relation to other existing or consented sites.

### *Conclusions on Landscape, Seascape and Visual Impacts*

36. In view of the above I conclude that the proposed development would have significant adverse effects which would be localised. There is disagreement between the parties regarding the values to be placed upon localised effects, SNH deferred judgement on that to the council. It is clear to me that the Trotternish Peninsula is held in high regard

as an area of high aesthetic quality by both residents on Skye and visitors to the island, many of the representations received relate to concerns regarding adverse landscape and visual impacts. The SLVIA notes that the Skye and Lochalsh Landscape Character Assessment emphasises the importance of the coast of Skye and views over the sea as part of the sense of place and special character of the area.

37. I share the council's opinion that this is a special area, it contains iconic views of national importance as reflected in the NSA designation. I am content that the development would not detract from the overall integrity of the NSA or the SLA. However, I find that insufficient consideration has been given the local context of the proposed development. For the reasons set out above I conclude that it would be insensitively sited in relation to its proximity to the setting of Flodigarry Township and the adjacent offshore islands. I, therefore, consider that it would adversely affect the special qualities of the NSA and SLA.

38. I conclude that the proposal conflicts with Policies 28, 36, 50, 57 and 61 in that it does not demonstrate sensitive siting taking account of the local landscape characteristics and that it would not adequately protect the special qualities of the designated areas within which it would be set.

### Impact on Wildlife and Habitats

39. Policy 58 'Protected Species', sets out the circumstances in which developments that may have an adverse effect, either individually or cumulatively, on European protected species, or other protected birds, animals or plants may be permitted. Policy 59 'Other Important Species' and Policy 60 'Other Important Habitats' seek to protect other important species and habitats including those listed in the Scottish Biodiversity List. The National Marine Plan contains similar policy guidance in relation to protected species. It requires that the impacts of development upon Priority Marine Features are considered, taking account of the advice of Statutory Advisers. Policy GEN 13 'Noise' requires that significant adverse effects of man-made noise (including acoustic deterrent devices) on species sensitive to such effects are avoided.

40. Section 5 of the EIA report deals with general aquaculture interaction with the environment, section 5.5 addresses impacts upon species and habitats of conservation importance, including European protected species, and sensitive sites, species and habitats.

### *Inner Hebrides and Minches Special Area of Conservation (SAC)*

41. The proposal lies within this SAC the qualifying interest of which is the Harbour Porpoise (*Phocoena phocoena*). The SAC covers an area of approximately 13,814 square kilometres. Direct habitat loss as a result of the proposed development would be less than 0.0001% of the SAC. The proposal aims to use acoustic deterrent devices (ADDs) which emit a high frequency sound below water to deter seals away from the fish cages, these devices also potentially cause disturbance to porpoises and other cetaceans. The EIA report indicates that mitigation proposed in relation to the location, design and operation of the development, including those relating to containment and lice mitigation, are sufficient to minimise any effects on this species.

42. Due to the potential use of ADDs, I consider that the proposed development is likely to have a significant effect on the qualifying interest of the SAC. Consequently, I have

undertaken an 'Appropriate Assessment' under the terms of the 'Habitats Regulations' which forms Annex A to this decision. That assessment was informed by various information, including the consultation response and further written submissions from SNH. My assessment contains my conclusions on the effects on the SAC in further detail.

43. In their consultation responses neither SNH nor Marine Scotland objected to the proposed development in relation to impacts upon the SAC. Both recommended that further information be provided but in response to my request for further written submissions (relating to the conditions proposed by the council and the appellants) they are now satisfied that the outstanding matters may be addressed by the proposed planning conditions. In particular, the appellants' ADD Use Statement (which has been prepared for this site and the two fish farms which have obtained permission) is considered to address the cumulative impact of the use of ADDs. Both the council and SNH consider that the proposed development would not affect the integrity of the SAC.

44. In undertaking my Appropriate Assessment I have taken into account the design of the proposed development, the operational measures to minimise the need to use ADDs and the provisions that could be made within the conditions to be imposed upon any planning permission. My assessment concludes that the proposed development would not adversely affect the qualifying interest and conservation objectives of or the integrity of the Inner Hebrides and Minches SAC.

45. Although objections to the planning application expressed concern that the use of ADDs is dangerous and can cause permanent damage to cetaceans I have not been provided with evidence of that.

#### *The River Kerry Special Area of Conservation (SAC)*

46. The appeal site lies approximately 34 kilometres from this SAC, designated for a species and its habitat which are protected under the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004. This species requires healthy populations of juvenile salmon and trout to complete its life cycle. Benthic impacts of fish farming are regulated by the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). I will go on to discuss those impacts in more detail when I address impacts on Priority Marine Feature species later in my decision.

47. I have undertaken an assessment, as contained within Annex A, of whether the development would have likely significant effects on this SAC in accordance with the terms of the 'Habitats Regulations'. In reaching my conclusion on this matter I have taken into consideration that SNH has advised that there is unlikely to be a significant effect on the SAC and its reasons for reaching that conclusion as set out within the consultation response dated 12 November 2019.

48. Confidential Annex 2 of the EIA report provides details of the assessment of impacts on this species. It indicates that mitigation proposed in relation to the location, design and operation of the development, including those relating to containment and lice mitigation, are sufficient to minimise and effects on this species. The EIA report concludes that there is unlikely to be a significant effect on the SAC.

49. I am satisfied that the proposed design and operational methods are aimed at minimising fish loss and to control levels of sea lice. The draft EMP sets out such measures in further detail. The imposition of appropriately worded planning conditions and the SEPA and Marine Scotland licencing regimes would allow appropriate monitoring and enforcement in relation to these matters. Taking all of this into consideration, as set out in Annex A, I am satisfied that, had I been minded to uphold the appeal, the development would not have a likely significant effect on the River Kerry SAC.

#### *Shiant Isles Special Protection Area (SPA)*

50. The site is approximately 21 kilometres from this SPA which is classified for a range of breeding seabirds, the appeal site is within the foraging range of some of these species. The EIA report concludes there is unlikely to be a significant effect on the SPA.

51. The RSPB considers that the EIA report only takes account of the loss of foraging area as a result of the footprint of the proposal and does not take account of the decline in faunal diversity from the deposition, distribution and re-suspension of particulate matter and medicine residues from the site. It notes that food sources are not evenly distributed and considers that it is important to conserve areas of high diversity such as the location of the proposed fish farm.

52. SNH has not raised any concerns that the proposal would adversely affect the conservation objectives for the SPA. It is of the view that there is unlikely to be a significant effect on the SPA as the proportion of the foraging area affected by the proposal would be insignificant and it is satisfied that the mitigation measures proposed would reduce the risk of bird entanglement.

53. I have undertaken an assessment in accordance with the terms of the 'Habitats Regulations', of whether the development would have likely significant effects on the SPA as set out within Annex A,. The total loss of foraging area that would arise from the proposed fish farm and the consented sites to the south combined is estimated to be 0.06%. The EIA report concludes there is unlikely to be a significant effect on the SPA. It notes that there is a relatively low number of seabird nests on the cliffs adjacent to the appeal site but that these are not part of the SPA designated area. Nevertheless, this has, in part, influenced the decision to site the fish farm further offshore than many others in Scotland.

54. Even though the RSPB objects to the development I have not been provided with any detailed or substantive evidence that the development would have adverse effects on the qualifying species as a result of decline in faunal diversity and benthic impacts. I address benthic impacts in more detail in my consideration of Priority Marine Feature species. The development design does not include the use of secondary anti predator nets, this would reduce the risk of entanglement. In addition, a number of measures are proposed to reduce the risks of attracting birds to the site and to minimise collisions from boats. Planning conditions could require that the development is constructed, operated and managed in accordance with the mitigation measures within the EIA report and in the EMP. They could also include specific requirements in relation to the nature of the nets to be used and management regimes to minimise impacts on birds.

55. Taking the aforementioned matters into consideration, as set out in Annex A, I am satisfied that, had I been minded to uphold the appeal, the development would not have a likely significant effect on the Shiant Isles SPA.

### Priority Marine Features

#### *Tide Swept coarse sands with burrowing bivalves*

56. Directly beneath and surrounding the proposed development there are areas of seabed habitat that contain the priority marine feature 'Tide swept coarse sands with burrowing bivalves (Moerella sp. with venerids)'. Benthic impacts, whereby waste food, residual chemicals and medicines and fish faeces can alter or result in deterioration of this habitat, potentially leading to the elimination of the mollusc species which are included in the Priority Marine Feature. As noted at paragraph 46 above SEPA has responsibility for regulating sea bed impacts via the CAR licence regime. The discharge of lice treatment chemicals from well-boats is controlled under licence by Marine Scotland. In terms of the biodiversity duties required by the Nature Conservation (Scotland) Act 2004 (as amended), benthic impacts are also a planning consideration in relation to the effects on species or habitats of conservation importance.

57. Benthic impacts are considered at Section 6.1 and Annex A of the EIA report. It is noted that the baseline benthic survey was carried out in accordance with SEPA guidance, this has not been disputed by SEPA. All sampling stations record various mollusc species that are included in the feature. A seabed visual survey was also undertaken which found that the habitat was indicative of this feature. The benthic survey analysis showed the presence of diverse and healthy faunal communities. The univariate index values, (i.e. species abundance, richness, diversity and evenness) used as indicators of sediment health, were found to be high and the pollution status scores indicate normal communities. The analysis also found that the condition of sediment was within SEPA 2006 quality standards.

58. The 'Hydrographic Modelling Technical Report' (which forms Annex 1C to the EIA report) includes the findings of the modelling of appropriate consent limits for biomass and the 'in-feed' sea lice treatment medicines. It indicates that this site is characterised by high tidal energy and low shear (i.e. similarity of current velocity and direction all depths) and that velocities were relatively high for an open water location. It notes that the site is therefore likely to result in very high export of released solids, particulate mass and medicine residues.

59. The EIA report concludes that benthic impacts would be adverse on the seabed beneath the site and within the modelled area. However, it indicates that the assessment of impacts has been based on SEPA's modelling and upon a worst case scenario in terms of use of an artificially high feed load, maximum permitted site and operational biomass and without mitigation measures in place. It notes that the site would be operated to a peak biomass that is currently the maximum consented in Scotland. However, the impacts are predicted not to exceed SEPA's Environmental Quality Standards, it is expected that in practice the impacts would be considerably less. It concludes that, with mitigation, impacts due to deposition of fish waste, feed and medicines and mechanical damage from anchors and moorings would have a low likelihood of occurring and such impacts would have a medium level of severity. Without mitigation predicted impacts would be likely to highly likely to occur and, with the exception of mechanical damage, severity of impacts would be

medium to severe. The proposed EMP sets out a number of operational methods that would form such mitigation, including those specifically to manage fish health and sea lice numbers.

60. SEPA has raised no concerns regarding the modelling report and advised that nutrient calculations indicate that there should be no unacceptable impacts either at this site or cumulatively across the wider area. It has confirmed that the maximum biomass and level of chemical usage would be set through the CAR licence and can be controlled through its regulations. I note that SEPA has raised no objections to the proposal.

61. SNH has advised that the surveys appear to follow the relevant guidance. It considers that the habitat of this Priority Marine Feature appears to be extensive at this location. It advises that overall, the habitat is considered to have a low sensitivity to organic enrichment, tolerance is assigned as medium with recovery high. It concludes that the low sensitivity combined with the energetic marine environment are such that significant habitat changes as a result of the development are likely to be restricted to its immediate depositional footprint of the development.

62. Taking account of the above I am satisfied that, had I been minded to uphold the appeal, subject to appropriate mitigation there would be no significant adverse effects on this Priority Marine Feature. Such mitigation could be achieved and controlled through planning conditions and through the regulatory controls and licensing of SEPA and Marine Scotland.

### *Black Guillemot*

63. The RSPB has advised that the proposed development and the consented site at Invertote would be immediately adjacent to two of the largest and most dense black guillemot populations on Trotternish. It believes that due to the proximity of the two fish farms to kelp beds and the black guillemot breeding colonies they would impact on approximately 10% of the Skye population of this species. It raises concerns that the effects on prime foraging habitat and the prey species on which the black guillemots depend are likely to deteriorate which may result in a decline in the colonies. It notes that this species is faithful returning to the same breeding colony and feeding territory each year.

64. The EIA report identifies risks to this species from impacts of the proposal upon territorial waters, entanglement and disturbance from operational activities. It indicates that the water depths at the site are within the diving range of this species but that it tends to favour shallower waters. In terms of the assessment of impacts the EIA report addresses impacts on seabirds as a whole, it does not separately consider black guillemot.

65. The EIA report indicates that the direct loss of foraging area due to the siting of the fish farm combined with the proposed site at Balmaqueen amounts to less than 0.04% of the available habitat on the north and eastern coast of the Trotternish Peninsula. Both SNH and the RSPB advise that kelp beds play a role in the foraging habitat for this species. The EIA report does not discuss this in detail but notes that there are kelp beds closer to the shore which offer greater foraging potential than the appeal site. I note that the baseline video survey report describes the sediment within the survey locations as primarily coarse sand and gravel with varying amounts of pebbles, and occasional cobbles and boulders but does note the presence of kelp. The photographs contained within that report do not

contain any images of kelp. The survey results therefore do not lend support to RSPB's contention that there are kelp beds at the location of the proposed fish farm.

66. The risks posed from and measures to mitigate entanglement that are discussed above in relation to other bird species within the Shiant Isles SPA are equally relevant to black guillemot. I have no evidence that this particular species is more vulnerable to entanglement or requires additional mitigation measures.

67. The EIA report notes that the site is not located close enough to seabird nesting sites and breeding colonies to cause any direct disturbance. It does, however, acknowledge that seabirds feeding or roosting in flocks or groups would be sensitive to disturbance. Various mitigation measures are proposed to minimise the effects of operational activities on marine wildlife including seabirds. Staff would receive training in accordance with SNH's 'Scottish Marine Wildlife Watching Code and Guide to Best Practice'.

68. I note that the survey details contained within the EIA report indicate that black guillemot are present in the vicinity of the site. The surveys show this species in varying numbers across the sampling locations with the greatest number at Steall a Ghreip, Eilean Flodigarry and Stacan Goblach. The appeal site lies approximately 1 kilometre west of Steall a Ghreip, approximately 1.2 kilometres north-north-west of Eilean Flodigarry, and around 2 kilometres south of Stachan Goblach.

69. The aforementioned SNH best practice guidance indicates that birds on the water, engaged in feeding, resting, preening, courtship and moulting, may be vulnerable and that interruptions can have significant impacts on health and survival. It notes that repeated disturbance is likely to have greater impact. The operation of the site would require the use of work boats on a day to day basis but no details have been provided of the likely frequency of such movements. SNH advises that while effects on small numbers of birds cannot be discounted, significant effects on the population are unlikely. It considers that the proposal does not raise any issues of national interest regarding this Priority Marine Feature species.

70. I am satisfied that the measures to minimise benthic impacts and those aimed at minimising entanglement and disturbance would be important in ensuring that there is no significant adverse effects on black guillemot. I am content that the proposed mitigation measures reflect the SNH best practice advice. Based on the evidence before me I consider that activities at and related to the fish farm would be likely to cause some disturbance to black guillemot in proximity to the site. I consider that cumulative impacts of the proposed development and the approved fish farm at Invertote on black guillemot cannot entirely be discounted. However, I have not been presented with evidence which indicates that such impacts would be significantly adverse. I consider that there would be some localised adverse impacts on this Priority Marine Feature species but I find no reason to dispute the conclusion of SNH that significant adverse effects on this species are unlikely.

#### *Other Wildlife and Habitat Impacts*

71. A number of representees make reference to a protected bird species being present in close proximity to the appeal site. The EIA report acknowledges that this species has a significant presence on the Trotternish Peninsula and survey work has confirmed that they

are found in the locality of the site. This species is protected under the 1981 Wildlife and Countryside Act.

72. Confidential Annex 2 of the EIA report identifies the potential risks to this species are from entanglement in nets and marine litter and disturbance. It concludes that subject to mitigation the possibility of impact of developments on this species is likely to be much reduced. However, it does not draw any conclusion on the scale or significance of potential impacts. The RSPB considers that the proposed mitigation is crucial but remains concerned that there would be adverse impacts. It has not commented on the implications or the significance of such impacts on this species. In addition, the SNH consultation response makes no comment on this particular species. Consequently, I find that there remains some uncertainty over the impacts upon this species. Had I been minded to uphold this appeal I would have sought further submissions in order to be satisfied that there would be no significant adverse effects upon this species.

73. Representees have commented on the prospect of adverse impacts on harbour seals noting that there is a colony of 30-50 nearby to the north of Flodigarry Island. The EIA report notes that the closest designated seal haul out location is approximately 5 kilometres from the site. It is proposed that operational plans would be prepared taking account of the presence of seal colonies that are closer to the appeal than the recognised haul out sites. The mitigation to minimise impacts on cetaceans and seabirds would also be relevant in relation to impacts upon this species.

74. The impacts on any seal colonies close to the proposed fish farm have not been raised as an issue by Marine Scotland or SNH. I am aware that seals outwith designated sites also have protection under the Marine (Scotland) Act 2010, that act seeks to balance conservation of seals with aquaculture. I acknowledge that Marine Scotland as the licensing authority for seals, may grant a licence to permit the killing of seals only in special circumstances. However, I can appreciate the concerns that placing a fish farm near an existing seal colony is inviting conflict. Had I been minded to grant permission I would have sought further submissions in order to be satisfied that there would be no significant adverse effects in relation to this matter.

### Impact on Wild Fish

75. The potential interaction with wild salmonids is dealt with in Section 6.2 of the EIA report. The assessment indicates that the proposed development has the potential to have an adverse impact on wild salmon and sea trout in the river and coastal waters close to the site. Risks to the species are identified as disease and breaches in containment of farmed stock. It is considered that the development is unlikely to make a significant contribution to nutrient enhancement or algal blooms and that sufficient safeguards would be in place to reduce the potential for disease and escapes. Subject to the proposed mitigation measures no significant adverse effects are identified.

76. It is recognised that the benthic impacts of aquaculture and escape of stock from fish farms has the potential to impact upon wild fish including salmon and trout, both of which are included in the Scottish Biodiversity List. I note the concerns raised by consultees and objectors regarding adverse effects of the proposed fish farm on the health of wild fish. A number of representees, including the Skye District Salmon Fishery Board, also raised concerns raised in relation to the robustness of the development stating that this location is particularly prone to large swells and severe weather conditions.

77. I have addressed sea lice and benthic impacts above in relation to the River Kerry SAC and priority marine species. As noted above the appellants propose a number of measures aimed at maintaining a healthy and secure stock of farmed fish. The draft EMP includes details of the design and operational methods which aim to maintain the health of farmed stock and in turn that of wild fish and sets out the principles guiding the sea lice control strategy and action plan. Such measures include underwater feeding, the use of lice skirts and the incorporation of 'cleaner' fish. It is proposed that non- medicinal treatment of sea lice would be prioritised over medicinal controls and stocking numbers would initially be at around half of the smolts required to meet maximum biomass. Thereafter, stocking levels would only be increased towards the maximum if low sea lice numbers and good fish health are maintained during the initial production cycle.

78. I note the concerns that if the proposed development does not maintain its organic status then the cage size proposed would allow a higher stocking density with a consequential increase in impacts. While this proposal is intended to operate under organic status in association with the two other consented fish farms nearby there is nothing within the planning system that would prevent that status from altering. However, the EIA report does not qualify the predicted impacts as only being in relation to an organic fish farm and I have not been provided with any evidence demonstrating that a non-organic operation would have significantly different impacts. Irrespective of that the maximum sustainable biomass and associated levels of chemical usage are matters that are governed by SEPA. Furthermore, Marine Scotland has advised that operations and records on site with regard to sea lice control would be monitored for compliance with the relevant legislation and good practice code.

79. The Skye District Salmon Fishery Board objected to the proposal at the planning application stage on the basis that pre-development fish surveys had not been undertaken. The draft EMP indicates that initial baseline, pre-development surveys of the wild fish population have been undertaken. The requirements for pre-development and ongoing surveys, monitoring and review of impacts on wild fish are set out in the draft EMP. This would allow any increases in sea lice numbers among wild fish or changes to their population structures that might result from the development to be identified. It is proposed that strategies and monitoring protocols would be reviewed and updated in line with best practice sea-lice control measures. The draft EMP also sets out the provisions to halt activity if required. Had I been minded to uphold the appeal I consider that the requirement for surveys, monitoring and review could have been achieved through an appropriately worded planning condition in order to avoid significant adverse impacts on wild fish.

80. In terms of containment the EIA report indicates that the specifications of the equipment would be suitable for the location, an on-site presence would be maintained whenever possible and remote monitoring of the site would be undertaken. The draft EMP also sets out the methods proposed to prevent loss of farmed stock including cage design and maintenance, employment of predator deterrent measures, site management and monitoring. It includes a contingency plan setting out actions in the event of any escapes or suspected escapes.

81. Marine Scotland acknowledge that the location experiences 'moderately strong tidal streams'. On the basis of the details provided of the grid mooring system and cages it advises that the development would be satisfactory as can reasonably be foreseen. It also considers that the contingency plan for a suspected or actual breach in containment is

satisfactory. Containment and escapes are regulated by Marine Scotland, and the site would be routinely monitored for compliance with the relevant legislation. National Marine Plan Policy Aquaculture 9 requires that consenting authorities are satisfied that appropriate emergency response plans are in place. I have not been presented with any substantive evidence that would lead me to a different conclusion from Marine Scotland on these matters.

### Conclusions on Wildlife and Habitats Impacts

82. Taking account of the above I am satisfied that the proposed development could take place without significant impacts on the two SACs, the SPA and the identified Priority Marine Feature. However, had I been minded to grant permission I would have sought further submissions in order to be satisfied that there would be no significant adverse impacts in relation to protected bird species and the nearby seal colony.

### Impacts on Navigation and other Maritime Users

83. Policy 50 supports aquaculture subject to there being no significant adverse effect directly, indirectly or cumulatively on commercial inshore fishing grounds, established harbours and natural anchorages, and navigation (including recreational). The National Marine Plan requires consideration of impacts on existing navigational routes, navigational safety and maritime tourism and recreation.

84. Mallaig and North-West Fishermen's Association, the Scottish White Fish Producers Association and the Scottish Fishermen's Federation objected to the planning application. Despite a meeting with the appellants they had remaining concerns regarding adverse impacts on local fishermen relating to loss of safe shelter and fishing grounds and adverse impacts on fish stocks. Concerns were expressed that small family owned fishing interests would be put out of business.

85. The EIA report indicates that following pre-application consultation and scoping it was concluded that impacts on navigation would not be significant and these were not addressed further. Assessment was therefore confined to impacts on commercial fishing and recreational use. The analysis of available data on activity in the vicinity of the site over a five year period indicated that the levels of use by recreational and fishing vessels are low. A total of only 327 individual vessels entered the sample area in the five year period, most of which pass offshore of the site. Only two fishing vessels with mobile gear were recorded within the area in that period and in total the activity amounted to less than 10 hours. Although the data did not capture all such activity within the area it was considered to be sufficiently representative. The EIA report concluded that the development would be unlikely to have a significant effect upon fishing activity with mobile gear.

86. Although the EIA report addressed impacts on navigation, fishing and other maritime users I issued a request for further written submissions seeking parties' views in relation to the requirements of Policy 50 with respect to impacts on navigation, anchorage, commercial fishing and other non-recreational maritime users. No additional comments were received from the Skye District Salmon Fishery Board. The response from Marine Scotland indicated that there may be some displacement of creel fishing vessels and some overlap with nephrops (lobster) fishing at the appeal site, however such losses are not considered significant. Although there may be potential impacts in terms of loss of natural anchorages

it was not possible to quantify this. It advised that assessing impacts upon established harbours and natural anchorages is outwith its remit but matters of navigational safety are addressed through its licensing process.

87. The Northern Lighthouse Board indicated that Flodigarry is not used as an anchorage. It advised that small vessels may choose to pass on the shore-side of Eilean Flodigarry en route to the recognised and charted anchorage at Staffin, which provides a limited degree of shelter from easterly winds, however that anchorage would not be recommended in such conditions. It considers that the development would not preclude the use of that passage by small craft.

88. The appellants' response to my request for further written submissions provided further detailed information including data on vessel routing, common anchorage locations and levels of use. Analysis using additional data showed that a very low number of vessels were recorded at the northern end of the Poldorais Channel between Eilean Flodigarry and the mainland. Over the 91 month period records showed an average of less than one vessel per month. The analysis showed that 83 vessels used Staffin Bay for anchorage over that period and that no vessels anchored close to the appeal site.

89. The appellants acknowledge that the use of Automated Identification Systems, upon which the data is based, has limitations but they consider that in the absence of other publicly accessible data it provides the best available indicator of such movements. They note that vessels using the channel would have in excess of 300 metres to navigate between the fish farm infrastructure and the closest tidal rock on the shore-side. The appellants therefore consider that the development would pose no impediment to navigation and would have no adverse impact on the availability of suitable anchor locations.

90. Taking all of the above into account I am satisfied that the proposed fish farm would not have significant adverse impacts upon commercial inshore fishing grounds, established harbours and natural anchorages and navigation. Adequate space would remain to allow safe passage for leisure and recreational craft such as tourist boat trips and kayaks. The requirements in relation to navigational lighting set out in the consultation response from Northern Lighthouse Board would be addressed by Marine Scotland. I, therefore, find that the proposal complies with the parts of Policy 50 that relate to these matters.

### Noise

91. The EIA report indicates that the primary noise source would be the machinery on the feed barge, including cranes, generators and hydraulic systems. Noise from work boats is expected to vary and be transient in nature. The assessment was stated to be based on a worst case scenario with allowances made for tonal elements and assuming low attenuation due only to distance. It predicts that in calm conditions noise is expected to travel about 500 metres and when there is wind and ambient noise, it is predicted to be barely audible beyond 100 metres. It concluded that there would be no significant adverse impacts on receptors at or close to Dun Flodigarry Hostel or Flodigarry Township where existing vegetation would offer a degree of attenuation. Nevertheless, it recommended that a full noise assessment be carried out once equipment is on site.

92. The council's environmental health officer (EHO) did not raise any concerns regarding the methodology used. The EHO advised that predicted noise levels from the

feed barge are very low and unlikely to be audible at the nearest noise sensitive property and that other noise would be likely to be intermittent. He noted that the assessment is based on an assumed 35dB(A) background noise level but, given the remoteness of the location, it is possible that actual levels could be lower. However, he offered no objections to the proposal subject to conditions including limits upon noise and hours of operation and the requirement for mitigation as set out within Table 28 of the EIA report. A condition is also recommended requiring further noise assessments if the recommended noise level could not be met.

93. In view of the above I consider that there is a degree of uncertainty over noise impacts. Furthermore, I note that the conditions proposed by the council do not reflect those recommended by the EHO; they do not include any requirement for monitoring, mitigation or limits on operational hours.

94. I have taken into consideration the concerns raised from residents and the owners of local tourist accommodation, including Dun Flodigarry Hostel, regarding the effects of the proposal on the tranquillity of the area. The SLVIA also addresses noise and notes that activity at the proposed development could periodically erode tranquillity. Impacts would be temporary and variable, but effects may be locally significant. The guidance contained within Planning Advice Note (PAN) 1/2011 "Planning and Noise" indicates that account should be taken of the sensitivity of the location and that sound levels in gardens and amenity areas may also need to be considered in terms of enabling a reasonable degree of peaceful enjoyment of these spaces for residents.

95. Based on the evidence before me I anticipate that there would not be significant adverse noise impacts within buildings. I consider that on some occasions and under certain conditions noise would be perceptible within some gardens and outdoor areas, on the coastal trail and at the eco-museum viewpoint at Flodigarry. Effects are most likely to be greatest on the Skye Trail, where background noise levels are likely to be the lowest. However, I am content that subject to the imposition of suitable planning conditions noise impacts would not be significantly adverse. Had I been minded to uphold the appeal I would have sought further submissions on such conditions.

### Economic Impacts

96. The council has advised that the site lies within a 'Fragile Area', as defined by Highlands and Islands Enterprise. Policy 36 and Policy 57 require consideration of the support that a development may provide for communities in such areas. SPP and the National Marine Plan recognise the contribution that aquaculture can make to the economy of coastal and island communities and fragile rural areas, both require that the economic and social benefits of a proposed development be taken into account.

97. The EIA report indicates that the fish farm would create the equivalent of seven full time jobs on site. It would also increase wider job opportunities in related businesses supplying goods and services but this contribution to the local economy has not been quantified. The figures have been queried by objectors who contend that they do not reflect other fish farms of a similar size. Objectors consider that local communities will benefit little from the development as staff with the required qualifications and skills are likely to be brought in from outside the area. The number of jobs that may be created, directly and indirectly, are difficult to verify. Nevertheless, I find it reasonable to conclude that the proposed development would provide some economic benefits through the construction

period and once it is operational. Jobs out with the tourism sector would add to the diversity of the local economy and no doubt be of benefit to the community. Within a Fragile Area I consider that the value of such jobs is of particular importance.

98. References have been made to a financial contribution that the appellants may provide to local communities for use in development projects. The Staffin Community Trust commenting on the planning application indicated that without this contribution the proposed redevelopment of the slipway at Staffin and associated local business propositions would not be feasible. The Trust also considers that such developments would attract the young people needed to sustain the community and would provide wider economic benefits. I can appreciate the significance of this to the local community. However, the proposal before me does not include any development at Staffin and any proposed community levy is voluntary and is not a material planning consideration. I, therefore, give no weight to that matter.

99. Many of the representees argue that any economic benefits of the development would be outweighed by its adverse impacts on the tourism economy of the area. Objectors argue that the location would be spoiled for visitors both directly in terms of impacts on views but also through indirect impacts on wildlife that draws tourists. I note the concerns that the landscape and visual effects could alter the number of people choosing to book accommodation and using businesses and other facilities in that area. The objection from the Flodigarry Hotel argues that the development could damage its significant contribution to the local economy. It states that this has amounted to over £4 million in the past 6 years and that it employs 60 full time equivalents directly and indirectly on the island.

100. The island of Skye is well known as a tourist destination. From my observations during my site inspection it is clear that Skye as a whole and the Trotternish Peninsula in particular relies heavily on the tourist economy. I noted a high volume of tourist accommodation, a large number of tourist facilities and businesses and a significant amount of tourist activity. I observed that almost every car park aimed at tourists or walkers along the west coast of the peninsula and at the Quiraing was very busy or overflowing.

101. Given the attractiveness of both the island and the Trotternish Peninsula as a whole I consider that the development would be unlikely to have an effect on the number of visitors to the area. I consider that the attractiveness of the Skye Trail is unlikely to be diminished and I do not believe that the development would put off those who wish to complete its full length. The activity at the proposed fish farm and the potential use of ADDs may lead to the displacement of cetaceans and other wildlife at least on an intermittent basis. It is not possible, however, to conclude that a reduction in wildlife sightings would have a significant adverse impact on the number of visitors to the area. I noted that the viewing point at Kilt rock is busy and attracts people for more than just the possibility of spotting wildlife.

102. Any potential effects on tourism are difficult to evaluate and I have no specific evidence to quantify what these may be in financial terms or visitor numbers. However, the Trotternish Peninsula and Skye in general are clearly a significant draw to tourists and I consider that if there were to be any adverse effects these are likely to be very localised. As noted above I consider that the development would have unacceptable impacts on the landscape character at Flodigarry Township. I can, therefore, understand the concerns of those who own or are employed in tourist based businesses and accommodation in the vicinity of Flodigarry. Overall, I consider that the development would not make the area less attractive to the extent that there would be any significantly adverse effect on tourism in

the wider area. On balance, I believe that the development has greater potential to have a positive rather than a negative impact on the economy of the island but I cannot say with any certainty what the net effect of the proposal may be.

### Other impacts

103. The EIA report assesses a wide range of other impacts, the council has not founded its refusal on any of those. Following my consideration of the environmental information, I have identified no additional significant environmental effects. I note the comments raised by representees regarding the unsuitability of the public road to Staffin jetty. The proposal before me does not include any land based development. While the appellants may have aspirations to undertake such development the consideration of any transport impacts would be for the council to consider as part of any future planning application.

### Compliance with the Development Plan

104. The support for aquaculture and developments that will support fragile rural communities within the local development plan policies is qualified by the requirements to consider impacts on landscape character, scenery, individual and community residential amenity and whether proposals are sensitively sited and designed. For the reasons set out above I consider that the proposed development would unacceptably erode the landscape character, scenic setting and visual amenity of the community at Flodigarry Township. I also find that, due to the proximity of the proposed development to the offshore islands, it would have unacceptable landscape and visual impacts on the views out to sea from this part of the coastal fringe. I, therefore, consider that it would significantly and unacceptably erode the special qualities of the Trotternish NSA and Trotternish and Tianavaig SLA. I conclude that it would be insensitively and unacceptably sited in relation to its proximity to the setting of Flodigarry Township and the adjacent offshore islands. Consequently, I find conflict with policies 28, 36, 50, 57 and 61.

105. I consider that the proposal is unlikely to have any adverse effect on the conservation interests for which the Inner Hebrides and Minches and the River Kerry SACs and the Shiant Isles SPA have been designated and there would be no significant adverse effects on any Priority Marine Feature. However, I find that there is some remaining uncertainty that all potential impacts on wildlife, habitats and protected species would be acceptable. I, therefore, cannot conclude that the development fully complies with the requirements of policies 58, 59 and 60.

106. Overall, I conclude that the proposal does not accord with the development plan.

### Other Material Considerations

107. I have carefully considered the proposal in relation to the support for aquaculture within SPP and the National Marine Plan. However, the support for developments that can deliver economic benefits to a coastal and island area identified as fragile is not unqualified and I am required to take into account landscape and visual impacts. In particular, paragraph 212 of SPP requires me to consider whether any significant adverse effects on the special qualities of the NSA are outweighed by social or economic benefits of national importance. In this instance the unacceptable effects would not be outweighed by economic benefits of national importance. On balance, I conclude that overall the

development does not contribute to sustainable development and does not satisfy the key policy principle of SPP to achieve the right development in the right place.

108. I have taken into account the representations submitted in opposition and support of the proposal. I have mostly addressed the matters raised under the various headings above. There are no other material considerations raised in the representations which would alter my conclusions.

### Other Matters

109. Concerns have been raised over the lack of sustainability and ethics of fish farming, the welfare of farmed fish and in relation to the nature of the company proposing the development. The evidence contained within the EIA report and the consultation responses does not indicate that if the fish farm did not maintain organic status that the environmental impacts that I have considered would be significantly different. In addition, the stocking levels, use of chemical treatments and medicines are all governed by the SEPA and Marine Scotland licensing regimes. It is not within my remit to take the other matters into account.

### Overall Conclusions

110. Drawing together all of the above I consider that the proposal is not sensitively sited and that it would have significant and unacceptable impacts on landscape character and visual amenity. I consider that although the impacts would be localised they would unacceptably erode the special qualities of the Trotternish NSA and the Trotternish and Tianavaig SLA. Therefore, I find that the proposal fails to comply with local development plan policies 28, 36, 50, 57 and 61. In addition, as there remains some uncertainty regarding the significance of potential impacts upon wildlife and habitats I find that the proposal does not fully comply with policies 58, 59 and 60.

111. I have taken into consideration the potential economic benefits of the proposal. However, it is my conclusion that those would not outweigh the unacceptable impacts of the development. In applying the overall balance I find that it conflicts with the local development plan, the Highland Coastal Development Strategy, Scottish Planning Policy and the National Marine Plan. I have assessed all of the relevant environmental information and I find nothing that leads me to a different conclusion.

112. I, therefore conclude, for the reasons set out above, that the development does not accord overall with the development plan and that there are no material considerations which would still justify granting planning permission.

*Lorna McCallum*

Reporter

## Schedule 1: Opportunities for public participation in decision-making

There is the following evidence before me of opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal:

- The appellants have provided a report on pre-application consultation. This indicates that for fish farms with a surface area of less than 2 hectares there is no formal requirement to undertake pre-application consultation. However, as part of the pre-application process the appellants met with community groups and public drop in sessions were held at Staffin on 15 February 2019 and at Kilmuir on 16 February 2019. These events were advertised. The public had an opportunity to comment to the appellants on the proposed development;
- The application was advertised on 2 August 2019 as an EIA development. This gave the opportunity for the public to make representations upon the proposal for the development and the accompanying EIA report;
- Additional information was submitted to the planning authority, the application was re-advertised on 20 September 2019 and the public had an opportunity to comment on that information. A copy of the press advertisements has been provided.
- The planning authority indicates that it received 85 public representations and a petition in respect of the application. The main points raised in those representations are summarised in the councils' report of handling as follows:

### Against:

- a) pollution of sea lochs
- b) sea lice impact on farmed fish and wild fish
- c) risk of hybridisation from escaped fish breeding with wild fish
- d) shooting of seals and harm to wildlife from acoustic deterrent devices
- e) seals at Sgeir na h-Eireann and protected birds habitat under threat
- f) impact on tourism and the prospects for the proposed cultural centre, Ionad Thronairnis, due to visual impacts could negate employment creation and other economic benefits
- g) visualisations understate actual visual impacts
- h) closed containment should be required; an answer to chemical pollution and sea lice issues
- i) unclear how organic production differs from normal production
- j) unless farmed, cleaner fish come with their own environmental problem of natural stock depletion
- k) maximum stocked biomass of 2500 tonnes is difficult to equate with a stocking density of 8kg/m<sup>3</sup> for a farm of this size
- l) application contravenes policies 28, 36, 50, 57 and 58 of the development plan
- m) Staffin slipway and access road are not suitable for heavy goods vehicles but the application states that fish will be landed and the site serviced from this slipway
- n) noise, light and odour pollution on Flodigarry properties and local bed and breakfast businesses
- o) site is clearly visible from the Skye Coastal Path and the local development plan suggests views across open water should be protected

- p) a variety of protected species have been sighted near the site during the last 12 months but the application makes no mention of them or the surveys required by Policy 58 of the development plan
- q) extreme sea-states are common in this location leading to the possibility of equipment damage and mass-escapes
- r) toxins from the farm could damage coastal stocks of Dulce and Carrageen which are still foraged by locals
- s) the site is on the path of a wild salmon run to and from the Brogaig, Kilmartin and Lealt rivers as evidenced by historic salmon stations on nearby coastal locations
- t) local fishing for Pollack (Lythe) will be obstructed by this site
- u) submitted EMP does not meet Marine Scotland's minimum criteria in that it fails to include sea lice dispersion modelling. Consequently, it is impossible to ascertain whether cumulative impacts upon wild salmonids generally and migrating salmon in particular will occur
- v) the cumulative impact of this and other fish farms on the migratory salmon routes up the west coast should be regarded as a 'national' impact to which the precautionary principle should apply in accordance with SPP
- w) feed pipe abrasion and wear results in some 200kg a year of plastic waste entering the sea environment from an average farm

**In support:**

- a) Proposal will help support a wide variety of jobs across many sectors across Scotland
- b) There is much misinformation about the fish farming industry. Planners must listen to the regulators.

Those who made representations upon the application have been treated as interested parties in the appeal. They have had the opportunity to make representations on matters that they raised, by written response to the appeal. I have taken those representations into consideration in my decision.

## Annex A

### Regulation 48 of the Conservation (Natural Habitats etc.) Regulations 1994 Appropriate Assessment

#### Habitats Regulations Appraisal (Appropriate Assessment)

1. The proposed development lies within the Inner Hebrides and Minches Special Area of Conservation (SAC), the River Kerry Special SAC and the Shiant Isles Special Protection Area (SPA). Consequently, the Conservation (Natural Habitats, & c) Regulations 1994 (as amended) (the 'Habitats Regulations') apply and I must consider the likely effects of the proposal upon the qualifying interest and conservation objectives of the SACs and the SPA. The Regulations require that, where a development proposal is unconnected with the nature conservation management of a Natura 2000 site and would give rise to likely significant effect on such a site (either alone or in combination with other plans or projects), as competent authority, I must carry out an "Appropriate Assessment" of the implications for the site in view of that site's conservation objectives.

2. In considering the effects of the proposed development and in carrying out the Appropriate Assessment I have been informed by information including: the appellant's Environmental Impact Assessment (EIA) ; the Acoustic Deterrent Device (ADD) Use Statement dated 15 June 2020 and Draft Environmental Management Plan (EMP) dated September 2019; the responses from the council, the appellants and Scottish Natural Heritage (SNH) to my requests for further written submissions; SNH's letter of 12 November 2019, and the letter of 29 August 2019 from the Royal Society for the Protection of Birds (RSPB) regarding this proposed development, the Appropriate Assessment carried out by Highland Council; my understanding of the qualifying interests and conservation objectives of the SACs and the SPA.

#### Inner Hebrides and Minches Special Area of Conservation (SAC)

##### *Judgement of Likely Significant Effects*

3. The qualifying interest for which the site of the Inner Hebrides and the Minches SAC is designated is *Phocoena phocoena*, commonly known as harbour porpoise, which are present throughout the year.

4. The SAC is the largest protected area in Europe for harbour porpoise and the only one in Scotland for that species. It covers just over 13,800 square kilometres (1,381,391 hectares). The sensitivities of this species include, entanglement, loss of prey species, the effects of contaminants on water quality, underwater noise and death or injury by collision.

5. SNH indicates the proposal has the potential to have a significant effect on harbour porpoise within the SAC because acoustic deterrent devices (ADDs) are included as part of the range of predator control measures and may disturb this species. I agree that due to the proposed use of ADDs the fish farm would be likely to have a significant effect on the qualifying interest of the site, harbour porpoise. Consequently, as competent authority in determining this appeal, I am required to carry out an Appropriate Assessment to consider the likely impact of the proposed development on the qualifying interest and conservation objectives of the Inner Hebrides and Minches SAC.

### Appropriate Assessment

#### *SAC Conservation Objectives*

6. The conservation objectives for the SAC are to maintain the harbour porpoise at a favourable conservation status and to ensure that the integrity of the SAC is maintained through the following:

- minimising the risk to that species from injury or killing,
- maintaining the distribution of the species by avoiding significant disturbance, and
- maintaining the condition of supporting habitats and availability of prey.

#### *Consideration of Effects on the Integrity of the SAC*

7. The site's integrity would be adversely affected if the favourable conservation status of the qualifying species at the SAC would be adversely affected. The integrity of a designated site is its ability to maintain its ecological functions and processes in order to sustain the habitat, complex of habitats and/or the levels of populations of the species for which the site was classified.

8. In assessing the effects on the integrity of the SAC I have taken into consideration the designation document for the SAC, published by SNH. That document indicates that underwater noise can result in disturbance of harbour porpoise. The type of disturbance, its duration and the area over which harbour porpoise are likely to be impacted are recognised as important considerations in any assessment of disturbance. Impacts of disturbance that would affect the integrity of the site may be regarded as alteration of the distribution of harbour porpoise within the SAC such that recovery cannot be expected or effects can be considered long term. The effects of a development that would last beyond the average generation time of the species (the average life expectancy being around 6 years) are more likely to constitute significant disturbance. It notes that localised, short term disturbance away from the coast may not cause levels of disturbance that would raise concern. The management advice given is that the use of ADDs at finfish aquaculture sites should be minimised and that ADD plans should consider the potential for cumulative impacts of noise.

9. In its consultation response SNH recommended the submission of additional information to clarify some matters, however, it advised that it considers the proposal would not adversely affect the integrity of the SAC. This position was based on a number of factors including the range of measures to be employed to reduce the chances of seal attacks, the location of the site on the edge of the Minch and the details provided of the limitations on and the logging of ADD use. The response from SNH to my request for further written submissions dated 5 June 2020 provides a more up to date position. It is now satisfied that the proposed planning conditions address the issues of uncertainty that it had previously raised.

10. Details relating to the use of ADDs set out in the EIA report and within the ADD Use Statement indicate that the following measures are proposed to limit the effects of their use:

- A range of measures are proposed to reduce the chances of seal attacks and minimise ADD use including using cage nets marketed as seal proof, incorporation

of seal blinds into cage design, maintenance of net tension, lower stocking densities and regular removal of mortalities.

- The site is on the edge of the Minch in a relatively unconstrained area in terms of cetacean movements (as opposed to sounds or narrows).
- A single integrated ADD Use Statement has been prepared that would apply to the proposed site and the other two approved fish farms at Invertote and Culnacnoc to the south. This would address the issue of any cumulative effects of the proposed fish farm in combination with the other approved sites to the south.
- The ADD Use Statement sets out limitations on the power mode and frequency of use of ADDs on all three sites. This includes that they will be set at 'off' mode until seal attacks have been confirmed; will only be activated in 'patrol mode' in the event of a second seal predation event within a period of 5 days and would not sound continuously. Escalation to 'standard mode' would be limited to only one of the sites in this group at any one time, would be limited to a maximum of five consecutive days and would be restricted to daytime use.
- A log would be kept of seal activity and ADD use and an annual report summarising ADD use and seal predation incidents would be available to the council and SNH on request. The ADD Use Statement would be reviewed at least on an annual basis and any proposed revisions would require the written approval of the council.
- A log of wildlife, including cetaceans, would be maintained. ADDs would not be switched on when cetaceans are observed near the cages.
- It is proposed that hydrophones would be installed at the site to record cetaceans in the area and to allow any effects of ADD use to be monitored and allow their use to be reviewed.
- The system would be fitted with monitoring units and full deployment and use records would be available on request to the council and SNH.

11. The council's Appropriate Assessment notes that the SNH 'Site Selection Assessment Document' for the SAC describes it as an area with high predicted and observed densities of this species. It also refers to SNH's 'Advice to Support Management Document' which notes that there are numerous finfish farms within or immediately adjacent to the SAC and which advises that SNH considers there is a low risk of entanglement for harbour porpoise from aquaculture infrastructure. The ADD Use Statement indicates that the proposed system is already installed and in use on other sites within the SAC and that small scale trials have suggested that its use in 'patrol mode' is unlikely to have a major effect on harbour porpoise. The ADD Use Statement makes provisions for it to be reviewed and this could have been a requirement of planning conditions had I been minded to uphold the appeal.

12. Although objections to the planning application expressed concern that the use of ADDs is dangerous and can cause permanent damage or be fatal to cetaceans I have not been provided with evidence to support that. Objectors have made specific reference to studies into this matter and a 2014 report commissioned by SNH on the sensitivity of

cetaceans and seals to ADDs. The objectors note that the report did not recommend any specific habitat exclusion around fish farms but concluded that exposure to active ADD use suggests that there is a credible risk of exceeding injury criteria for seals and porpoises. SNH has not made reference to any such studies within its comments. Had SNH any concerns in relation to the findings of such studies, particularly the 2014 report, I would have expected these to have been stated within its comments in relation to the use of ADDs.

### *Conclusion*

13. I have considered the proposed design of the development, the operational measures to minimise the need to use ADDs and the information outlining the circumstances within which they would be used. I have also taken into account that planning conditions could require that the mitigation measures contained within the EIA report, the EMP and ADD Use Statement are implemented and that the ADD Use Statement and EMP are reviewed and revised. Such planning conditions would form an enforceable framework alongside the licensing regime of both SEPA and Marine Scotland. Taking these matters into account I am satisfied that the proposal would not adversely affect the qualifying interest and conservation objectives or the integrity of the Inner Hebrides and Minches SAC.

### Shiant Isles Special Protection Area (SPA)

#### *Judgement of Likely Significant Effects*

14. The proposed development lies approximately 21 kilometres from the Shiant Isles Special Protection Area (SPA). The qualifying interests of the SPA relate to its support for a number of seabirds of European importance including barnacle goose, European shag, razorbill and Atlantic puffin. It also qualifies by regularly supporting in excess of 20,000 individual seabirds, including nationally important populations of northern fulmars, common guillemots and black-legged kittiwake. Potential impacts upon these species include loss of habitat, entanglement, disturbance and collisions.

15. The conservation objectives for the SPA seek to maintain the populations and distribution of these species with the SPA, to maintain the distribution, extent, structure, function and supporting processes of habitats that support those species and to avoid significant disturbance to these species.

16. In responding to the consultation on the planning application SNH advised that the fish farm would be within foraging distances of many of these species. However, it believes that there is unlikely to be a significant effect on the SPA for the following reasons:

- The proportion of the foraging area affected by the proposal is insignificant, and
- Mitigation measures are proposed, including well tensioned nets and avoidance of the use of secondary anti-predator nets, which would reduce the risk of bird entanglement.

17. The EIA report identifies the potential risks posed by the development as being loss of habitat, entanglement, disturbance and collisions.

18. The SPA citation states that it has an area of 6955.65 hectares. The total surface area of the fish cages would be approximately 1.4 hectares, the direct loss of foraging area would therefore be comparatively very small. Taking account of indirect benthic impacts there is no evidence that the development would affect the population numbers or distribution of the qualifying species. The development design incorporates the use of top nets of a size to reduce the opportunity for bird entanglement and does not include the use of secondary anti-predator nets. A waste minimisation and management plan is proposed and feeding would take place under water, this would reduce the risk of feed pellets and dust on the surface attracting birds to the site. It is indicated that the use of snorkel/tube nets may eventually reduce the need for the use of top nets.

19. Had I been minded to grant permission I am content that planning conditions could require that the development be constructed and operated in accordance with the mitigation measures contained within the EIA report, the EMP and the ADD Use Statement. Conditions could also require that these documents are reviewed and revised. Taking these matters into consideration I am satisfied that the development would not have a likely significant effect on the Shiant Isles SPA.

### The River Kerry Special Area of Conservation (SAC)

#### *Judgement of Likely Significant Effects*

20. The proposed development is located approximately 34 kilometres from this SAC. The qualifying interest for which the SAC is designated requires healthy populations of juvenile salmon and trout to complete its life cycle.

21. In responding to the planning consultation, SNH advised that it considers that there is unlikely to be a significant effect on this species for the following reasons:

- Salmon is the most important host species and recent surveys indicate that fish densities were sufficient to support that role, and
- The salmon arising from this river tend to head out to sea as they migrate towards the North Atlantic/Norwegian Sea. They are, therefore, not expected to interact with any sea lice emanating from the proposed farm.

22. The appeal site is at some distance from this SAC. The proposed development has been designed to lessen the threat to fish loss and a containment and escapes plan forms an Annex to the EIA report. The EMP includes details of sea lice management. A number of measures are proposed to maintain the health of the farmed fish and to assist in the control of sea lice. Mitigation measures include the use of tube/snorkel nets, permanent underwater feeding and, if required sea lice skirts. Had I been minded to grant permission I am content that planning conditions could require that the development be constructed and operated in accordance with the mitigation measures contained within the EIA report and in the EMP. Conditions could also require that these documents are reviewed and revised. Taking these matters into consideration I am satisfied that the development would not have a likely significant effect on the River Kerry SAC.