

**Delegated or Committee Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle**

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<b>Reference No:</b>	20/01345/MFF
<b>Planning Hierarchy:</b>	Local Application
<b>Applicant:</b>	MOWI Scotland Ltd.
<b>Proposal:</b>	Formation of fish farm (Atlantic Salmon) incorporating twelve 120m circumference circular cages and siting of feed barge
<b>Site Address:</b>	North Kilbrannan Fish Farm, North of Cour Bay, Kilbrannan Sound, East Kintyre

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## **SUPPLEMENTARY REPORT NO. 5**

### **1.0 INTRODUCTION**

The purpose of this report is

- To advise Members of a further late representations received since the publication of SR4.

### **2.0 LATE REPRESENTATIONS**

#### **Mr Harry Nickerson, Director, Cour Ltd. (email dated 27/11/23)**

Our concern about the handling of the above CAR Licence and Planning Application continues to grow and we are more convinced than ever that consenting it would be unlawful. We first asked SEPA for the scientific analysis relating to the risk of harm to swimmers as required by the CAR Regulations in October 2020 (three years ago). As acknowledged by SEPA, we pressed for a response in August this year and again on 9 November. A response has finally arrived less than three working days prior to the Public Hearing which does not give us reasonable time to consider and question their conclusions which seem to have ignored much of the evidence without explanation. We wonder whether the Public Hearing should go ahead until all involved have had time to understand how SEPA have suddenly become so sure of their position in the face of so much evidence to the contrary. It seems that the facts have not changed in that no UK or Scottish Authority has conducted a formal peer reviewed analysis of the safety of swimming in any emissions from a fish farm. In the absence of any published background information, we are separately submitting Freedom of Information Requests to the Council and SEPA to ask for all information leading up to this development. We have also become aware of official evidence that strengthens our arguments considerably and makes it even harder to prove that there is no risk of harm to humans. If Councillors are not convinced by this accumulation of evidence to reject the application, then at the very least, consenting this application before this issue has been properly resolved will infringe the precautionary principle.

We have only had time for a brief look at SEPA's letter and have managed to obtain some very preliminary analysis which we attach, but initially it seems to raise as many questions as answers and we list a few examples.

SEPA have based their review on the information in the report prepared by the consultancy, WCA, and Salmon Scotland. They make no mention of the evidence we have provided from three totally separate, highly qualified and independent experts. These experts pointed out serious flaws in the WCA Report many of which were obvious even to non-experts and concluded that the chemical discharges were not safe. These experts also presented evidence on accumulative and secondary harmful effects that were not considered by the WCA Report at all. SEPA also do not mention that they have previously been alerted to research from the Canadian Government which may be the only officially endorsed evidence on the degradation of Hydrogen Peroxide in sea water (report attached). The Canadian Government evidence clearly states that Hydrogen Peroxide takes much longer to degrade in seawater than originally believed, which suggests that risk has been severely underestimated by the WCa report. SEPA have not explained why the Industry's evidence, which is based on data that is over 20 years old, is more reliable than the independent experts who have impartially considered all available evidence up to the present day. Nor have they explained why they are ignoring the corroborating evidence from the Canadian Government. We are concerned at the lack of transparent, accountable and peer reviewed scientific decision making.

We wish Councillors to be aware that the evidence from:

1. The Canadian Government
2. A Professor of Ecotoxicology / Marine Scientist / Member of the UK Hazardous Materials Committee
3. An Emeritus Professor of Medicinal Chemistry and
4. An Occupational Hygienist specialising in Industrial Health and Safety

all suggests that this planning application will create the risk of harm to swimmers. Against this, only Salmon Scotland argues that it is safe, which SEPA appear to endorse in spite of the very obvious flaws and apparently without producing any valid evidence of their own. In this situation, we cannot see how Councillors can legally consent this planning application and even if they are not convinced by such overwhelming evidence, they must at the very least apply the precautionary principle unless or until SEPA provide proper peer reviewed scientific evidence to support their position.

SEPA state that '...the concentrations of hydrogen peroxide will reduce rapidly (i.e., within minutes) after discharge and within a short distance from the farm (i.e., 10s of metres rather than 100s of metres) because of dispersion and dilution.' The WCA Report, on which SEPA based their review, does not support this view and even the Annex appended to the report by Salmon Scotland contradicts SEPA as it states '.....dispersion in an open-water environment is expected to reduce concentration below the NELs quickly, in as little as 30 minutes and generally within a distance of 2-300 m.....' It is not clear how SEPA have concluded that the risk is reduced to 10s of metres when the data that they are using suggests distances of 2-300 metres. The Canadian Government evidence also contradicts SEPA's deductions and proves that the area and duration of risk are significantly greater. We note that in the hearing agenda papers, the proposed mitigation measure of alerting the

public when treatment is occurring seems to have been removed, presumably relying on SEPA's new advice that no risk exists. This needs a lot more consideration when there is no evidence whatsoever that the risk is zero and a lot of evidence including from Salmon Scotland and WCa that some risk does exist. Accepting any risk of harm to public safety is unlawful and where such an obvious disparity exists between Statutory advice and the evidence, it is not reasonable to ignore that risk and the precautionary principle should apply until proper scientific evidence provides the appropriate level of certainty.

SEPA originally told us that they could not assess the risk of harm to humans due to their lack of scientifically qualified staff to conduct toxicology assessments. We request that SEPA confirms whether they have recruited this expertise recently. If they have acquired the relevant expertise, we request them yet again to produce the peer reviewed study and resulting official policy document regulating the safety of swimmers near fish farms. If they do not have the relevant expertise, nor have conducted a proper peer reviewed study culminating in an official policy, then further justification is required to disregard the precautionary principle when there is unambiguous Prima Facie evidence from the Canadian Government and three independent experts that the risk of harm exists. Additional justification to ignore the precautionary principle is required when every other relevant UK and Scottish authority have stated that they have never studied this issue and therefore cannot say that there is no risk of harm to humans.

SEPA have not provided any credible scientific evidence which we originally requested in 2020 about how far a hazard will extend and how long it will last. They seem to be relying entirely on the Industry's own evidence, without any peer review and then adjusting the conclusions without any supporting studies. Furthermore, there seems to be no recognition that multiple objectors have stated that recreational activities are not confined within Cour Bay and take place at the proposed site of the fish farm itself. Without these basic facts and independent official evidence, it seems hard to justify any further decisions and the precautionary principle must apply.

SEPA state that only Hydrogen Peroxide is potentially discharged above no effect levels and even children of 40kg are not at risk. We have not had time to assess this deduction, but the industry's own evidence of discharges above no effect levels clearly contradicts the absence of any risk and it seems that SEPA may be confused about the 40kg threshold which is more relevant to Azamethiphos discharges. We do know that the assumptions in the WCA Report (which the independent experts all considered unreliable), show that a child of 35kg could be exposed to Azamethiphos at potentially harmful levels. Furthermore, the independent experts suggested that more realistic assumptions were needed such as recognising that accidental swallowing will normally occur when the victim is also immersed in the chemical and therefore doubly exposed. Even a fully grown male who swallows two small mouthfuls of contaminated water will be above the no effect level and that can happen instantly if you capsize a kayak. The independent experts have also highlighted the greatly increased risk to a human foetus carried by a swimming mother and the Veterinary Medicines Directorate have identified the same risk to pregnant female operatives. Pregnancy is a Protected Characteristic, so failing to assess this risk is potentially discriminatory. It is therefore hard to see how SEPA have arrived at their conclusion and further explanation is required. We also do not believe that the Council or SEPA have conducted an Equality Impact Assessment on the pregnancy issue as required by the Equality Act 2010.

SEPA have not commented on the Veterinary Medicines Directorate's evidence that their chemical licences were not intended to cover scenarios where swimmers might be present and that CAR Licences are therefore relying on scientific assumptions that were not cleared

or designed for the possibility of swimmers being in the vicinity. In addition, SEPA's original 1998 policy for Azamethiphos was only temporary, it only considered the harmful effects to the environment rather than humans and since 25 years have passed with more recent research available, this 'temporary' policy is decades overdue for full review and endorsement. In the light of our evidence, the precautionary principle must apply.

SEPA have admitted that they didn't assess the impact of bath chemicals on swimmers and it seems that now they also admit that they didn't assess the human impact of organics, metals and other chemicals either, because they do not see the need. It is hard to prove that there is no need when there has never been an assessment. SEPA state that bacteria from cold blooded fish faeces does not infect humans which is generally true, but we have seen scientific papers suggesting that the bacteria *Toxoplasma Gondii* might occur in both cold and warm blooded animals, so scientific opinions seem to be changing. Other examples such as *Listeria* and *Campylobacter* can occur at various stages of fish production and Covid has shown that viruses can jump between species, so SEPA's approach does not seem adequate on this matter of public safety.

Regardless of whether there is a toxic effect of swimming in fish farm emissions, SEPA have still not commented on the amenity impact of fish faeces exceeding the combined output of sewage from Helensburgh, Oban and Campbeltown, nor the other floating and submerged residues created by fish farm processes such as hydrolicers and feeding. All of these will reduce water quality, create an unpleasant swimming environment and impact the neighbours. Both SEPA and the Council have a duty to promote public health (including mental health) through public amenity, which are all likely to be degraded by the presence of these various types of pollution in a well-established area of swimming and recreation.

A hurried study of SEPA's very late response suggests that it exposes them and the Council to legal challenge due to the existence of a large quantity of evidence of potential harm to swimmers, the contradictory statements in their assessment and their apparent failure to conduct any studies of their own to fulfil their statutory duty. They and the Council (based on the most recent version of the handling report) appear to be recommending a reversal of the precautionary principle and even seem to be abandoning the mitigating measure of warning the public when treatment is occurring. The precautionary principle is invoked when there is a lack of scientific certainty and the burden of proof shifts to the potential causer of the harm to prove that there will be no adverse impact. So when SEPA state that there is "no evidence" that there will be harm, apart from being factually incorrect, this is not the same as establishing that there is proper scientific evidence that harm will not be caused. Similarly, "likelihood" is a degree of possibility, which is an unacceptable and dangerous degree in situations regarding human health.

As we have stated many times, we believe that without a systematic independent scientific review, as recommended by NHS Highland, the precautionary principle must apply.

*Comment: Officers have been guided by consultation responses received from NHS Highland and SEPA. The most recent consultation feedback from SEPA advises that based on the available evidence SEPA are satisfied that the discharges of the bath medicines from the proposed development would not pose a risk to the health of wild swimmers in Cour Bay. SEPA also responded to Mr Nickerson's concerns about discharges of other substances from the proposed farm, including copper, nitrogen compounds, phosphorus, organic carbon in fish faeces and antibiotics. They have confirmed that all of these substances are discharged at considerably lower rates than the rate at which hydrogen peroxide is likely to be discharged after a bath treatment and that there is no evidence or likelihood that permitted discharges of these substances pose a risk to wild swimmers in Cour Bay.*

*In response to Mr Nickerson's comments of 27<sup>th</sup> November 2023 (above) SEPA have stated "The Canadian Technical Report to which Mr Nickerson refers is a report on the degradation (i.e., breakdown) of hydrogen peroxide in seawater. The report concluded that degradation is faster in filtered seawater than in raw seawater. The information submitted by the applicant and our review did not assume any breakdown of hydrogen peroxide (only dispersion and dilution). Consequently, the Canadian Report has no bearing on the conclusions of our review.*

*The planning documents include the applicant's rebuttals of the 3 critiques of the WCa study submitted by Cour Ltd. The critiques included that:*

- WCa only considered an average-sized adult when smaller individuals may be more at risk.*
- The effect of environmental factors on the distribution of the substances in the sea after discharge should be considered.*

*In our assessment, we applied the risk assessment model to different-sized people and considered the results of dispersion modelling undertaken by Salmon Scotland."*

NB Full details of all representations received can be viewed on the Council's Planning Portal [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

### **3.0 RECOMMENDATION**

It is recommended that planning permission be approved subject to a pre-determination hearing and the revised conditions listed in Appendix 1 supplementary report no. 4.

**Author of Report:** Sandra Davies

**Date:** 27/11/23

**Reviewing Officer:** Peter Bain

**Date:** 27/11/23

**Fergus Murray**  
**Head of Development and Economic Growth**