

CLOSING SUBMISSION

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2013**

**ON BEHALF OF THE LOCH LOMOND AND THE TROSSACHS NATIONAL PARK
AUTHORITY**

**IN RELATION TO AN
APPEAL BY LOCH LONG SALMON LIMITED**

**AGAINST
THE REFUSAL OF PLANNING PERMISSION FOR THE INSTALLATION OF A MARINE FISH FARM AND
ASSOCIATED DEVELOPMENT INCLUDING SHORE BASE, SLIPWAY, PONTOON AND ROAD
UPGRADES, DATED 4 NOVEMBER 2022**

IN RESPECT OF LAND AT BEINN REITHE, LOCH LONG, G83 7AR

**DPEA REFERENCE: PPA-002-2020
PLANNING AUTHORITY REFERENCE: 2021/0357/DET**

27 OCTOBER 2023

**AS Anderson
Strathern**

1 Rutland Court
Edinburgh
EH3 8EY

1.0 Introduction

1.1 This is Loch Lomond and The Trossachs National Park Authority's ("National Park Authority") Closing Submission in relation to its final stance on the Appeal following the conclusion of Further Procedure. The National Park Authority continue to strongly oppose the Appeal and consider it should be dismissed by the Scottish Ministers.

2.0 Loch Lomond and The Trossachs National Park Authority

2.1 The National Park Authority¹ is the statutory planning authority for (1) the National Park² and (2) for aquaculture in its Marine Planning Zone^{3 4} and it exercises both a development planning and development management function in these related planning jurisdictions.

2.2 Although possessing the full range of statutory planning powers, national parks authorities are markedly different to other "non-national park" planning authorities (who are constituted as local authorities). The key differences which bear upon the approach which the National Park Authority adopted in this matter (and are directly relevant to Scottish Minister's determination of the Appeal) are that the Loch Lomond and The Trossachs National Park ("National Park") has been specifically designated by the Scottish Ministers as a national park because it meets the following statutory criteria:-

"that the area is of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage"⁵

2.3 The National Park is therefore a nationally important landscape designation and of equivalent status to a National Scenic Area in terms of landscape considerations. Unlike local authorities and in recognition of the national status and purpose of its designation, the National Park Authority must ensure that its statutory aims are collectively achieved in a co-ordinated manner and in the event of a conflict greater weight must be given to the first aim which is the conservation **and** enhancement of the natural and cultural heritage of the National Park. Additionally, the Scottish Ministers and the National Park Authority, in exercising functions so far as affecting the National Park must have regard to the National Park Plan⁶.

3.0 Decision on the Application

3.1 On 31 October 2022 a Special Meeting of the National Park Authority's Board convened to consider and determine the (detailed) planning application reference 2021/0357/DET ("Application") by Loch Long Salmon Limited ("Appellant") for planning permission for the installation of a marine fish farm and associated development including shore base, slipway, pontoon and road upgrades at in respect of land at Beinn Reithe, Loch Long, G83 7AR ("Proposal"). The decision on the Application was taken following a site visit and a hearing.

¹ Designated by The Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002

² CD7.2

³ CD7.1

⁴ CD7.3

⁵ Section 2 (2) (a) of the National Parks (Scotland) Act 2000

⁶ Section 14 of the National Parks (Scotland) Act 2000 and CD3.5

3.2 Planning Officers of the National Park Authority prepared a very detailed Board Report⁷ (which recommended after careful assessment that the Application ought to be refused) for that Board Meeting and National Park Authority Board Members, who considered and accepted that report and recommendation, voted, by a majority of ten votes to one, to refuse the Application for the reasons set out in Appendix 1 of the Board Report⁸.

3.3 The Decision Notice⁹ arising from that meeting (containing a summary of the National Park Authority's reasons for refusal) remains fundamental to the National Park Authority's stance in the Appeal and is set out below:-

"The National Park Authority's reasons for refusal are:

The proposed development would not comply with Overarching Policy 1, Overarching Policy 2 or Natural Environment Policy 1 of the Local Development Plan as it would not relate well to the landscape context and setting and would not be sympathetic to local built forms.

The development would have an industrial appearance in an area of undeveloped coastline. The development would not safeguard visual amenity and important views and would not protect or enhance the rich landscape character of the National Park. The development would adversely impact the special landscape qualities for which the National Park has been designated.

The proposed development would not comply with Natural Environment Policy 15: Coastal Marine Area of the Local Development Plan as it would not be in alignment with the National Marine Plan policies and objectives. Specifically, the development would not be in alignment with National Marine Plan Aquaculture Policy 5 that aquaculture developments should avoid and/or mitigate adverse impacts on the seascape, landscape and visual amenity of an area and Objective 2 for Wild Salmon and Diadromous Fish to maintain healthy salmon and diadromous fish stocks.

The proposed development, following a Habitats Regulations Appraisal/appropriate assessment under the Conservation (Natural Habitats, &c.) Regulations 1994, in relation to the Endrick Water SAC would have an adverse effect on the integrity of the Endrick Water SAC, designated for Atlantic salmon and lamprey. The technology proposed has not been trialled in Scotland and there are inherent risks from an escape incident to wild salmon populations which are already fragile. The terms of the Habitats Regulations Appraisal/appropriate assessment (in relation to the Endrick Water SAC) are adopted and it is also considered that the proposed development is contrary to Natural Environment Policy 2 (which repeats the provisions regulations 48 and 49 of the Habitats Regulations 1994) as the derogation tests set out in paragraphs (a) "there are no alternatives and" (b) "there are imperative reasons of overriding public interest" of that policy cannot be met by the proposed development.

It has not been possible to assess the impacts of the proposed woodland removal and compensatory planting as insufficient information has been provided by the applicant. The information provided is insufficient to meet the requirements of the Scottish Government Control of Woodland Removal Policy and the loss of woodland does not meet the test in Natural Environment Policy 8 of the Local Development Plan.

The proposed development would be contrary to the first, second and third statutory aims of The National Park (as set out in section 1 of The National Parks (Scotland) Act 2000). The National Park

⁷ CD1.31

⁸ NPA 22- Minute

⁹ CD1.32

Authority must, in its determination of the application, give greater weight to the first aim “to conserve and enhance the natural and cultural heritage of the area” as it is in conflict with the fourth aim.

3.4 That Decision Notice also lists all of the refused plans and drawings which include the detail of the marine enclosure elevations¹⁰ which form an integral part of the Proposal.

3.5 The National Park Authority specifically adopt the terms of its Board Report and the Decision Notice and contends that its reasons for refusal (contained in the Decision Notice) have been strengthened particularly due to the incorporation of the National Planning Framework 4¹¹ (“NPF4”) into the statutory development plan and a number of key matters and findings that emerged during the Hearing and Inquiry Sessions that were held and which are specifically identified in this submission.

3.6 The terrestrial elements of the Proposal lie within the National Park Authority boundary¹² and the marine elements lie within the National Park Authority’s marine planning zone^{13 14}- the terrestrial and marine elements are connected by the pontoon and umbilical. The National Park Authority assessed the Proposal holistically in terms of its terrestrial and marine elements and it is considered artificial to do otherwise. The terrestrial elements of the Proposal are located within the National Park boundary (on a special landscape of high value) and the marine elements also have significant seascape, landscape and visual effects on these terrestrial elements.

3.7 The National Park Authority do not oppose the principle of marine aquaculture nor do they oppose technological innovation but it is clear from the very detailed Board Report that it was signalling significant concerns on whether the proposed technology for the Proposal was commercially proven or otherwise and identifying that there were material risks associated the technology¹⁵. These concerns were significantly increased as a consequence of Further Procedure and thus the delivery of any claimed economic (including wider sector benefits) or claimed environmental benefits by the Appellant must be assessed in the light of this. The National Park Authority contend that such claims can carry little weight in the overall assessment and do not outweigh the very strong policy and legal arguments militating against the Proposal.

4.0 Appeal against refusal

4.1 The Appellant appealed against the refusal of the Application on 10 February 2023 and the Scottish Ministers issued a “recall direction” in respect of the Appeal dated 6 March 2023.

4.2 The National Park Authority submitted its Response to the Appeal to the DPEA on 27 February 2023 which included a policy assessment of the Proposal against the NPF4 which from 13 February 2023 (date of publication by the Scottish Ministers) formed part of the statutory development plan, along with the National Park Authority’s Local Development Plan (including its adopted Supplementary Guidance) (“LDP¹⁶”).

¹⁰ NPA

¹¹ CD3.2

¹² CD7.2

¹³ CD7.3

¹⁴ With the exception of 4 mooring points that lie within the marine planning zone of Argyll and Bute Council

¹⁵ NPA CD1.31 para 8.3.5

¹⁶ CD3.1

5.0 Hearing Sessions and Inquiry Session

5.1 The Reporter (Mr David Liddell) who has been appointed to report to the Scottish Ministers on the Appeal (following a pre examination meeting) sought further procedure in terms of Hearing Sessions on the Topics of (a) Planning Policy, Related Policy and the Sandford Principle (b) Nature of the Development and (c) Seascape, Landscape and Visual Effects and (d) an Inquiry Session on the Effects on Wild Salmon from the Risk of Escaped Farmed Fish and (e) further written procedure in terms of “Other Consenting Regimes” and on Planning Obligations and Planning Conditions.

5.2 In preparation for each of the Hearing Sessions and the Inquiry Session, the National Park Authority submitted detailed Hearing Statements (including a Rebuttal Statement in respect of Seascape, Landscape and Visual Effects) and an Inquiry Statement on the Effects on Wild Salmon from the Risk of Escaped Farmed Fish together with Professor Adams Report¹⁷, his precognition and that of Fiona Stewart, Natural Heritage Planning Advisor. These statements and other evidential matters are referred to for their terms and adopted into this Closing Submission.

6.0 Key Areas - Determining Issues

6.1 The key areas which the National Park Authority will focus upon in this Closing Submission are the determining issues on which the Hearing Session and Inquiry Session focussed and where key evidence was tested and particularly where there was conflict between the opinions of those representing the National Park Authority and those representing the Appellant.

6.2 There are two principal areas where the Appellant alleged that there had been a change of stance by the National Park Authority since its assessment of the Application in the Board Report. It is not considered that on the evidence this has occurred or that this criticism is in any way justified.

6.3 Firstly, the Appellant alleged that the National Park Authority had not expressly contended at an earlier time that the objectives of National Park designation and the overall integrity of the National Park would be compromised by the Proposal (NPF 4 Policy 4 c)i.). The compromising nature and scale of the impacts of the Proposal on the National Park are clearly evident from the Board Report¹⁸ and are contained within the Reasons for Refusal. Since the incorporation of NPF4 as part of the statutory development plan¹⁹ (which post-dates the Decision Notice) the National Park Authority has consistently referred to the Proposal as contrary to Policy 4 c)²⁰. It is on this basis that the National Park Authority contend that it is fully entitled to invite Scottish Ministers to refuse the Appeal on the basis of NPF4 Policy 4 c) i.

6.4 Secondly, the Appellant alleged that the National Park Authority had changed its stance on the appropriate assessment as set out in Annex 2 (“will have an adverse effect”) of the Board Report to one where adverse effects on the integrity of the Endrick Water SAC could not be ruled out. Regulation 48 Habitat Regulations only allows two possible outcomes to an appropriate assessment - either a project will or will not have such effects- it is in a very real sense a binary assessment. This is reflected in the guidance set out below which the National Park Authority followed.

NatureScot’s Guidance on Appropriate Assessment²¹ which states in particular that:-

¹⁷ NPA 56

¹⁸ For examples see Chapter 8.51 and 9.3 of the Board Report CD1.31

¹⁹ 13 February 2023

²⁰ NPA’s Response to the Appeal and NPA’s Hearing Statement on Policy.

²¹ CD1.3

*“If it can be concluded that the proposal will not adversely affect the integrity of a European site permission may be granted. If not, **or there is uncertainty**, permission must be refused.”²²*

6.5 EU Guidance²³ which states in particular that:-

“To sum up, there are two possible conclusions that can be drawn from this assessment:

- there is no adverse effect and the project or plan can be approved as it stands;*
- there will be adverse effects **or adverse effects cannot be ruled out.**”*

6.6 The key areas on which the National Park Authority will focus in this Closing Submission are set out below and include all of the matters that are covered in the National Park Authority’s Case Summaries.

7.0 Planning Policy, Relevant Policy and the Sandford Principle

7.1 The National Park Boundary is established under the National Park Authority’s Designation Order²⁴ and is set out in a series of deposited maps²⁵. For all planning purposes the area over which the National Park Authority had planning jurisdiction includes all of the terrestrial elements of the Proposal and the vast majority (bar 4 mooring points) of the marine elements²⁶. The NPA’s LDP²⁷ and the NPF4²⁸ contain planning policies that are directly relevant in the development management consideration of both the terrestrial and marine elements of the Proposal.

7.2 Policies of the National Marine Plan²⁹ are also engaged by LDP Natural Environment Policy 15. I also provided an opinion at the Hearing that it was likely that section 15(1) of the Marine (Scotland) Act 2010³⁰ applied to Scottish Ministers. However, it was the National Park Authority’s firm contention that Scottish Ministers consideration of the Proposal was primarily an exercise of their planning function and planning decision-making under the Town and Country Planning (Scotland) Act 1997³¹ and any determination under the Marine (Scotland) Act 2010 would be subsidiary to their overall planning determination.

7.3 The National Park Authority adopts its planning policy assessment and the application of the Sandford Principle as contained in its Board Report³² and its Decision Notice³³. The central reasons for refusal of the Proposal have not changed and relate to its unacceptable landscape, seascape and visual impacts and the significant adverse effect that it would have on the integrity of the Endrick Water SAC. The LDP and NPF4 are in alignment and the Proposal is contrary to both the LDP and the NPF4 individually and cumulatively. The incorporation of NPF4 into the “development plan” has significantly strengthened the case against the Proposal across all of the National Park Authority’s

²² Stage 5

²³ APP7.8

²⁴The Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002

²⁵ CD7.2

²⁶ CD7.3

²⁷ CD3.1

²⁸ CD3.2

²⁹ CD3.6

³⁰ CD7.4

³¹ Section 48

³² NPA

³³ CD1.32

reasons for refusal. The Chief Planner's Letter³⁴ is important in interpreting the NPF4. The National Park Authority consider that it is important to acknowledge that in adopting the NPF4 the Scottish Ministers have provided a comprehensive set of national policies in order to underline the importance of the "plan led" system for considering new development, taking account of the need for long term spatial sustainable planning and specifically to address the climate and nature crises. This step change in approach inevitably involves "raising the bar" and demanding higher standards from development, making important locational choices and a more critical assessment of new development and all of its environmental effects.

7.4 The National Park Authority contend that the Proposal is **contrary** to the following LDP Policies :-

7.4.1 Overarching Policy 1- as it is not development that would contribute to (a) the collective achievement of the four aims of the National Parks (Scotland) Act 2000 and in giving greater weight to the first aim in the event of a conflict with the other aims or (b) sustainable development and it would not relate well to the landscape context and setting nor respect the important landscape of the site and surrounding area.

7.4.2 Overarching Policy 2 (Landscape & Visual Amenity) as it does not safeguard visual amenity and important views protect and/or enhance the rich landscape character and features and areas specifically designated for their landscape value nor protect and/or enhance biodiversity or designated sites.

7.4.3 Natural Environment Policy 1 (National Park Landscapes, Seascapes and Visual Impact) where development requires to protect the special landscape qualities of the National Park in accordance with its Special Landscape Qualities³⁵.

7.4.4 Natural Environment Policy 2 (European Sites) which protects the Endrick Water SAC from development that will adversely affect its integrity.

7.4.5 Natural Environment Policy 8 (Trees and Woodlands) as the Proposal involves loss of part of an ancient woodland.

7.4.6 Natural Environment Policy 11 (Protecting the Water Environment³⁶)(a) and (b). The landscape value of the water bodies are defined in the National Park's Special Landscape Qualities as well as in the Landscape/Seascape Assessment of the Firth of Clyde³⁷.

7.4.7 Natural Environment Policy 15 -Coastal Development that adopts the National Marine Plan Aquaculture policies and the Proposal is contrary to policy 5 that protects landscapes and seascapes and visual amenity and objective 2 that protects wild salmon.

7.5 The principal NPF4 policies which are relevant are NPF4 Policies 1, 2, 3, 4, 6, 9, 10, 13, 29 and 32. Given the approval by Scottish Parliament and the adoption³⁸ of the NPF4 by Scottish Ministers, the NPF4 represents the most recent expression of development plan policy and must be afforded very significant weight.

³⁴ CD3.15

³⁵ CD4.2

³⁶ which is defined in the Glossary as including "coastal waters"

³⁷ CD4.4

³⁸ On 13 February 2023

7.6 NPF4 Policies 1, 2 and 3 are linked, centrally important and seek to address both the “climate” and “nature” crises³⁹ in terms of their intent and outcomes and apply to all development proposals. It is stated that significant weight should be given in the assessment of development proposals. Although not in force at the time the Application was refused, the Appellant has made little or no effort in the significant period of time that has elapsed to address relevant parts of the policies that are engaged and where further information would have greatly assisted an assessment. The Proposal is contrary to these fundamental policies.

7.7 The Appellant’s approach in terms of Policies 1 and 2 is to have due regard to potential wider sectoral benefits that the Proposal could potentially deliver if adopted and scaled up by the industry; the claimed relatively low carbon nature of salmon; use of green tariff electricity and short sea shipping for delivering and collecting fish and waste (at some future time). As the Proposal is at the trial or experimental stage it is in the NPA’s opinion entirely premature and incorrect to make such claims at this time. Any potential contribution the Proposal itself could make must also be carefully balanced against its adverse environmental effects which considerably outweigh any potential benefits. In particular, the wider industry change reasons are not considered relevant.

7.8 NPF 4 Policy 2 requires that development is sited and designed to minimise lifecycle greenhouse gases. No attempt has been made by the Appellant to quantify the significant emissions that will be generated by the Proposal – which are likely to be high given 24 hr requirement to pump oxygen and recover waste from the pens together with significant vehicle movements⁴⁰. Providing quantitative information is a clear expectation of the Chief Planner’s Letter. Without this base line information and assessment, it must follow that the Proposal is contrary to this policy.

7.9 NPF4 Policy 3 a) is engaged and this is accepted by the Appellant. NPF4 Policy 3 a) requires that the Proposal must contribute to the enhancement of biodiversity including where relevant restoring degraded habitats and building and strengthening nature networks and the connections between them. Policy 3 d) which is also engaged requires adverse impacts to be minimised through careful planning and design. The Appellant’s response to this policy is to provide some compensatory planting and even if this were native species of trees it is inadequate as this is by its nature “compensation” and not enhancement. By way of what might be required, the National Park Authority have already received specific biodiversity enhancement proposals⁴¹ from other developers in response to this policy. Absent such enhancement, the Proposal is not in accordance with Policy 3 a) and nor is it in accordance with d).

7.10 The National Park Authority contends⁴² that the Proposal is contrary to NPF4 Policy 4 c) i. Natural Places because the landscape and seascape affected by the Proposal is highly sensitive to this incongruous form of development and would result in a detrimental change to the character and quality of this important part of the National Park.

7.11 “National Park” is a landscape definition and it is (although deriving from separate legislation) the equivalent in status to a “National Scenic Area”. This is confirmed by NatureScot⁴³ and the fact that NPF Policy 4 c) affords equal status to them. The Appellant recognises that the National Park is a landscape designation in their EIA SLVIA written text which notes that “*the quality of the landscape is reflected in its designation as a NP*”.

³⁹ NPA 9

⁴⁰ This is a requirement of the EIA Regulations 2017

⁴¹ Oral evidence of Alison Williamson Planning Officer

⁴² See the NPA’s Response (pg 11) to the Appeal and the NPA’s Hearing Statement on Policy (para 3.6.19).

⁴³ Policy Note

7.12 Accordingly, the National Park Authority are of the opinion that in seascape and landscape terms the objectives of the National Park and its overall integrity would be compromised should the Proposal be consented.

7.13 Only in the event that Scottish Ministers are of the opinion that the NPF 4 Policy 4 c)i. does not apply then it is considered by the National Park Authority (its “*esto*” argument) that the Proposal would in any event fail NPF 4 Policy 4 c) ii. as it will have significant adverse effects on the qualities for which the area has been designated and these are not clearly outweighed by social, environmental or economic benefits of national importance.

7.14 The Proposal is contrary to NPF 4 Policy 4 a) and 4 b) which oppose development proposals that have an unacceptable impact on the natural environment and which requires an appropriate assessment in relation to significant effects on SACs.

7.15 NPF 4 Policy 4 f) is also engaged in terms of the requirement to meet a statutory test which in this case is Regulation 48 of the Habitats Regulations. The National Park Authority is of the opinion that it cannot on the evidence rule out adverse impacts on the integrity of the Endrick Water SAC. Thus, the Proposal is contrary to Policy 4 f).

7.16 NPF 4 Policy 4 e) is also engaged and it requires that the “precautionary principle” will be applied in accordance with relevant legislation and Scottish Government guidance. The Appellant’s EIA also adopts the “precautionary principle”⁴⁴. The National Park Authority contends that it is important for Scottish Ministers to adopt this principle in their decision-making on the Proposal due to its experimental nature and its potentially significant environmental effects.

7.17 NPF4 policy 6 b) is engaged and as the Proposal is contrary to it as it has resulted in the loss of ancient woodland.

7.18 NPF4 Policy 9 b) is engaged and as the Proposal (as development on greenfield land) is contrary to it as it has not been allocated for development and is not explicitly supported by the LDP.

7.19 NPF4 Policy 10 b) i. is engaged and applies to the Proposal because it is located in the undeveloped coast. This imposes a (strict) “necessity” test rather than one of “desirability” and it is contended that the locational requirement may apply.

7.20 NPF 4 Policy 13 is engaged and the National Park Authority consider that the Proposal is located in an unsustainable location and will generate substantial vehicle movement during its construction and operational phase, it also requires substantial road building and it falls within Policy 13 f) “smaller scale development” where it would be important to monitor travel patterns.

7.21 NPF4 Policy 29 – it was agreed between the National Park Authority and the Appellant that this policy applied to aquaculture as the list i - x was non exhaustive. In particular, it is considered by the National Park Authority that policy b) is engaged and the Proposal fails this policy test as it is not suitably scaled, sited or designed to be in keeping with the character of the area.

7.22 NPF 4 Policy 32 – Although this policy encourages and promotes aquaculture it does not do so at the expense of the environment and specifically indicates that migratory fish are to be safeguarded and operating within environmental limits is important to ensure a “thriving marine ecosystem”. It is silent on the role of technological innovation in salmon farming and does not refer to semi closed

⁴⁴ CD1.0002 EIAR Vol 1 para 2.3

containment. In order to protect migratory fish species (salmon and sea trout) it bans open pen salmon farming on the north and east coasts of Scotland which appears to be an acceptance that open pen salmon farming has adverse effects on wild salmon and seatrout. No explanation is given why the north and east coast should be treated differently from the west. Policy 32 requires b) that proposals will comply with LDP and the National Marine Plan and that they will demonstrate that operational impacts are acceptable and comply with the regulatory frameworks. The National Park Authority contend that the Proposal does not comply with these requirements. The Proposal is also contrary to Policy 32 d).

7.23 Although the Scottish Ministers are not bound by the Sandford Principle in legislative terms⁴⁵, they are in any event are bound by the terms of LDP Overarching Policy 1⁴⁶. The National Park Authority contend that the Proposal would be contrary to the first, second and third statutory aims of the National Park Authority and because these are in conflict with the first aim -which is to conserve and enhance the natural and cultural heritage of the area- that first aim must be given priority⁴⁷. It is noted that this primary aim requires conservation and enhancement not conservation or enhancement. By way of context and policy direction, reference is also made to the Scottish Governments' consultation⁴⁸to strengthen the aims of national parks.

7.24 In determining the Appeal, the Scottish Ministers are required to make that determination in accordance with the provisions of the development plan unless material considerations indicate otherwise⁴⁹. The Proposal is contrary to key policies of the development plan and the material considerations do not outweigh the provisions of the development plan.

8.0 The Nature of the Development

8.1 The Proposal proceeds by way of a (detailed) planning application and should the Appeal be upheld there is no latitude available to the Appellant to subsequently amend the Proposal nor can it be considered as a "development or design envelope". In particular, the design detail of the circular pens was confirmed in a letter dated 12 October from Fiizk⁵⁰ and formed the basis of The National Park Authority's planning assessment⁵¹ of the Application and must therefore be the basis of Scottish Ministers' assessment. The requirement for adequate plans arises from the DMR⁵² and that is why the design details and elevations are required. The Appellant's analogy that this was a similar situation to a windfarm simply does not apply, as in this case there is no certainty on the technology to be used and the latitude sought is undefined. This significantly undermines the Appellant's case that the Proposal is commercially proven. It is particularly important to have certainty on the design detail of a proposal at such a sensitive location in order that its environmental and landscape effects can be properly assessed. The Reporter will be aware that it would not be lawful for Scottish Ministers to grant planning permission on the basis that the detailed design drawings are omitted (or subject to

⁴⁵ Under the National Parks (Scotland) Act 2000

⁴⁶ Through section 25 of the Town and Country Planning (Scotland) Act 1997

⁴⁷ The National Parks (Scotland) Act 2000

⁴⁸ NPA135⁴⁹ Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997

⁴⁹ Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997

⁵⁰ APP6.003

⁵¹ NPA 139N and CD1.3 pg 7 Figure 5

⁵² Reg 9 (b) (Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013/155 (Scottish SI)

subsequent changes) and that permission is granted subject to fundamental design details yet to be approved.

8.2 The National Park Authority contend that on the balance of the evidence the Proposal is **commercially unproven and must be considered to be at the trial stage**. This contention (which the Scottish Ministers are invited to accept) fundamentally weakens the Appellant's case and consequently strengthens the National Park Authority's case particularly in relation to its (a) assessment of the negative impacts of the Proposal on the seascape, landscape and visual receptors and (b) significantly undermines the resilience claimed by the Appellant for the Proposal and thus its claimed benefit in reducing escapes of farmed fish and other claimed areas of environmental improvement.

8.3 It is fundamental for the Scottish Ministers to make a finding-in-fact on whether (on the evidence) the Proposal is commercially proven or still at trial stage before they assess its wider environmental effects. On the evidence the National Park Authority contend that it is undoubtedly at the latter (trial) stage. The onus is squarely on the Appellant to demonstrate its case in this matter with convincing and independently verifiable evidence. The Appellant has failed to do this. The evidence submitted by the Appellant on the commercial proven nature or otherwise of the Proposal is both ambiguous and unconvincing and the outcome of the Hearing increased rather than decreased the serious concerns of the National Park Authority in this regard.

8.4 The evidence of the Appellant ⁵³ ⁵⁴ indicates that in Norway, SCCSs have been granted full commercial licenses by the Directorate of Fisheries since 2018 and that before that year, SCCSs operated solely under research or development licenses. The Appellant argues that if the technology is commercially proven in Norway and elsewhere then it must be considered as equally proven in Scotland. That proposition presupposes that the technology is indeed commercially proven (even in Norway or elsewhere) and the National Park Authority do not accept that proposition.

8.5 The Appellant at the Hearing sought to distinguish between research licences on the one hand and development licences on the other, with the latter being argued by the Appellant as broadly the equivalent to a commercial licence. Absent convincing evidence on the Norwegian licensing regime in this matter, it is not possible to draw any particular conclusion on the importance of this distinction and although a licence may be issued it does not follow that a farm will or has been installed.

8.6 The Appellant's evidence indicates that in the last 8 years more than 30 SCCS have been in operation in 150 production cycles. The National Park Authority contend that this is not a significant or sufficient number when compared to the total number of fish farm licences granted in Norway which are understood to be approximately 1000 - and may include those operating under research and development licences.

8.7 No clear-cut and independently verified information has been provided by the Appellant on the exact technology that was utilised for these systems nor the density of stocking nor whether they were used for "post smolt" or "entry to harvest" models.

⁵³ APP6.0012

⁵⁴ APP001.0017

8.8 There is also considerable ambiguity in regard to the efficacy of waste recovery technology proposed and it was established at the Hearing that an 85% waste recovery standard whilst being supported in modelling had never been operated and achieved in practice. In their oral evidence the Appellant referred to 40% waste capture having been achieved elsewhere. The Appellant indicated that it was prepared to take the risk on the Proposal not meeting 85% waste recovery, but the National Park Authority cautions the Scottish Ministers against taking such a risk which is fundamentally contrary to the precautionary principle that the Appellant claims to have adopted.

8.9 The Appellant has placed particular emphasis on evidence produced from CtrlAQUA⁵⁵, which it claims offers an independent academic view on the commercially proven nature of the Proposal. Whilst CtrlAQUA provides some support for the efficacy of SCCS systems in general it is deeply undermining to the Appellant's case that they state that :-

"The semi-closed systems (S-CCS) were in the very early developmental stage when CtrlAQUA started, and still today most of the systems are at the pilot stage."

and within their visions and objectives they state:-

"there are still developmental needs to complete the system to become "off the shelf ready, especially for the semi-closed systems"

8.10 Advice given by Marine Scotland Policy⁵⁶ whilst supporting technology innovation is guarded ("*promising overall*") and does not advise that the SCCS technology is commercial proven and it cannot be taken as an endorsement of the efficacy/resilience of the Proposal.

8.11 Nature Scot⁵⁷ describe the Proposal as "novel"

8.12 Fisheries Management Scotland⁵⁸ state that it can "*see clear benefit in the use of closed and semi-closed containment systems in Scotland **once this technology is proven.***"

8.13 ADSFB state⁵⁹ that it "*can see clear benefit in the use of closed and semi-closed containment systems in Scotland **once this technology is proven.** We have a strong preference for this technology to be deployed and tested within an area where salmon farming is already taking place, rather than expanding the 'aquaculture zone' into Loch Long."*

8.14 Critically, when asked if there was a SCCS Fiizk Certus fish farm in commercial operation using the same technology proposed by the Appellant where waste was pumped ashore, the Appellant answered in the negative. On that basis alone the Proposal (as opposed to the general technology) cannot on any reasonable basis be considered to be commercially proven. It is a concept and it

⁵⁵ APP6.45

⁵⁶ CD2.5

⁵⁸ CD2.2

⁵⁹ CD2.1

presents an unacceptable risk and improper basis for permission to be granted at such an environmentally sensitive location within the National Park.

8.14 The Board Report⁶⁰ makes it explicitly clear that the National Park Authority were not satisfied that the technology was commercial proven.

8.15 The Appellant has failed to provide clear-cut independent verification of commercial use of the intended technology at scale and they have had over 11 months (since the Application was refused) to produce this. The Appellant appears to be well resourced, it could reasonably have provided copies of the licences and permits for SCCSs from Norway and further afield with the provision of all necessary information including stocking density, the exact location, depth of water, proximity to other fish farms and possible impacts with migratory rivers and exact nature of the proposals (including delivering oxygen and the proportions of captured waste). The Appellant's case was largely based on accepting Loch Long Salmon Limited representative's unvouched statements regarding visits to SCCS's at undisclosed locations using unspecified technology. Absent this detailed information, it is simply not possible in the National Park Authority's contention to reasonably conclude that the Proposal is commercial proven.

8.16 The National Park Authority ⁶¹ and objectors have lodged evidence indicating problems encountered in the deployment of SCCSs. In the absence of convincing evidence from the Appellant it was considered necessary to have due regard to these matters which at the least indicate recent and current⁶² problems with the deployment of SCCS technology.

8.17 Whilst the Proposal has received a CAR Licence⁶³ it is important to observe that the fundamental condition of the CAR Licence that seeks to require that 85% of the waste is captured, does not appear to be expressed in enforceable terms.

8.18 The Appellant's contend that the outer bag(s) contained in the Proposal offers a greater degree of protection from predators (seals)- which is the principal cause of farmed salmon escapes from open net fish farms⁶⁴. Although the National Park Authority must exercise caution due to the "trial stage" that the Proposal is at, it accepts (on a logical but unproven basis) that the incorporation of an opaque outer bag should have the effect of reducing escapes from seal predation. However, that claimed resilience from seal predation is unsupported by detailed independently verified studies and the evidence is that grey and common seals are present in Loch Long with scientific studies demonstrating that seals can hunt without using their sight⁶⁵.

8.19 Although the Proposal will include the outer bag, no other part of the Proposal has been improved or strengthened to make it more resilient than existing open net farms. The method for detection of any breaches of containment or failures with the Proposal is no different from any other open net

⁶⁰ CD1.31

⁶¹ NPA 58 and 59

⁶² NPA 101

⁶³ CD1.36

⁶⁴ NPA 56

⁶⁵ NPA 125 and 126

farm. It is obvious that these may go undetected for some considerable time and fish can quickly escape in great numbers. The risk of escapes is greatly magnified because once farmed fish escape (unlike animals in terrestrial confinement) they cannot be retrieved and do disperse quickly and widely⁶⁶.

8.20 The National Park Authority is also concerned at the efficacy of the FEMP and the Technical Standard 2015 (and Code of Practice) in preventing escapes from the proposed technology. Marine Scotland have not explicitly stated that the Technical Standard 2015 (which predates the grant of commercial licences for SCCS in Norway) applies to SCCS and it is concerning that the glossary does not specifically include it⁶⁷. The Scottish Government would appear to have concerns with current compliance evidenced by its intention to issue criminal fines in relation to escape⁶⁸. Concern was also expressed by Marine Scotland in relation to the Carradale incident where it was concluded that there was a continuing need to strengthen the regulatory regimes to prevent escapes occurring⁶⁹.

8.21 The CAR Licence dictates that the maximum weight of farmed salmon that can be held on site at any one time must not exceed 3,452 tonnes. The Appellant claims that the Proposal allows the hyper density of stocking at “post smolt” or “entry to harvest” models. This tonnage was explained by the Appellant as equating to 900,000 smolts per circular pen (x4) (3,600,000 smolts in total) or 300,000 entry to harvest salmon per circular pen (x4) (1,200,000 entry to harvest in total). This is the basis of which the Proposal must be assessed for an Appropriate Assessment under the Habitat Regulations 1994 taking into account the precautionary principle.

8.22 The Appellant places emphasis on Loch Long not being in a disease management area⁷⁰ and whilst that may confer a commercial advantage, that does not outweigh the adverse effects on the seascape, landscape and visual receptors nor the adverse impacts on the integrity of the Endrick Water SAC. As the post smolt method involves their transference to open net farms this significantly undermines the Appellant’s environmental claims for the Proposal.

8.23 The site at Loch Long, although suitable for the Appellant’s requirements, is far from unique in fish farming terms. The Appellant is pursuing a larger SCCS proposal at Loch Linnhe⁷¹ which will not likely require an appropriate assessment for Atlantic salmon.

8.24 The National Park Authority contend that it would be important and necessary for this technology or similar technology to be subject to closely monitored trials at a much lesser scale and at a suitable location prior to a commercial roll-out at the scale proposed. It is the National Park Authority’s contention that such a trial should be conducted at a much less sensitive location in environmental and landscape terms.

⁶⁶ APP6.7

⁶⁷ CD2.5

⁶⁸ APP6.8

⁶⁹ NPA11

⁷⁰ CD2.5

⁷¹ NPA 92 Scoping Opinion

9.0 *Seascape, Landscape and Visual Effects*

9.1 In relation to Seascape, Landscape and Visual effects, the National Park Authority's case centres on the following key issues:

9.1.1 The landscape and seascape of the Appeal site and its setting are highly sensitive to the introduction of an incongruous fish farm development and in considering the intrusive nature of prominent industrial infrastructure, it would result in a detrimental change to the character and quality of the National Park. Consequently, the National Park Authority considers that the Proposal would compromise the objectives and the overall integrity of this nationally important landscape; and

9.1.2 The Appellant's Seascape Landscape and Visual Impact Assessment (SLVIA) cannot be relied upon to provide a robust assessment of effects. As such, the Appellant's case is based on some fundamental mischaracterisations and errors and therefore, it should carry little weight in the Appeal decision.

9.2 The National Park is a nationally important landscape designation that with a wealth of Special Landscape Qualities, is highly valued by local residents and visitors from around the world. In practice, the outstanding scenic quality of the site and its setting is underpinned by a dramatic composition of a long and narrow *fjord like* loch, that with steep forested/wooded slopes leading down to a secluded rocky coastal edge, is contained by a backdrop of stunning mountainous scenery. With an absence of development, especially along the western side of the loch, the local landscape and seascape exhibit a distinctive undeveloped appearance, with a tranquil quality.

9.3 This highly scenic composition also underpins the enjoyment and visual amenity of a large number of people undertaking recreational activity in the surrounding seascape/landscape and those passing through it. As evidenced in the *Landscape/Seascape Assessment of the Firth of Clyde* ("LSAFC") and the LDP, this part of Loch Long forms a marine gateway⁷² into the National Park. The nearby A814 also forms a road gateway into the National Park, and along the Three Lochs Way (one of Scotland's Great Trails), recreational users also enter the National Park in quite close proximity to the site. Collectively, these factors make a vital contribution to the overall character and quality of the National Park.

9.4 As a new technology in Scotland, it is important to understand the appearance of the Proposal and its differences with more traditional fish farm infrastructure. In considering effects therefore, it is clearly apparent that:

9.4.1 With a cluttered composition of cage-based infrastructure, the marine components of the Proposal are much more intrusive than a typical traditional fish farm;

9.4.2 The marine components would occupy most of the narrow loch width, thus overwhelming its narrow form and the appreciation of open water (cages and associated infrastructure would occupy approximately 40% of loch width, and with marine lighting and buoys, approximately 70%);

72 Reference is made to the LDP- CD3.1 page 49 "Arrochar & Succoth. Arrochar and Succoth lie in a stunning setting at the top of Loch Long and surrounded by hills and mountains. The Villages have grown along the loch shore. The area has fantastic opportunities to develop more as a **marine gateway** with the redevelopment of the former Torpedo site."

9.4.3 Considering the various terrestrial components (including office, workshop and storage areas, oxygen tanks, feed silos, water treatment plant and a new access track etc.), the overall appearance of the Proposal is considered to be industrial and highly incongruous; and

9.4.4 As there are no existing fish farms in Loch Long, the Proposal would be highly uncharacteristic.

9.5 With a 50 m diameter and an 8 m height, the mass of the five cages, (with a cluttered composition of large steel containers, poles, netting and rails etc.) would without doubt, appear very prominent on the open water.

9.5 In its assessment of the Application the National Park Authority engaged the services of Mr Harman (a Chartered Member of the Landscape Institute) and the Scottish Ministers are referred to his advice given in September 2022⁷³. The National Park Authority indicated in its Response to the Appeal and Hearing Statement on Policy that the Proposal was in conflict with NPF4 Policy 4 c). Mr Harman's advice was incorporated into the Board Report and is consistent with the Hearing Statement and Hearing Rebuttal Statement he provided, and the evidence he gave at the Hearing Session held on 26th September 2023.

9.5 In Mr Harman's opinion (which the National Park Authority adopt) the landscape and seascape of the Appeal site and its setting are highly sensitive to the introduction of an incongruous fish farm development and considering the intrusive nature of prominent industrial infrastructure (i.e the Proposal), it would result in a detrimental change to the character and quality of the National Park.

9.6 In relation to landscape character, the Proposal would significantly erode and detract from several key characteristics that are integral in defining the local landscape and associated gateway of the National Park. These are:

9.6.1 Steep-sided hills, with pronounced summits, which rise dramatically from narrow sea lochs and deep glens;

9.6.2 Long and narrow sea loch of Loch Long;

9.6.3 Some hills form key landmark features in views along the sea lochs; and

9.6.4 Settlement largely absent even from the narrow rocky coastal edges along the sea lochs and some parts feel relatively remote.

9.7 It would also introduce man-made structures into the coastline and associated noise and disturbance that is not currently experienced. Lighting on land and water-based infrastructure would also be very obvious during dark hours, contrasting with the otherwise unlit and undeveloped locality.

9.8 In relation to the *Shepherd's Point to Coilleasan Coastal Character Area*, it is clearly apparent that the Proposal would notably erode or compromise most seascape key characteristics. Of particular concern, the Proposal would:

9.8.1 Detract from the enclosed and steeper sided loch as it reaches into the rugged mountains of eastern Argyll towards Arrochar;

9.8.2 Compromise the existing irregularly distributed pattern of onshore development in an area of steep sided coast that is remote and difficult to access;

9.8.3 Compromise the undeveloped and highly scenic marine gateway to the National Park;

9.8.4 As the only fish farm in Loch Long, be highly uncharacteristic;

⁷³ NPA 132

- 9.8.5 Overwhelm the narrowness of this stretch of loch, which creates drama, and is especially accentuated travelling north to the head of the loch;
- 9.8.6 Detract from the semi-natural character of the woodland on the lower slopes;
- 9.8.7 Compromise the views that extend up and down the long length of the loch
- 9.8.8 Compromise views from access routes that offer fine panoramic views, both from higher elevations and from along the shore;
- 9.8.9 Detract from the experience of seclusion; and
- 9.8.10 Introduce visual clutter from the inter-visibility with the MOD buildings and structures outside of the National Park.

9.9 The Proposal would also significantly erode several Special Landscape Qualities that are integral in defining the landscape and seascape gateway into the National Park, such as tranquillity and the scenic composition of the narrow loch enclosed by steep rising hills. As such, seascape effects are judged to be detrimental to the integrity of the *Shepherd's Point to Coilessan* CCA.

9.10 Furthermore, the Proposal would result in significant visual effects on the users of Three Lochs Way, the Core Path to the north of the site, the A814, recreational users on the loch, and from most open parts of accessible hill slopes and summits within the ZTV at up approximately 5 km from the site. As Loch Long forms a very important visual focus, the complex composition of industrial infrastructure would appear very obvious, resulting a notable juxtaposition with the surrounding scenic views of undeveloped forested sides and uninterrupted open water.

9.11 The National Park Authority, following a careful and detailed assessment of the seascape, landscape and visual effects consider that the Proposal would compromise the objectives and the overall integrity of the National Park and therefore, the Appeal ought to be dismissed as it is contrary to NPF 4 Policy 4⁷⁴ c) i. This policy was not part of the development plan when the Application was considered by the National Park Authority at its Board Meeting. It is however clear from the Decision Notice⁷⁵ that the National Park Authority had very serious concerns regarding the adverse seascape, landscape and visual impacts of the Proposal on the National Park and consequently, these were key reasons for refusal.

9.12 SNH' *Draft Note on the Legislative and Policy Framework for NPs and NSA's*⁷⁶ was considered at the Hearing Session. The National Park is designated as it is an area of "outstanding national importance" for its natural and cultural heritage. It was observed that in the Glenshero Wind Farm decision⁷⁷ the impact of a windfarm proposal outside of the Cairngorms National Park Area was considered to compromise the integrity of that National Park. In that policy framework interpreting when the "objectives of a designation" were "compromised" was read (as applied to the Appeal) as having regard to whether (1) the National Park Authority's four statutory aims were compromised and also (2) whether the overall integrity of the NP was compromised. The Decision Notice recites why the Proposal conflicts with the National Park Authority's statutory aims and engages the Sandford Principle. It is clear from the definition in the policy framework of "overall integrity" that adverse effects to part of a National Park could result in damage to the unity or soundness of the whole. A similar reasoning and conclusion on integrity of a National Scenic Area was also made by the Reporter⁷⁸ in the Arran Fish Farm Appeal. This position is reflected in paragraph 53 of NatureScot's

⁷⁴ CD3.2

⁷⁵ CD1.032

⁷⁶ App4.5

⁷⁷ APP5.11 and APP5.12

⁷⁸ APP5.1

*Draft Guidance for Assessment of Effects on Special Landscape Qualities*⁷⁹ which states “For integrity to be compromised, this does not depend on an extensive area or large number of SLQs being significantly affected.” It is therefore the National Park Authority’s case that the Proposal would compromise the objectives and the overall integrity of the National Park.

9.13 The National Park Authority also adopt Mr Harman’s criticisms of the Appellant’s assessment of the landscape, seascape and visual matters as contained in his Hearing Statement⁸⁰, and consider that they severely undermine the Appellant’s case in this regard. It was notable that the author of the SLVIA did not participate in the Hearing Session.

9.14 Given these fundamental shortcomings, the Scottish Ministers should eschew the confusing and often contradictory narrative adopted by the Appellant. The cogent, robust and reliable assessment of the Proposal is that given by National Park Authority.

9.15 The landscape and seascape of the Appeal site and its setting is highly sensitive to the introduction of an incongruous fish farm development and considering the intrusive nature of this prominent industrial infrastructure, it would result in a detrimental change to the character and quality of the National Park. Quite simply, the Proposal is located at an inappropriate location. Scottish Ministers ought therefore, to give priority to conserving the National Park for future generations to enjoy, as Legislation and Policy intends.

10.0 Effects on Wild Salmon from the Risk of Escaped Farmed Fish

10.1 The National Park Authority was the “competent authority” for the purposes of the Habitats Regulations⁸¹ in relation to an appropriate assessment (“AA”) it undertook concerning the potential introgression impacts of escaped farmed salmon from the Proposal on the integrity of wild salmon in the Endrick Water SAC⁸².

10.2 The National Park Authority is unable (on the evidence) to **rule out** an adverse effect on the integrity of Endrick Water SAC from these impacts and it is not certain beyond reasonable scientific doubt that adverse impacts on the integrity of the Endrick Water SAC will not occur⁸³. Therefore the Proposal cannot be consented unless there are no alternatives and imperative reasons of overriding public interest apply⁸⁴.

10.3 Introgression⁸⁵ (which involves the movement of genetic material from farmed to wild salmon) is an acknowledged harmful effect and poses potentially a serious threat to the wild salmon population in the Endrick Water SAC. Hybridisation⁸⁶ can impact on fitness resulting in a significant negative pressure on the viability of wild populations. Mr Wright confirmed that the general risk of introgression posed by salmon farming is not in dispute⁸⁷.

⁷⁹ NPA138

⁸⁰ See the conclusion at paragraph 10

⁸¹ The Conservation (Natural Habitats, &c.) Regulations 1994

⁸² NPA 49

⁸³ Regulation 48(5) and CD5.5 CJEU Waddenzee case (C-127/02)

⁸⁴ Regulation 49 – no evidence was led that this applied and the NPA are of the opinion that this high test could not be met by the Proposal.

⁸⁵ NPA 44 -Executive summary and glossary

⁸⁶ NPA 44 glossary

⁸⁷ Mr Wright’s precognition paragraph 1.

10.4 The National Park Authority and the Appellant diverges on which of the conservation objectives are relevant for the AA, with the Appellant being of the opinion that only Objective 2 part a is relevant. The National Park Authority is of the opinion that Objective 1 - avoidance of significant disturbance to the qualifying species is also relevant and also that there were additional objectives to consider regarding ensuring that the qualifying species were maintained in the long term.

10.5 It is also relevant to the AA that Atlantic salmon in the Endrick Water are genetically distinct from other populations locally and from wider Scotland⁸⁸.

10.6 Professor Adams confirmed that established scientific evidence is now very clear that farmed salmon extensively interbreed successfully with wild salmon in rivers where they both occur - this has already occurred extensively along the West coast of Scotland where 38% of rivers carry fish farm origin salmon genes⁸⁹ and this effect has also been detected in the Endrick⁹⁰. The overall evidence points to a strong correlation between introgression and the proximity to areas of marine aquaculture⁹¹.

10.7 The Endrick Water SAC is classified at grade 2⁹² which means that there is only a 60-80% chance of it reaching its conservation limit. It is in decline and the most recent evidence demonstrates that the health of the juvenile salmon population is “unfavourable and declining”⁹³. The population is thus in a very fragile condition. In addition, it is a very small salmon river with an estimated “carrying capacity” of approximately 300-400⁹⁴ adult spawning fish- the actual population is likely to much less than that given its condition. Consequently, the impact of introgression will have proportionally a much greater effect than on a larger population⁹⁵.

10.8 The National Park Authority (as does the Appellant) adopt the precautionary principle⁹⁶ but specifically the National Park Authority do not adopt an “absolutist stance” in relation to the standard of scientific proof required – in particular it does not require absolute certainty.

10.9 The National Park Authority is of the opinion that a reasonable worst-case scenario (adopting the precautionary principle) may involve a single mass escape of farmed salmon from the Proposal with potentially very high numbers of sexually mature farmed salmon entering the Endrick Water SAC. Evidence from recent escapes in the Clyde would suggest escaped salmon are likely to enter the Endrick Water SAC and interbreed. As a result of the well-established low survivorship of the resulting hybrids, which will not contribute to the following generation this would have very significant, arguably catastrophic and demographic impacts on the population that would follow. Escapes at a lesser level must also be considered to cause harm to the Endrick Water SAC through hybridisation and introgression.

10.9 The survivability of farmed salmon from the time of escape until the wild salmon breeding season (November -January) may be determined by a range of factors. Farmed salmon that have only been in units at sea for a short period (post-smolts) are more likely to naturalise when they escape but may

⁸⁸ NPA 56

⁸⁹ NPA 44

⁹⁰ NPA 44 Figure 14

⁹¹ NPA 44

⁹² Appendix 2 to Board Report CD1.31

⁹³ NPA 114

⁹⁴ Oral evidence of Professor Colin Adams

⁹⁵ NPA 106 and NPA 109

⁹⁶ CD6.4 and CD3.13 and oral evidence of Fiona Stewart Natural Heritage and Planning Advisor

take longer to reach sexual maturity. Larger fish can be sexually mature at the point of escape but their ability to naturalise is likely to be lower⁹⁷.

10.10 It is a very important factor that the Proposal's holding units that are markedly larger than conventional cage units and also allow for a stocking density that is considerably higher than the industry norm⁹⁸ at "post smolt" or "entry to harvest" models - which means a containment breach will lead to a significantly greater loss of farmed fish than a conventional open net farm. The tonnage (3,452 tonnes) of farmed salmon for the Proposal was explained by the Appellant as equating to 900,000 smolts per pen (x4 = 3,600,000 smolts in total) or 300,000 "entry to harvest" salmon per pen (x4 = 1,200,000 "entry to harvest" salmon in total). It is against these numbers and the risk that they present that an AA requires to be undertaken.

10.11 Although NatureScot were satisfied that the Proposal would not have an adverse effect on wild salmon, they did not provide evidence to support this position in relation to the risk of introgression effects and relied upon the Environment Management Plan and Technical Standard. There was no evidence from NatureScot to support the argument that there would not be the same risk of fish escapes as recorded elsewhere within the industry (Scotland's Aquaculture).⁹⁹

10.12 The National Park Authority were on the evidence entitled in its AA to give due weight to the opinions of other specialist consultees¹⁰⁰.

10.13 AA requires to take account of the manner in which a proposal is to be undertaken and any conditions¹⁰¹. This involves a careful analysis of the nature of the Proposal and mitigations and in this matter the National Park Authority adopt its case that the technology proposed for the Proposal remains commercially unproven and at the trial stage and that the mitigations including the outer P.V.C bag, FEMP and Technical Standard are insufficient to address its concerns regarding escapes. It was not demonstrated that the outer P.V.C bag due to its opaque nature was adequate protection against seals^{102 103}.

10.14 Although evidence of no escapes from these SCCs units was presented by the Appellant, this does not mean that escapes are not possible as their use has been limited.

10.15 The Appellant's case was that for escapes to have an adverse impact on populations this would require an influx of sexually mature salmon and that only at levels where escapes comprised 30-50% of the population were clear changes visible¹⁰⁴. Professor Adams indicated that in assessing the impact of a mass escape on the Endrick Water SAC that the 30-50% level could easily be achieved and significantly exceeded.

10.16 The Appellant's own reasonable worst-case scenario proposed the level of escapes from the Proposal in the order of 10% (based on Carradale event) of the total fish held which amounts to

⁹⁷ Oral evidence of Professor Adams

⁹⁸ CAR licence CD1.36

⁹⁹ NPA61

¹⁰⁰ Regulation 48 (4)

¹⁰¹ Regulation 48(6)

¹⁰² NPA 125, 126

¹⁰³ seal damage is the reported cause of escapes in only comprises 35% of reported escapes hole in the net, human error and weather together resulting in 41% of reported reasons for an escape NPA 61

¹⁰⁴ APP6.63 and APP6.65

120,000 “entry to harvest salmon” or 360,000 smolts escaping¹⁰⁵. That is still a very significant number of possible farmed fish escapes close to a fragile salmon population.

10.17 Professor Adams suggested a figure of 50% escaping from a single unit was more appropriate - equal to 450,000 smolts. Applying the Carradale escape data (where 4% entered the Endrick Water SAC system) this indicates that up to 18,000 fish could enter the Endrick Water Endrick Water SAC. The impacts of an escape of “entry to harvest” fish might result in 6,000 farmed salmon (300,000 x 50% x 4%) entering the Endrick Water SAC. Although the estimate for smolt entry to the Endrick Water SAC does not take into account any additional mortality resulting from the time taken for these juvenile fish to mature, the estimated numbers vastly exceed the likely wild salmon spawning population size by orders of magnitude.

10.18 Once salmon escape there is no practical way of recovering them. At this level of invasion, the numbers of sexually mature farmed salmon entering the Endrick Water SAC would result in a mass hybridisation event, simply overwhelming the fragile and small wild salmon population in one single breeding season which would create a very significantly damaging population level effect from which the Endrick Water SAC salmon population may not recover¹⁰⁶.

10.19 Although in cross-examination it was put to Professor Adams that this effect would be potentially mitigated in one season by the numbers of hybridised fish having migrated and being out at sea when the non-hybrids returned for breeding, he indicated that this mitigation would not apply because not all of the hybrids would migrate out in the first year and would remain in the Endrick Water SAC to the detriment of returning non-hybridised salmon. Even if this was a mitigating factor the detriment to the population would far exceed what could be argued as reasonable or minor for an SAC feature of interest.

10.20 In terms of dispersal of farmed fish from an escape, the monitoring¹⁰⁷ of the Carradale incident demonstrates that by far the highest number of escaped salmon were to be found in the River Leven (which is the migratory pathway for wild salmon entering Loch Lomond and moving up to the Endrick Water SAC to breed). Additionally, escaped salmon were found to be entering rivers 255km from Carradale. The Endrick Water is 55Km from the Proposal site and well within the dispersal range of escaped salmon. The report¹⁰⁸ cautions that although no immediate significant genetic impact in the spawning season was detected in Scotland following the escape, that may be due to the lack of sexual maturity of the fish.

10.21 Although the factors¹⁰⁹ identified by Mr Wright that influence interbreeding by escapees are largely accepted it is considered that his evidence of farmed salmon having a 1/3rd the reproductive success of wild salmon and a survivability of 16% of wild salmon when assessed against the reasonable assumption of a mass escape of from the Proposal represent a considerable risk to the Endrick Water SAC.

10.22 Mr Wright’s case on introgression was largely based on the adoption of Castellani¹¹⁰ which Professor Adams distinguished from a reasonable worst-case scenario occurring at the Endrick SAC which included a single escape event that could greatly surpass 50% of the population of wild salmon

¹⁰⁵ Evidence of Mr Wright in cross examination

¹⁰⁶ Oral evidence of Professor Adams

¹⁰⁷ APP6.7 Table 1.7

¹⁰⁸ APP6.8

¹⁰⁹ Para 7 of Mr Wright’s precognition

¹¹⁰ APP6.5

-which might only be 200 or less wild salmon. He indicated that the Norwegian institute had established a much lesser figure (10%) of intrusion that was considered harmful.

10.23 The wild Atlantic salmon population in the Endrick SAC is very small and in a fragile and declining condition. It is more vulnerable to the introgressive impacts from escaped farmed salmon than a larger river with a much larger population. Evidence of introgression which is a harmful effect in the Endrick Water SAC already exists, and introgression is contrary to its conservation objectives.

10.24 The Proposal will introduce farmed salmon populations in very large and unprecedented numbers into a marine environment using commercially unproven technology which is at the trial stage.

10.25 Adopting a reasonable worst-case scenario, the National Park Authority are very concerned on the evidence that a single event mass release of farmed salmon from the Proposal could simply overwhelm the small and fragile population of wild salmon in the Endrick SAC.

10.26 The science in this whole matter is far from fully developed however analysis of the available scientific evidence clearly points to a significant risk from introgression seriously undermining the conservation objectives of the Endrick Water SAC.

10.27 Adopting Wadenzee¹¹¹, the Scottish Ministers as competent authority (taking account of the AA of the implications of the Proposal on the Endrick Water SAC in light of its conservation objectives) can only grant planning permission if they have made certain that it will not adversely affect the integrity of that highly protected site and qualifying species. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

10.28 The National Park Authority are of the opinion on the evidence before the Inquiry that clear-cut scientific doubt remains (due to a range of complex factors and in certain material instances a lack of evidence) as to the absence of such adverse effects.

11.0 Overall Conclusions

11.1 The National Park Authority contend that the Proposal does not comply with key relevant policies of the LDP and NPF4 and there are no material considerations that would justify a departure from the statutory development plan. The effect of the incorporation of the NPF4 into statutory development plan has strengthened considerably the reasons for refusal of the Proposal.

11.2 The National Park Authority are not opposed to the principle of aquaculture but there is a careful planning balance to be struck in ensuring that the National Park is conserved and enhanced while also supporting social and economic wellbeing.

11.3 As the Proposal would be contrary to the first three statutory aims of the National Park Authority then greater weight (priority) needs to be given to the first aim. Although the Scottish Ministers do not appear to be directly bound by the Sandford Principle under the National Parks (Scotland) Act 2000 – it would appear surprising that it wasn't intended to apply in such an appeal situation such as

¹¹¹ APP5.6

this - they are in any event bound in their determination of the Appeal as the Sandford Principle is embedded in LDP Overarching Policy 1¹¹².

11.4 The National Park Authority acknowledge that the salmon farming industry in Scotland is working towards alternative technologies to reduce environmental impacts but contend that on the evidence, the Proposal cannot be considered to be commercially proven and must be considered to be at the trial stage. That unproven commercial nature of the Proposal seriously undermines any direct or sector-wide economic or environmental claims made by the Appellant.

11.5 The National Park Authority have adopted the precautionary principle¹¹³ in its approach to its assessment of the Proposal which due to its hyper stocking density will make it (if consented) one of the largest fish farms in Scotland and it commends adoption of that principle to the Scottish Ministers.

11.6 The National Park Authority are deeply concerned regarding the seascape, landscape and visual impacts of the Proposal and are of the opinion that it would exhibit an industrial appearance with significantly greater impacts than a conventional open pen fish farm. The Proposal would seriously undermine many of the distinctive characteristics and qualities of the surrounding seascape and landscape and consequently, the strategic importance of this undeveloped gateway into the National Park would be compromised. Loch Long is without doubt an iconic and accessible fjord like loch. That is why in particular the National Park Authority consider that NPF4 Policy 4 c) i. is engaged and the Proposal is contrary to it.

11.7 The Proposal is in serious conflict with a number of statutory development plan policies and particularly those which protect the nationally important seascape and landscapes of the National Park as set out above. In determining the Appeal, the Scottish Ministers are required¹¹⁴ to make their determination on the Appeal in accordance with the provisions of the statutory development plan (LDP and NPF4) unless material considerations indicate otherwise. There are no material considerations that would justify a departure from the statutory development plan.

11.8 Therefore, the Scottish Ministers are respectfully invited to dismiss the Appeal and accordingly to refuse planning permission.

11.9 The requirements of the Habitats Regulations 1994 are also incorporated into the statutory development plan¹¹⁵ and must form part of the Scottish Ministers planning policy as well as its legal assessment. In the event that the Scottish Ministers are minded to uphold the Appeal they will themselves be required as “competent authority” to undertake an appropriate assessment¹¹⁶ not just in relation to the impacts of introgression by escaped farmed fish on wild salmon in the Endrick Water SAC but also in relation to the other matters including impact of sea lice and also in relation to the potential impacts on the Ailsa Craig SPA. In undertaking those appropriate assessments the Scottish

¹¹² First bullet point of Overarching Policy 1:

“All development should contribute

to the National Park being A successful, sustainable place by:• Contributing to the collective achievement of the 4 aims of the National Parks (Scotland) Act, and giving greater weight to the first aim of the National Park if it appears to be in conflict with the other National Park aims,..”

¹¹³ NPF4 Policy 4 e)

¹¹⁴ Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997

¹¹⁵ LDP Policy 2 and NPF4 Policy 4 b)

¹¹⁶ Regulation 48 of the Habitats Regulations 1994

Ministers must consult¹¹⁷ with NatureScot and in the National Park Authority's opinion also consult with it and other interested stake-holders.

11.20 The National Park Authority are of the opinion that there is an insufficient case to support a derogation under Regulation 49 of the Habitat Regulations 1994 as it cannot be said that there are not alternatives or that the Proposal could not be conducted at an alternative location and there are no imperative reasons of overriding public interest ("IROPI") that apply¹¹⁸. If Scottish Ministers are considering IROPI then the National Park should be consulted.

The National Park Authority have set out under separate cover its draft scope for Planning Obligations and proposed Planning Conditions that ought to be applied should the Appeal be upheld.

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¹¹⁷ It is insufficient for Scottish Ministers to rely on the NatureScot's response to National Park Authority's request for advice under Regulation 48(3) of Habitats Regulations 1994

¹¹⁸ Regulation 49 of the Habitats Regulations 1994