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Volume 7E Proposed Development (Onshore) Appendices

Appendix 5-2 Cultural Heritage Policy Tests

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Acronyms and Abbreviations

EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
HEDBA	Historic Environment Desk-based Assessment
HEPS	Historic Environment Policy for Scotland
HES	Historic Environment Scotland
NPF4	National Planning Framework 4

1 Cultural Heritage Policy Tests

1.1 Introduction

- 1.1.1.1 This technical appendix supports Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage of the Environmental Impact Assessment Report (EIAR).
- 1.1.1.2 The purpose of this appendix is to present the legislation and policy pertinent to the Terrestrial Archaeology and Cultural Heritage assessment, to align the way in which impact to a heritage asset is determined as defined in policy with the requirement of the EIA Regulations and to assess whether the Environmental Impact Assessment (EIA) meets the policy tests (legal, national and local) in regard to the historic environment.

1.2 Legislation

- 1.2.1.1 The Planning (Listed Buildings and Conservation Areas) Act (Scotland) 1997 (UK Parliament, 1997¹) (the Act) is the key legislation in regard to Listed Buildings and Conservation Areas in particular which provides tests which need to be met by planning applications.
- 1.2.1.2 In regard to Listed Buildings, Section 59 of the Act notes that:
- (1) "In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*
- 1.2.1.3 The Act further clarifies that 'preserving' means "[...] preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development" includes redevelopment."
- 1.2.1.4 Similarly in regard to Conservation Areas, Section 64 of the Act states that:
- "[...] with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*
- 1.2.1.5 No Conservation Areas will be impacted by the Proposed Development (Onshore), so the general duties in s. 64 of the Act are not engaged.
- 1.2.1.6 Under the Electricity Act 1989 Schedule 9² (Paragraph 3 (1)(a) there is also a duty to "have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest...".

1.2.1.7 The Proposed Development (Onshore) design and the assessment have had full regard to the legislative context set out above. The outcome of the assessment demonstrates the compliance with the legal framework.

1.3 National Policy

1.3.1 National Planning Framework 4

1.3.1.1 The principal national planning policy on the importance, management and safeguarding of the historic environment is set out within Policy 7 'Historic assets and places' of the National Planning Framework 4 (NPF4) (Scottish Government, 2023³) which forms part of the development plan.

1.3.1.2 The key policy intent of Policy 7 of NPF4 is to "*protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places*".

1.3.1.3 A selection of excerpts from NPF4 are included in Annex 2 of the Historic Environment Desk-based Assessment (HEDBA) (Volume 7E, Appendix 5-1), however, the key excerpts in regard to impact to the historic environment include the following:

- *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.
- *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.*
- *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.

- *o) Non-designated heritage 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.*

Where impacts cannot be avoided they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.

When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.

- 1.3.1.4 Part 3 – Annexes of NPF4 defines cultural significance as “*Cultural significance means aesthetic, historic, scientific or social value for past, present or future generations. Cultural significance can be embodied in a place itself, its fabric, setting, use, associations, meanings, records, related places and related objects.*” in Annex F ‘Glossary of definitions’.
- 1.3.1.5 No definition of impacts or significant impact as per Section a of Policy 7 is provided in NPF4 or its appendices, however, impact is defined in the Historic Environment Policy for Scotland (HEPS) (Historic Environment Scotland, 2019⁴) discussed below (see Section 1.5).
- 1.3.1.6 In regard to NPF4, the EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage) and supporting HEDBA (Volume 7E, Appendix 5-1) clearly present an assessment of the cultural significance of the identified historic environment resource (including designated and non-designated heritage assets), identify where they might be impact and what form this might take (e.g., direct physical impact, setting impacts etc.), and present an indicative scope for follow-on mitigation works. As such, it is considered that the needs of Policy 7 of the NPF4 have been met. As no Scheduled Monuments are adversely affected (either directly or in terms of adverse effects on the integrity of their settings), the specific requirements for point h of Policy 7 as presented in 1.3.1.3) are met.

1.4 Local Policy

1.4.1 Aberdeenshire Local Development Plan

1.4.1.1 The Proposed Development (Onshore) is situated within the administrative boundary of Aberdeenshire Council, which adopted the Aberdeenshire Local Development Plan (The Local Plan) in January 2023 (Aberdeenshire Council, 2023⁵) and forms part of the development plan.

1.4.1.2 The historic environment is addressed in Section 11 of the Local Plan under the title 'The Historic Environment', and the following policies are relevant to terrestrial archaeology and cultural heritage:

- Policy HE1 Protecting Listed Building, Scheduled Monuments and Archaeological Sites (including other historic buildings); and
- Policy HE2 Protecting Historic, Cultural and Conservation Areas.

1.4.1.3 As there are Scheduled Monuments, Listed Buildings and Inventory Gardens and Designed Landscapes within the study areas discussed in the EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage) and supporting HEDBA (Volume 7E, Appendix 5-1), but no direct physical or indirect physical impacts are predicted, only the following sections of Policy HE1 apply:

- 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.
- 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.
- 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.
- HE1.6 Where preservation of the site [in this case, Scheduled Monuments and/or Archaeological Sites] 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.

- 1.4.1.4 In regard to Policy HE2, only the following apply:
- HE2.3 Development affecting an inventory battlefield or inventory garden and designed landscape will only be permitted if:
 - 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
 - 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.
 - 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.

1.4.1.5 The full details of the above policies are presented in Annex 2 of the HEDBA (Volume 7E, Appendix 5-1).

1.4.1.6 The EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage) and supporting HEDBA (Volume 7E, Appendix 5-1), are considered to meet the requirements of the Local Plan as it has been assessed that the Proposed Development (Onshore) would not have any significant adverse effects to any Conservation Areas, Inventory Gardens and Designed Landscapes and Inventory Battlefields which is a requirement of Policy HE2.3. Furthermore, the identified Listed Building and Scheduled Monuments (including the part of their setting that contributes to their cultural significance) will be unchanged, thus meeting Policy HE1.

1.5 Supplementary Policy and Advice Notes

1.5.1.1 The HEPS 2019⁴ is a policy statement which sits outside the development plan and is an important material consideration. It provides key context to the background approaches to the identification and protection of heritage assets, with planning policy then applying this to decision-making.

1.5.1.2 ⁴The HEPS defines an impact as something that “...can be neutral, positive or negative. There can be impact on the physical elements of a place or on its setting, if its surroundings are changed so that our understanding, appreciation or experience is altered. Changes in the historic environment can also affect people’s associations with a place or its setting, and their responses to it.”

1.5.1.3 Furthermore, it notes that “if detrimental impact on the historic environment is unavoidable, it should be minimised.” (HEP3 is presented in

'Managing Change: Policies and Principles and 'Policies for Managing The Historic Environment' in HEPS 2019⁴).

1.5.1.4 Further guidance is also given in the Planning Advice Note 2/2011: Planning and Archaeology (The Scottish Government 2011⁶) which provides advice to planning authorities and developers on dealing with archaeological remains and notes that where EIA is required, the pertinent EIA Regulations apply.

1.5.1.5 In regard to HEPS 2019⁴ and PAN 2/2011⁶, it is considered that the requirements have been met as an assessment of impact is clearly presented in the EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage). Furthermore, the EIAR Chapter (Chapter 5: Terrestrial Archaeology and Cultural Heritage) identifies the likely scope of archaeological mitigation going forward to further assess the potential for archaeological remains which satisfies the advice note requirements.

1.6 The EIA Regulations

1.6.1.1 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (Scottish Parliament, 2017)⁷ came into effect on 16 May 2017. The purpose of EIA is to identify the likely significant effects of a proposed development on the environment before any decision in regard to a planning application is made.

1.6.1.2 In EIA terms, an effect is either significant or not significant under the 2017 Regulations, and both the direct and indirect significant effects (including operational effects where applicable) should be assessed. In the Environmental Impact Assessment Handbook: Guidance for competent authorities, consultation bodies, and other involved in the Environmental Impact Assessment process in Scotland (Historic Environment Scotland (HES), 2018⁸) ('the 2018 EIA Handbook') it is presented that impacts of major or moderate significance would be regarded as likely significance effects, meaning that impacts of a minor or negligible would be considered as not being significant (see C.8.8 of the 2018 EIA Handbook⁸). The 2018 EIA Handbooks is a comprehensive guide to EIA in Scotland.

1.6.1.3 Planning Circular 1/2017 Environmental Impact Assessment regulations (Scottish Government, 2017⁹) should also be consulted for further guidance from the Scottish Government on the 2017 Regulations.

1.6.1.4 In regard to the EIA Regulations, the EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage) refers to and applies the principles of the HES 2018 EIA Handbook. The EIAR Chapter (Chapter 5: Terrestrial Archaeology and Cultural Heritage) presents an assessment that concludes on the likely significant effects due to the Proposed Development (Onshore) and states where an effect would be significant or not significant. In addition to this, as the EIAR Chapter applies the terminology

and language as required under the EIA Regulations, and therefore it is considered to have met the requirements of the EIA Regulations.

1.7 Alignment of NPF4 and the EIA Regulations

- 1.7.1.1 Based on the information outlined above, the assessment of impact as required under NPF4 and assessment of significance of effects under the EIA Regulations is broadly aligned.
- 1.7.1.2 As impacts are clearly defined in the EIAR Chapter (Volume 5, Chapter 5: Terrestrial Archaeology and Cultural Heritage), the assessment meets the requirements of NPF4 and EIA significance is used to describe the relative importance of impacts, generally based on the magnitude of change and sensitivity of the receptor.

1.8 References

¹ UK Parliament (1997) 'Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997'. Available at: [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#) (Accessed: 14/10/2024).

² UK Parliament (1989) 'Electricity Act 1989'. Available at: <https://www.legislation.gov.uk/ukpga/1989/29/contents> (Accessed: 14/10/2024).

³ Scottish Government (2023) 'National Planning Framework 4'. Available at: <https://www.gov.scot/publications/national-planning-framework-4/> (Accessed: 14/10/2024).

⁴ Historic Environment Scotland (2019) 'Historic Environment Policy for Scotland'. Available at: <https://www.historicenvironment.scot/advice-and-support/planning-and-guidance/historic-environment-policy-for-scotland-heps/> (Accessed: 14/10/2024).

⁵ Aberdeenshire Council (2023) 'Aberdeenshire Local Development Plan'. Available at: <https://online.aberdeenshire.gov.uk/ldpmedia/LDP2021/AberdeenshireLocalDevelopmentPlan2023IntroductionAndPolicies.pdf> (Accessed: 14/10/2024).

⁶ Scottish Government (2011) 'Planning Advice Note 2/2011: Planning and Archaeology'. Available at: <https://www.gov.scot/publications/pan-2-2011-planning-archaeology/> (Accessed: 14/10/2024).

⁷ Scottish Parliament (2017) 'Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended)'. Available at: <https://www.gov.scot/publications/pan-2-2011-planning-archaeology/> (Accessed: 14/10/2024).

⁸ Historic Environment Scotland (2018) 'Environmental Impact Assessment Handbook: Guidance for competent authorities, consultation bodies, and others involved in the Environmental Impact Assessment process in Scotland'. Available at: <https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=6ed33b65-9df1-4a2f-acbb-a8e800a592c0> (Accessed: 14/10/2024).

⁹ The Scottish Government (2017) 'Planning Circular 1/2017: Environmental Impact Assessment regulations'. Available at: <https://www.gov.scot/publications/planning-circular-1-2017-environmental-impact-assessment-regulations-2017/> (Accessed: 14/10/2024).

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