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Volume 7E Proposed Development (Onshore) Appendices

Appendix 5-1 Historic Environment Desk-based Assessment
Annex 2 Legislative and Planning Framework

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Volume 7E Appendix 5-1 Annex 2

Legislative and Planning Framework

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Designated Heritage Assets

Designation	Associated Legislation	Overview
World Heritage Sites		The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee inscribes World Heritage Sites for their Outstanding Universal Value – <i>cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity</i> . (UNESCO, 2019 ¹) Scotland protects its World Heritage Sites and their settings, including any buffer zones or equivalent, through the statutory designation process and through the planning system. The National Planning Policy Framework (Scottish Government, 2023 ²) sets out detailed policies for the conservation and enhancement of the historic environment, including World Heritage Sites, through both plan-making and decision-taking.
Scheduled Monuments and Areas of Archaeological Importance	<i>Ancient Monuments and Archaeological Areas Act 1979</i> ³	Under the <i>Ancient Monuments and Archaeological Areas Act 1979</i> (UK Parliament, 1979 ³), the Secretary of State (currently Department for Culture, Media and Sport) can schedule any site which appears to be of national importance because of its historic, architectural, traditional, artistic or archaeological interest. The function of compiling and maintaining the schedule of monuments in Scotland was conferred on Historic Environment Scotland under the <i>Historic Environment Scotland Act 2014</i> (Scottish Parliament, 2014 ⁴). Additional controls are placed upon works affecting Scheduled Monuments under the Act. Under the <i>Historic Environment Scotland Act 2014</i> powers are transferred to Historic Environment Scotland in relation to the grant, modification and revocation of Scheduled Monument Consent.
Listed Buildings	<i>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997</i> ⁵ <i>Planning (Listed Building Consent and</i>	In Scotland, under Section 1 of the <i>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997</i> (UK Parliament, 1997 ⁵), the Secretary of State is required to compile lists of buildings of special architectural or historic interest, on advice from such persons or bodies of persons as appear to him appropriate as having ‘special knowledge of, or interest in, buildings of architectural or historic interest’. Under the <i>Historic Environment Scotland Act 2014</i> ⁴ , this duty was conferred to Historic Environment Scotland. Under the same act functions in relation to the grant, modification and revocation of listed building consent was also conferred to Historic Environment Scotland.

Designation	Associated Legislation	Overview
	<p><i>Conservation Area Consent Procedure) (Scotland) Regulations 2015⁶</i></p>	<p>The process for applying for and determining applications for Listed Building Consent are addressed in the <i>Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015</i> (Scottish Parliament, 2015⁶).</p>
<p>Conservation Areas</p>	<p><i>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997⁵</i> <i>Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015⁶</i></p>	<p>A Conservation Area is an area which has been designated because of its special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. In most cases, Conservation Areas are designated by Local Planning Authorities. Section 64 (1) of the <i>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997</i> (UK Parliament, 1997⁵) requires authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Under the <i>Historic Environment Scotland Act 2014</i> (Scottish Parliament, 2014⁴), Historic Environment Scotland may also designate Conservation Areas.</p> <p>The process for applying for and determining applications for Conservation Area Consent are addressed in the <i>Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015</i> (Scottish Parliament, 2016⁶).</p>
<p>Inventory Gardens and Designed Landscapes and Inventory Battlefields</p>	<p>-</p>	<p>Both these statutory Inventories are administered by Historic Environment Scotland. Local authorities must consult Historic Environment Scotland on development proposals that they consider will affect an Inventory Garden and Designed Landscape and should ensure any impacts upon Inventory Battlefields are considered.</p>
<p>Historic Marine Protected Area</p>	<p><i>Marine (Scotland) Act 2010⁷</i></p>	<p>The <i>Marine (Scotland) Act 2010</i> (Scottish Parliament, 2010⁷) allows the Scottish Ministers to designate any area of the Scottish marine protection area as a historic marine protected area (a 'Historic MPA') for the purpose of preserving a marine historic asset of national importance.</p>

National Planning Framework 4

National Planning Framework 4², adopted February 2023

Policy Principles

Policy Intent:

To protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.

Policy Outcomes:

- The historic environment is valued, protected, and enhanced, supporting the transition to net zero and ensuring assets are resilient to current and future impacts of climate change.
- Redundant or neglected historic buildings are brought back into sustainable and productive uses.
- Recognise the social, environmental and economic value of the historic environment, to our economy and cultural identity.

Policy 7 Historic assets and places

Local Development Plans:

LDPs, including through their spatial strategies, should support the sustainable management of the historic environment. They should identify, protect and enhance valued historic assets and places.

Policy 7

a) Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change. Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records.

b) Development proposals for the demolition of listed buildings will not be supported unless it has been demonstrated that there are exceptional circumstances and that all reasonable efforts have been made to retain, reuse and/or adapt the listed building. Considerations include whether the: i. building is no longer of special interest; ii. building is incapable of physical repair and re-

National Planning Framework 4², adopted February 2023

use as verified through a detailed structural condition survey report; iii. repair of the building is not economically viable and there has been adequate marketing for existing and/or new uses at a price reflecting its location and condition for a reasonable period to attract interest from potential restoring purchasers; or iv. demolition of the building is essential to delivering significant benefits to economic growth or the wider community.

c) Development proposals for the reuse, alteration or extension of a listed building will only be supported where they will preserve its character, special architectural or historic interest and setting. Development proposals affecting the setting of a listed building should preserve its character, and its special architectural or historic interest.

d) Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the: i. architectural and historic character of the area; ii. existing density, built form and layout; and iii. context and siting, quality of design and suitable materials.

e) Development proposals in conservation areas will ensure that existing natural and built features which contribute to the character of the conservation area and its setting, including structures, boundary walls, railings, trees and hedges, are retained

f) Demolition of buildings in a conservation area which make a positive contribution to its character will only be supported where it has been demonstrated that: i. reasonable efforts have been made to retain, repair and reuse the building; ii. the building is of little townscape value; iii. the structural condition of the building prevents its retention at a reasonable cost; or iv. the form or location of the building makes its reuse extremely difficult.

g) Where demolition within a conservation area is to be followed by redevelopment, consent to demolish will only be supported when an acceptable design, layout and materials are being used for the replacement development.

h) Development proposals affecting scheduled monuments will only be supported where: i. direct impacts on the scheduled monument are avoided; ii. significant adverse impacts on the integrity of the setting of a scheduled monument are avoided; or iii. exceptional circumstances have been demonstrated to justify the impact on a scheduled monument and its setting and impacts on the monument or its setting have been minimised.

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- i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.

- j) Development proposals affecting nationally important Historic Battlefields will only be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristics, physical remains and special qualities.

- k) Development proposals at the coast edge or that extend offshore will only be supported where proposals do not significantly hinder the preservation objectives of Historic Marine Protected Areas.

- l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.

- m) Development proposals which sensitively repair, enhance and bring historic buildings, as identified as being at risk locally or on the national Buildings at Risk Register, back into beneficial use will be supported.

- n) Enabling development for historic environment assets or places that would otherwise be unacceptable in planning terms, will only be supported when it has been demonstrated that the enabling development proposed is: i. essential to secure the future of an historic environment asset or place which is at risk of serious deterioration or loss; and ii. the minimum necessary to secure the restoration, adaptation and long-term future of the historic environment asset or place. The beneficial outcomes for the historic environment asset or place should be secured early in the phasing of the development, and will be ensured through the use of conditions and/or legal agreements.

- o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.

Planning Advice Note 2/2011: Planning and Archaeology (Scottish Government, 2011⁸)

<p>Para. 4</p>	<p>Scottish Ministers’ policy for protecting archaeological remains through the planning system is contained in SPP. Government policy is to protect and preserve archaeological sites and monuments, and their settings, in situ wherever feasible. Where preservation in situ is not possible, planning authorities should consider applying conditions to planning consents, listed building consents and conservation area consents to ensure that an appropriate level of excavation, recording, analysis, publication and archiving is carried out before and/or during development. The interpretation and preservation in situ of archaeological remains should be seen as a positive resource that can contribute to a sense of place in new development.</p>
<p>Para. 5</p>	<p>In considering planning applications, planning authorities should take into account the relative importance of archaeological sites. World heritage sites are of international importance and scheduled monuments are of national importance and should be preserved in situ and in an appropriate setting. However, not all archaeological sites and monuments are of equal importance.</p>
<p>Para. 6</p>	<p>In determining planning applications that may impact on archaeological features or their setting, planning authorities may on occasion have to balance the benefits of development against the importance of archaeological features. The weight that should be given to archaeological considerations will depend on a number of factors, including:</p> <ul style="list-style-type: none"> the relative rarity of the archaeological feature concerned; the completeness of the feature / whether it is a particularly good example of its type; the historical or cultural associations of the feature; the value given to the feature by the local community; the potential value of the feature as an in situ educational or research resource; and the potential value of retaining the feature for tourism or place-making. <p>Since this list is not exhaustive, in considering these factors, it will benefit planning authorities to seek professional advice from their archaeological advisor.</p>
<p>Para. 15</p>	<p>Prospective developers should undertake an initial assessment of whether a property or area is known or likely to contain archaeological remains as part of their pre-planning application research into development potential. Developers may wish to commission their own professionally competent archaeological organisation or consultant, whose work should meet the Institute for Archaeologists quality standards, to develop this aspect of their proposals. It is strongly recommended that developers seek early advice from the local authority archaeologist before considering the submission of a planning or a listed building application in cases where remains are known or thought likely to exist. Such pre-application consultations and discussions can identify</p>

Planning Advice Note 2/2011: Planning and Archaeology (Scottish Government, 2011⁸)

potential archaeological issues at an early stage, thereby assisting the smooth processing of a planning application by minimising unnecessary and potentially costly delays. Where a proposed development may affect a scheduled monument or its setting contact should be made with Historic Scotland [Historic Environment Scotland] at the earliest opportunity.

Para. 16

When archaeologists know or have good reason to believe that significant remains exist, developers should be open to modifying their plans to reduce the risk of delays later in the planning process; for example, by re-designing foundations which avoid or minimise disturbance or by raising the ground levels on which a proposed structure is to be built, or by careful siting of landscaped or open areas. Techniques are available for sealing archaeological remains under buildings or areas of landscaping.

Para. 20

In many cases a Desk Based Assessment of existing information from the Scottish Marine Region/Historic Environment Record and other appropriate sources may be sufficient to allow authorities to make a planning decision. But where the professional judgement of the authority's archaeological advisor, based on available evidence, indicates that significant archaeological remains may exist, it is reasonable for the planning authority to request the prospective developer to arrange for an archaeological field evaluation to be carried out before the planning application is determined. However, where archaeological field evaluation is proposed on the site of a scheduled monument, separate consent will be required. In such cases, the planning authority should seek advice from Historic Scotland. Planning authorities should require only the information necessary to enable them to take an informed decision on the proposal, and this should be proportionate to the importance of the potential resource. Archaeological field evaluation is normally a rapid operation, involving a range of techniques including ground survey, historic building assessment, walk-over survey and trial trenching, carried out by a professionally competent archaeological organisation or person. Field evaluations of this kind help to define the character and extent of any remains that exist in the area of a proposed development, and thus indicate the strength of the case for preservation. They also provide information useful in identifying potential options for minimising or avoiding damage. The work should conform to the Standards and Guidance for Field Evaluation (2009) prepared by the Institute for Archaeologists.

Para. 21

When it is evident that a particular development proposal is likely to affect archaeological remains or their setting, applicants may be asked to provide more detailed information about their scheme – for example the type of foundations to be used – or they may be asked to outline a strategy for mitigation of the impact of their development upon the archaeological remains.

Para. 22

Developers should provide the results of desk based assessments and field evaluations as part of their planning application. They should ensure that all materials recovered by any field evaluation are appropriately disposed of, regardless of the success of an individual planning application.

Planning Advice Note 2/2011: Planning and Archaeology (Scottish Government, 2011⁸)

Para. 31	Even following the best pre-planning application research, there may be occasions when the presence of archaeological remains becomes apparent only once development has commenced. In these circumstances, the local authority archaeologist should be informed immediately, and will be able to offer practical advice on the mitigation measures which should be applied by the developer to ensure appropriate excavation, reporting and analysis if preservation in situ cannot be achieved. Failure to report may result in a temporary stop notice being issued by the planning authority. Where fresh archaeological discoveries are deemed by Scottish Ministers to be of national importance, in accordance with their published criteria, they have the power to schedule the remains. This can be done in a matter of days. In that event developers would need to seek separate scheduled monument consent before continuing work. A reserve power to revoke planning permission is also available to the planning authority or Scottish Ministers. If exercised compensation may be capable of being claimed.
Para. 35	Developers should consider the possibility of archaeological remains at an early stage in the planning of their development, and enter into early discussions with the local authority archaeologist where remains may be present. Developers should be prepared to undertake appropriate excavation and/or recording before and/or during development, and to support consequential analysis, publication and archiving of the results, and this can be required by the planning authority through the use of conditions or a legal agreement.

Local Planning Policy

Aberdeenshire Council Local Development Plan 2023 (Aberdeenshire Council, 2023 ⁹)		
Policy ref.	Title	Scope
Policy HE1	Protecting Listed Buildings, Scheduled Monuments, and Archaeological Sites (including other historic buildings)	<p>HE1.1 We will resist development that would have an adverse impact on the character, integrity or setting of listed buildings, or scheduled monuments, or other archaeological sites. If adverse impact is unavoidable, it should be minimised and justified.</p> <p>HE1.2 We will protect all listed buildings contained on the statutory list of Buildings of Special Architectural or Historic Interest for Aberdeenshire, all scheduled monuments contained on the statutory schedule of Monuments for Aberdeenshire and undesignated archaeological sites in Aberdeenshire. We will encourage their protection, maintenance, enhancement, and appropriate active use and conservation.</p> <p>Listed Buildings</p> <p>HE1.3 Alterations to listed buildings should be of the highest quality, and respect any features of special architectural, cultural or historic interest in terms of design, materials, scale, and setting. A Design Statement is required to support any proposed development and demonstrate how the proposal addresses paragraphs HE1.1 and HE1.2. The Design Statement should outline the details of the proposal, the significance of the building and justify that the proposal protects and respects the listed building.</p> <p>HE1.4 The demolition of a listed building will not be permitted unless there is clear evidence to show that the building is no longer of special interest, is incapable of repair or there are overriding environmental or socio-economic reasons not to retain it. It must be satisfactorily demonstrated that every effort has been made to continue the present use or find a suitable new use, with or without an appropriate adaptation of the building.</p> <p>Scheduled Monuments and Archaeological Sites</p>

Aberdeenshire Council Local Development Plan 2023 (Aberdeenshire Council, 2023⁹)

Policy ref.	Title	Scope
		<p>HE1.5 Development on nationally or locally important monuments or archaeological sites, or having an adverse impact on the integrity of their setting, will only be allowed if there are exceptional circumstances, including those of a social or economic nature, and there is no alternative site. It is the developer’s responsibility to provide information on the nature and location of the archaeological features, including details of any mitigation measures proposed, prior to determination of the planning application.</p> <p>HE1.6 Where preservation of the site in its original location is not possible, the developer must arrange for the full excavation and recording of the site in advance of development to satisfy Aberdeenshire Council that the impacts from development have been fully mitigated.</p>
Policy HE2	Protecting Historic, Cultural and Conservation Areas	<p>Conservation Areas</p> <p>HE2.1 We will resist development, including change of use or demolition, which would fail to preserve or enhance the character or appearance of a conservation area. This applies both to developments within the conservation area and proposals outwith that would affect its character or appearance. We will seek retention, restoration, and sympathetic adaptation of unlisted buildings which contribute positively to the special architectural or historic interest of the area, in preference to allowing their demolition.</p> <p>HE2.2 The design, scale, layout, siting and materials used in development within a conservation area must be of the highest quality and respect the individual characteristics for which the conservation area was designated. Development should be in accordance with any agreed Conservation Area Management Plan or Appraisal. All details must be provided under the cover of a full application and any trees (including veteran trees and trees outside of woodlands) contributing to the character and appearance should be retained. Homeowners and business owners within the conservation area boundaries automatically have certain Permitted Development Rights removed. Appendix 11 provides details on the additional controls within the conservation areas in Aberdeenshire.</p> <p>Battlefields, Inventory Gardens and Designed Landscapes</p>

Aberdeenshire Council Local Development Plan 2023 (Aberdeenshire Council, 2023⁹)

Policy ref.	Title	Scope
		<p>HE2.3 Development affecting an inventory battlefield or inventory garden and designed landscape will only be permitted if:</p> <p>the proposal would not have an adverse impact that compromises the objectives of the designation of an inventory garden or designed landscape, or the key landscape characteristics and special qualities of an inventory battlefield; or,</p> <p>any significant adverse effects are outweighed by long-term social or economic benefits of overriding public importance and there is no alternative site for the development. These conditions may also apply to developments outwith the designated sites. In either case, measures and mitigation must be taken to conserve and enhance the essential characteristics of the site as appropriate.</p> <p>HE2.4 All development affecting the character and/or the appearance of an inventory battlefield or inventory garden and designed landscape must be justified through a Design Statement and/or Landscape Management Plan.</p>

References

- ¹ United Nations Educational, Scientific and Cultural Organization [UNESCO] (2019) 'Operational Guidelines for the Implementation of the World Heritage Convention'. Available at: <https://whc.unesco.org/document/178167> (Accessed 11/10/2024).
- ² Scottish Government (2023) 'National Planning Framework 4'. Available at: <https://www.gov.scot/publications/national-planning-framework-4/> (Accessed: 27/05/2024).
- ³ UK Parliament (1979) 'Ancient Monuments and Archaeological Areas Act 1979'. Available at: <https://www.legislation.gov.uk/ukpga/1979/46> (Accessed: 27/05/2024).
- ⁴ Scottish Parliament (2014) 'Historic Environment Scotland Act 2014'. Available at: <https://www.legislation.gov.uk/asp/2014/19/contents/enacted> (Accessed: 27/05/2024).
- ⁵ UK Parliament (1997) 'Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997'. Available at: <https://www.legislation.gov.uk/ukpga/1997/9/contents> (Accessed 23/10/2024).
- ⁶ Scottish Parliament (2015) 'The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015'. Available at: <https://www.legislation.gov.uk/ssi/2015/243/contents/made> (Accessed: 27/05/2024).
- ⁷ Scottish Parliament (2010) 'Marine (Scotland) Act 2010'. Available at: <https://www.legislation.gov.uk/asp/2010/5/contents> (Accessed 11/10/2024).
- ⁸ Scottish Government (2011) 'Planning Advice Note 2/2011: Planning and archaeology'. Available at: <https://www.gov.scot/publications/pan-2-2011-planning-archaeology/> (Accessed: 27/05/2024).
- ⁹ Aberdeenshire Council (2023) 'Aberdeenshire Local Development Plan'. Available at: <https://online.aberdeenshire.gov.uk/ldpmedia/LDP2021/AberdeenshireLocalDevelopmentPlan2023IntroductionAndPolicies.pdf> (Accessed: 27/05/2024).

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